



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	544 of 2023
Date of filing:	03.03.2023
First date of hearing:	04.05.2023
Date of decision:	12-11-2024

Pranshu Gupta s/o Kalyan Mal Gupta

House no. 59, Godavari Appt.

Alakanda, New Delhi-110019,

.....COMPLAINANT

Versus

1.Ashiana Realtech Pvt. Ltd.

203-205, Progressive Chamber D-3, Block, Commercial Complex
Prashant Vihar, New Delhi-11085

2.Movish Realtech Pvt. Ltd.

203-205, D3 Block, Progressive Chamber, Commercial Complex,
Prashant Vihar, New Delhi-11085

3. Mohit Garg

203-205, Progressive Chamber D-3, Block, commercial complex
Prashant Vihar, New Delhi-11085

.....RESPONDENT(S)

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Complaint no.:	545 of 2023
Date of filing:	03.03.2023
First date of hearing:	04.05.2023
Date of decision:	12-11-2024

Lokesh Garg and Ruchi Garg

House No. 818, Saraswati Vihar,

Chakarpur, Gurugram-122002

.....COMPLAINANTS

Versus

1.Ashiana Realtech Pvt. Ltd.

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203-205, progressive chamber D-3, Block, Commercial Complex
Prashant Vihar, New Delhi-11085

.....RESPONDENTS

CORAM: Dr. Geeta Rathee Singh
Chander Shekhar

Member
Member



Present: - Adv. Subhash Chander Sharma, Counsel for complainants in both cases.

Adv. Navneet, Counsel for all respondents through VC on both cases.

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. This order shall dispose of both the above captioned two complaints filed by the complainants before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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.
2. The core issues emanating from the above captioned complaints are similar in nature. Complainants in the above referred Complaint No. 544 of 2023 and 545 of 2023 are allottees of the project namely "The Cubix" developed by the same respondents/ promoter, i.e., M/s Ashiana Realtech Private Limited in Sector-23, Dharuhera, District Rewari, Fulcrum of the issues involved in both the above captioned cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the unit in question and all complainant(s) are now seeking refund of their



paid amount along with the interest. This order is passed by taking complaint no. 544 of 2023 titled as "Pranshu Gupta versus M/s Ashiana Realtech Pvt. Ltd and others" as lead case.

3. The particulars of the project, 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 of complaint no. 544 of 2022	Details of complaint no. 545 of 2022
1.	Name of the project	The Cubix	The Cubix
2.	Name of the promoter	M/s Ashiana Realtech Pvt. Ltd.	Ashiana Realtech Pvt. Ltd.
3.	RERA registered/not registered	Registered 39-2018	Registered 39-2018
4.	Unit no.	B1-003, GF	A1-006, GF
5.	Unit area	1600 sq. ft.	1375 sq. ft.
8.	Date of builder buyer agreement	07.05.2013	29.04.2013
9.	Due date of offer of possession	07.11.2016	29.10.2016
10.	Possession clause in BBA	<i>"Builder based on its present plans and estimates and subjects to all exceptions, expect to complete construction of the said project and offer to make possession of the said Flat(s) to the Buyer within a period of 42 (Forty Two) Months from the date of signing of this agreement with a grace period of 6 (Six)</i>	<i>Builder based on its present plans and estimates and subjects to all exceptions, expect to complete construction of the said project and offer to make possession of the said Flat(s) to the Buyer within a period of 42 (Forty Two) Months from the date of signing of this agreement with a grace period of 6 (Six) months</i>

Patel

		<i>months subject to delays due to non-availability of construction material and labours, or delay due to force majeure conditions and reasons beyond control of the Builder in which case time of completion shall be deemed to reasonably extended. However, if the construction is completed earlier, the possession thereof can be delivered even earlier. The objection of the Buyer is this regard shall not be tenable"</i>	<i>subject to delays due to non-availability of construction material and labours, or delay due to force majeure conditions and reasons beyond control of the Builder in which case time of completion shall be deemed to reasonably extended. However, if the construction is completed earlier, the possession thereof can be delivered even earlier. The objection of the Buyer is this regard shall not be tenable"</i>
11.	Basic sales price	Rs. 37,92,000/-	Rs. 32,35,200/-
12.	Amount paid by complainant	Rs. 42,13,860/-	Rs. 36,24,051/-
13.	Offer of possession	10.11.2021	10.11.2021

A. FACTS OF THE COMPLAINT

4. Complainants purchased a residential flat bearing n. B1-003, ground floor admeasuring 1600 sq. ft. in the project, "The Cubix" at Sector-23, Dharuhera, Distt Rewari, Haryana vide builder buyer agreement dated 07.05.2013. Clause 6(1) of the agreement states that builder based on its present plans and estimates and subjects to all exceptions, expect to complete construction of the said project and offer to make possession of the said flat(s) to the buyer within a period of 42 (forty two) months from the date of signing of this agreement with a grace period of 6 (six) months

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subject to delays due to non-availability of construction material and labours, or delay due to force majeure conditions and reasons beyond control of the builder in which case time of completion shall be deemed to reasonably extended. However, if the construction is completed earlier, the possession thereof can be delivered even earlier. As per said clause respondent was liable to hand over the possession of the booked unit by 07.11.2016.

5. Builder buyer agreement was executed between the respondent no.1 and the complainant but respondent no.1 has now changed its name to Movish Realtech Pvt. Ltd. and complainant is not aware about the position regarding the assets, rights and liabilities of respondent no.1 and 2 therefore both parties are arrayed as parties being necessary parties. Respondent no. 3 is director in both respondent no.1 and 2 so he is also arrayed as necessary party.
6. Basic sales price of the flat was Rs. 37,92,000/- against which the complainant has already paid an amount of Rs. 42,13,860/-. It has been alleged by the complainant that despite the payment of Rs. 42,13,860/- respondent no. 1 has failed to deliver possession of his booked unit in accordance with the terms and conditions of the builder buyer agreement dated 07.05.2013. Complainant visited the respondent several times but respondent postponed the offer of possession under false pretentions and excuses. Thereafter vide demand letter dated 10.11.2021, respondent



raised a demand of Rs. 8,51,292/- without delivering the possession of his booked unit from the complainant.

7. In response to the said demand, complainant wrote a letter dated 09.01.2022 to respondents for delayed interest charges for inordinate delay in offering the possession of his booked unit but the respondents failed to pay delayed possession charges after which complainant sent a legal notice dated 31.10.2022 to the respondents. In the said notice complainant withdrew from the project and sought refund of amount of Rs. 42,13,860/- along with interest @ 18% p.a. The respondents replied to the said notice in frivolous manner and failed to refund the amount of Rs. 42,13,860/- along with interest.
8. Complainant has also filed copy of judgement of the Apex court in Civil **Appeal no. 12238 of 2018 titled as Pioneer Urban Land & Infrastructure Ltd. Bersus Govindan Raghavan** on 06.08.2024 wherein the Hon'ble supreme Court has held that when the builder fails to fulfil his contractual obligation of obtaining the occupancy certificate and offering possession of the flat to the respondent purchaser within the time stipulated in the agreement or within a reasonable time thereafter, the purchaser could not be compelled to take possession of the flat even though it was offered almost 2 years after the grace period under the agreement expired.


Rathee

9. Now, the complainant seeks indulgence of this Authority for withdrawal from the project and refund of the deposited amount along with interest as respondents have failed to fulfil their promise of delivering possession as per terms of builder buyer agreement dated 07.05.2013.

RELIEFS SOUGHT

Complainants has sought following relief :

10. Refund of Rs. 42,13,860/- amount being received by respondents from petitioner along with interest Rs. 63,84,099/- thereon @18% p.a. totalling Rs. 1,05,97,959/- along with costs as the petitioner seeks withdrawal from the project.

REPLY ON BEHALF OF RESPONDENT

11. That agreement as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has not been executed between the respondent company and the complainant. The agreement that has been referred by the complainant is the agreement that was executed much prior to coming into force of 2016 Act.
12. The respondent company had registered the project under RERA dated 20.08.2018 with Registration No. HRERA-PKL-RWR-39-2018 .
13. That Mr. Mohit Garg has no privity of contract with the complainant in his personal capacity and hence could not be arrayed as necessary party.
14. That the respondent completed the project within two years of its registration however due to spread of deadly Corona virus i.e. COVID 19,



national lockdown was announced in the entire country on 25.03.2020 and hence all offices including DTCP suspended its work till further announcements. As such the respondent applied for grant of OC on 07.12.2020.

15. That the Haryana Government, Town and Country Planning also passed notification dated 25th June 2021 whereby the State of Haryana decided to grant relief to the Real Estate Industry and it has been very clearly stated in said notification that the moratorium of six months for making various compliances was granted to the Real Estate Sector during first wave of COVID-19 outbreak vide memo. Misc. 1025/2020/13188 dated 28.07.2020 and it was had further extended to 31.05.2021. Hon'ble Authority is requested to consider such period as force majeure and the burden of payment of interest for the period from March 2020 till grant of OC i.e. 08.11.2021 must not be put on the respondent as the delay for grant of OC has been caused without any fault of respondent.

16. That the Hon'ble Authority had also considered period from 25.03.2020 till 24.09.2020 as force majeure period due to outbreak of Covid-19 and granted relief/extension in compliance with the various provisions of the RE(R&D) Act, 2016

17. That the Hon'ble Supreme Court, considering situation arisen due to spread of COVID-19, vide order dated 23.03.2020 in SUO MOTO WRIT PETITION (CIVIL) No. 3/2020, also extended the period of limitation



with effect from 15.03.2020 in all proceedings before Courts/ Tribunals across the country till further orders. The order passed by the Hon'ble Supreme Court on 23.03.2020 in SUO MOTO WRIT PETITION (CIVIL) No. 3/2020 has come to end on 14.03.2021 by virtue of order dated 08.03.2021 after which the Hon'ble Supreme Court of India vide its Order dated 27th April 2021, restored the order dated 23rd March 2020 due to the sudden and second outburst of Covid-19 Virus throughout the nation and in continuation of order dated 8th March 2021, directed that the period(s) of Limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders. As such the respondent is also entitled for benefit of such force majeure period and should be exempted from charge of delay interest from March 2020 to 08.11.2021 as Covid Period is also one of the major reasons for delay in acquiring Occupation Certificate.

18. The complainant never adhered to the payment plan and committed various defaults of payment. The complainant has not cleared the outstanding against his unit till date, despite receipt of offer of possession and numerous requests/reminders of payment by the respondent that shows that the complainant is not interested in taking possession but his only intention is to enrich herself wrongfully under the garb of delay possession interest.



19. Respondent has put forth its best efforts to complete the project. However, on accounts of factors/circumstances which were beyond the control of the respondent has restrained the Respondent to complete the Project in question within agreed period i.e the force majeure conditions.
20. The respondent has completed the project and also moved an application dated 07.12.2020 before the Hon'ble Director, Town and Country Planning, Haryana for grant of Occupation Certificate. Respondent had offered the possession of the unit to the complainant on 10.11.2021 after receiving occupation certificate dated 08.11.2021.
21. Respondents had incurred Cost of Rs. 103,12,97,759/- for completion of the project in question and the amount that had been received by the respondent from allottees in only Rs. 2,55,749,705/- that the respondent is suffering badly, for no fault of the respondent, firstly by incurring cost of completion of the project from his own resources, secondly by not getting the amount outstanding against the allottees till date i.e. even after completion of project and offer of possession and thirdly by getting burdened of false and frivolous litigations against the respondent by the allottees, fourthly for the time taken by Town and Country Planning for grant of Occupation Certificate due to outburst of Covid-19. Approximately 30 families are residing happily in the said project and numerous other allottees are in process of taking possession which is the evidence that the provision of all basic and necessary amenities in the



said project are complete. Report annexed herewith as Annexure R-9 is credence to completion of the project with all amenities as such the refusal of complainant to take possession after receipt of offer of possession on account of not in habitable condition is only bald allegation without any conducive evidence.

22. The complainant denied to take possession of the unit in question without any substantive reason hence the complainant is liable for breach of provision of section 19(10) of the RERA Act, 2016 as the complainant is at fault for not taking over possession even after issuance of offer of possession letter. The demand of refund of the complainant after lapse of year of getting offer of possession and completion of project is not tenable in the eyes of law and instant complaint needs to be set aside on this basis only.

ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT

23. Ld. counsel for the complainants submitted that arguments in both the captioned complaints are same therefore he is taking complaint no. 544 of 2023 as lead case and putting forth arguments for the same. He submitted that in the present case builder buyer agreement was executed between the parties on 17.05.2013. As per the builder buyer agreement deemed date of possession was 42+6 months from the date of execution of agreement which works out to 06.11.2016. An amount of Rs. 42,13,860/- was paid to the respondent against the basic sales price of Rs. 37,92,200/-



till the year 2016. Respondent has offered possession to the complainant on 10.11.2021 i.e, after delay of approx. 5 years along with a demand of Rs. 8,51,292/-. Complainant wrote a letter dated 09.11.2022 to the respondent thereby demanding compensation on account of delay in offering possession. Thereafter, complainant sent a legal notice dated 31.10.2022 to the respondent and demanded refund of his paid amount along with interest. Ld. counsel for the complainant also submitted that the judgement of Apex Court in **Newtech Promoters and Developers Pvt. Ltd v/s State of UP and ors.** supports his case as it has been laid down by the Supreme Court that section 18(1) of the Act clearly states that if the promoter fails to complete or is unable to give possession of an apartment, plot or building in terms of agreement for sale the allottee/buyer holds an unqualified right to seek refund of the amount with interest at such rates as may be prescribed in this behalf. He also referred to the judgement of the Apex Court in **Pioneer Urban Lan and Infrastructure Ltd. vs. Govindan Raghavan** wherein it has been held that where a builder failed to fulfil his contractual obligation of obtaining the occupation certificate and offering possession of the flat to the purchaser within the time stipulated in the agreement, or within the time stipulated in the agreement, or within a reasonable time thereafter. The purchaser could not be compelled to take possession of the flat, even



though it was offered almost 2 years after the grace period under the agreement expired.

24.Ld. Counsel for the respondent argued that present complaint has been filed by the complainant after possession was offered to them on 10.11.2021 after obtaining occupation certificate dated 08.11.2021. Reminder letters have also been issued to the complainant after offer of possession. He further submitted that respondent is entitled to get 9 months covid period declared as zero period as construction of the project has been hampered due to covid-19.

25.Ld. Counsel for the complainant rebutted the arguments of counsel for respondent stating that deemed date of possession in this case is in 2016 and it is the promoter who has delayed the project by approx. 5 years therefore force majeure should not be allowed to the promoter in the present case. He seeks refund of his paid amount along with interest @18% p.a.

ISSUE FOR ADJUDICATION

26. Whether the complainants in both the above captioned complaints are entitled to refund of the amount deposited by them along with interest in terms of Section 18 of RERA Act of 2016?



OBSERVATIONS AND DECISION OF AUTHORITY

27. Authority observes that admittedly complainant had purchased a flat bearing n. B1-003, ground floor admeasuring 1600 sq. ft. in the real estate project "The Cubix" located at Sector-23, Dharuhera, District Rewari, Haryana vide builder buyer agreement dated 07.05.2013. The builder buyer agreement was executed between complainant Mr. Pranshu Gupta and M/s Ashiana Realtech Pvt. Ltd. on 07.05.2013. As per annexure II of the builder buyer agreement basic sales consideration of the unit was Rs. 37,92,000/-. It is not disputed that against this basic sales consideration of Rs. 37,92,000/- complainant had paid an amount of Rs. 42,13,860/-. Perusal of clause 6(i) of the builder buyer agreement reveals that the builder i.e, respondent no. 1 had committed to complete construction of the said project and make offer of possession of the said flat to the buyer within 42 months from the date of signing of builder buyer agreement with a grace period of 6 months subject to delay due to non-availability of construction material and labour or delay of instalments by the buyers of other flats and/or delay due to force majeure conditions and reasons beyond the control of the builder. However, if the construction is completed earlier the possession thereof can be delivered even earlier.

28. Admittedly in the present case respondent no. 1 had offered possession of the unit to the complainant on 10.11.2021 after obtaining occupation



certificate on 08.11.2021. Complainant is allegedly aggrieved by the fact that respondent no.1 failed to fulfil its contractual obligation and did not offer possession of unit within the time as specified in the builder buyer agreement dated 07.05.2013. Complainant is also allegedly aggrieved by the fact that when the offer of possession was made after a delayed period the same was accompanied by illegal and arbitrary demands of Rs. 8,51,292/-. Therefore, in view of the above grievances the complainant wishes to withdraw from the project and is praying for relief of refund u/s 18(1) of the RERA Act, 2016.

29. Authority observes that complainant is claiming the relief of refund along with interest against respondent no.1 i.e, M/s Ashiana Realtech Pvt. Ltd. , respondent no. 2 i.e, M/s Movish Realtech Pvt. Ltd. and respondent no. 3 i.e. Mr. Mohit Garg, director of respondent no.1 and 2 companies. Complainant has alleged that though the builder buyer agreement dated 07.05.2013 was signed with respondent no. 1 however name of respondent no. 1 builder company i.e, M/s Ashiana Realtech Pvt. Ltd has been changed to M/s Movish Realtech Pvt. Ltd and since he is not aware of the terms of arrangement of rights and liabilities, M/s Movish Realtech Pvt. Ltd has also been arrayed as party. Further, complainant has alleged that Mr. Mohit Garg is the director of respondent no.1 and respondent no.2 and is responsible for running the affairs of both respondent



companies therefore he is also equally liable to refund the amount along with interest.

30. On perusal of the file it is observed that reply dated 24.08.2023 has been filed on behalf of the respondent. Today, Id. counsel for the respondents that she is representing all three respondents and has clarified that reply dated 24.08.2023 has been filed on behalf of all the respondents in both the captioned complaints. Respondent, in its reply has submitted that Mr. Mohit Garg has no privity of contract with the complainant in his personal capacity and hence could not be arrayed as necessary party.

31. Authority observes that the respondents in their common reply dated 24.08.2023 have raised preliminary objections with respect to the maintainability of the captioned complaints.

- i. The first preliminary objection raised by the respondent with respect to maintainability of the complaint is that the builder buyer agreement dated 07.05.2013 is not as per the format as prescribed under the RERA Act, 2016 and Haryana Real Estate (Regulation and Development) Rules 2017 made thereunder. Therefore, provisions of Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules 2017 are not applicable to the contract entered into between the parties prior to the Act coming into force. Hence complainant is not entitled to claim relief under the provisions of the RERA Act,



2016. Authority observes that the provisions of RERA Act, 2016 and Haryana Real Estate (Regulation and Development) Rules 2017 are applicable to all 'On-going projects'. In the captioned complaints, the real estate project in question i.e, 'The Cubix' was within the ambit of "on-going projects" on the date of commencement of RERA Act, 2016 as admittedly only an occupation certificate has been received till date and that also on 08.11.2021 i.e, after commencement of RERA Act, 2016. Section 18(1) of the RERA Act, 2016 simply provides that "if the promoter fails to complete or is unable to give possession of an apartment, plot or building" in accordance with terms of "agreement for sale" promoter shall be liable on demand to allottees, in case allottee wishes to withdraw from the project to return the amount received by him. The terms agreement for sale has been defined u/s 2(c) of the RERA Act, 2016 to mean an agreement entered into between the promoter and the allottee. Agreement for sale has not been restricted to be in any particular format. In fact the word 'prescribed' has only been used thrice in Section 18 and that too to elaborate and clarify the rate of interest that allottee shall be entitled to, in case of refund or delayed possession charges, as the case may be. The word 'prescribed' has not been used as a condition precedent for an agreement to sell to claim relief under



section 18(1) of Real Estate (Regulation and Development) Act, 2016. Real Estate (Regulation and Development) Act, 2016 is a reformative piece of legislature enacted to ensure speedy redressal to the aggrieved allottees . Legislators were conscious at the time of enactment of this Act that grievances of the allottees of the on-going real estate projects have to be addressed and therefore the Act was given retro-active effect. Further, the “Act” nowhere provides that its provisions shall not be applicable to the agreements for sale that were executed before coming into force of the RERA Act, 2016. Further, Section 88 of the Real Estate (Regulation and Development) Act, 2016 provides that the provisions of this Act shall be in addition to and not in derogation to the provisions of any other law for the time being in force.

- ii. Another objection of the respondent with respect to maintainability of the complaint is that complaint has been filed in form CRA whereas the same should have been filed before the Adjudicating officer of the Authority in form CAO. Authority observes that position of law stands cleared on account of verdict of Hon’ble Supreme Court delivered in similar matters pertaining to the State of Uttar Pradesh in **lead SLP Civil Appeal No. 6745-6749 titled as M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors. Etc.** Thereafter, Hon’ble High Court of



Punjab and Haryana has further clarified the matter in **CWP No. 6688 of 2021 titled as Ramprastha Promoters and Developers Pvt. Ltd. v. Union of India** and Ors. vide order dated 13. 01.2022. The Supreme Court has decided on the question of jurisdiction of the Authority and/or the adjudicating of the direct return/refund of the amount to the allottees under Sections 12, 14, 18 and 19 of the Act of 2016 in Civil Appeal Nos.6745-6749 of 2021 titled as M/s NewTech Promoters and Developers Private Limited Vs. State of UP And Others etc. Relevant para of the said judgment is being reproduced below:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory Authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory Authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer

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under Section 71 and that would be against the mandate of the Act 2016"

- iii. Thus, the Authority has complete subject matter jurisdiction to adjudicate this matter. Factual matrix of the case reveals that as per clause 6(i) of the builder buyer agreement, possession was to be handed over within 42 months from the date of execution of builder buyer agreement along with grace period of 6 months subject to force majeure and other conditions beyond the control of respondents, meaning thereby that respondent no.1 who was the signatory to the builder buyer agreement had committed to deliver the unit by 07.11.2016(42 months) or in case of any force majeure condition by 07.05.2017(42+6 months). However, admittedly offer of possession was made by respondent no.1 on 10.11.2021 after obtaining occupation certificate on 08.11.2021 i.e, after a delay of almost 4 years. Respondents in its reply at page 19-20 has provided a list comprising of 11 reasons/events which it considers as force majeure events and responsible for delay in handing over of project within the stipulated time. However, it is pertinent to mention that dates of reasons/events as relied upon by respondents are subsequent to the deemed date of possession i.e, after 42 months from the date of agreement to sell and few of the reasons for which no date of occurrence is provided are very general in nature to be

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even considered as force majeure events. Therefore, 07.11.2016 shall be considered as deemed date of possession without any entitlement to respondents to any grace period.

- iv. Authority further observes that the real estate project in question is registered with the Authority vide Registration No. 39 of 2018. Respondents have averred that they have completed the project within 2 years of its registration, however due to nationwide lockdown in the entire country on 25.03.2020 due to spread of covid-19 the occupation certificate could only be applied on 07.12.2020. In this regard it is clarified that registering an ongoing project with the Authority is an obligation on the promoter as per Section 3 of RERA Act, 2016. To obtain registration of the real estate project under Section 5 promoter voluntarily declares a date for 'completion' of entire project. Such voluntary declaration does not alter or amend the stipulated date for handing over the apartment, plot or building as per the agreement for sale executed between the allottee and the promoter. Authority has relied upon judgement of Bombay High Court in **Neelkamal Realtors Suburban Pvt. Ltd. vs Union of India and others (AIR 2018 (NOC) 398 (BOM)** wherein Hon'ble Bombay High Court has held that



“256. Section 4(2)(l)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(l)(C) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(l)(C) he is not absolved of the liability under the agreement for sale”

Hence, now there remains no confusion or ambiguity with respect to the fact that for “on-going project” the deemed date of possession shall be the date that was agreed between the allottee and promoter while signing the agreement for sale for an apartment, plot or building. As has been stated above, the deemed date of handing over the possession in captioned complaint was 07.11.2016 and the fact that the project was registered with Authority in compliance of provisions of Real Estate (Regulation and Development) Act, 2016 or occurrence of subsequent events such as outbreak of covid-19 shall have no effect on the deemed date of possession as stipulated in builder buyer agreement/agreement for sale. Reliance is also been placed upon the judgement of Hon’ble Delhi High Court titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr.* bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020

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dated 29.05.2020 wherein the Hon'ble Hight Court 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.

To conclude, Authority observes that mere averment of force majeure for causing delay in offering the possession is not sufficient to justify the delay caused.

- (v) Authority observes that there remains no ambiguity with regard to the fact that respondent no.1 offered possession to the complainant after lapse of deemed date of possession i.e, after 07.11.2016. Nevertheless, it is also a matter of record that offer of possession that was made on 10.11.2021 after obtaining occupation certificate from the competent Authority on 08.11.2021, thus the same was a valid offer of possession. Authority observes that as per Section 18(1) of the RERA Act, 2016 in case possession of the unit is not handed over as per the time stipulated in the agreement for sale then an allottee, if he wishes to withdraw from the project, is entitled to refund of the amount paid along with interest. Even the Hon'ble

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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. Relevant 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.*"

However this valuable right to demand refund of amounts paid along with interest has to be exercised within a reasonable period of time by the complainant. Now the question arises is what shall



constitute a reasonable time to exercise their right to seek refund and whether complainant may choose to exercise this right years after the time when the valid offer of possession is made to him. Here, harmonious interpretation of the right to seek refund under section 18(1) and the obligation of allottee to take physical possession under Section 19(10) within a period of two months of the offer of possession after grant of occupation certificate has to be made. When a valid offer of possession is made, then under Section 19(10) an allottee is obligated to accept the physical possession. However in case he does not wish to take the possession he should communicate his intention to withdraw to the respondent and demand refund of paid amount along with interest. In the present case valid offer of possession was made on 10.11.2021 and the complainant approached the Authority to seek the relief of refund under Section 18(1) in the year 2023. Authority observes that the entire amount paid by the complainant have been used towards the completion of the project and the same is complete and occupation certificate has been issued by the competent Authority on 08.11.2021. Now, it is to be seen whether on offer of possession vide letter dated 10.11.2021 the complainant chose to remain with the project and accept possession of the same or exercised his right and demanded refund of the amount paid



along with interest within 2 months period of such offer of possession. Perusal of record shows that complainant had written a letter dated 09.01.2022 exactly on the last day before the lapse of period of two months from receiving offer dated 10.11.2021, wherein complainant has communicated to respondent no. 1 to either "refund him the amount paid or to compensate him by giving interest for the delayed period". There is no document on record to show that respondent no.1 had accepted the proposal of complainant and agreed to give possession along with interest to the complainant. Subsequent thereupon complainant has sent legal notice dated 31.10.2022 to respondents seeking refund of the amount paid along with interest. However, the amount paid and interest thereupon was not returned and the complainant filed the present complaint in year 2023. The sequence of the events in the lead case and connected complaint no. 545 of 2023 shows that complainant had made it very clear to respondent within a period of 2 months of offer of possession that in case he is not compensated by paying interest for delay caused in making offer of possession he shall not accept the possession of the unit and would want refund of his amount paid along with interest. It is a matter of record that interest for delayed payment was not paid to complainant. Thus it is clear from bare reading of letter dated



09.01.2022 that in the eventuality of non-payment of interest for delayed period the complainant only wanted refund.

- (vi) In view of the above, Authority is of the considered view that in exercise of his rights under Section 18(1) due to delay in handing over of possession within stipulated time as per agreement for sale complainant had demanded refund and that too within period of 2 months on offer of possession. Thus Authority finds it a fit case to allow refund of amount paid along with interest.
- (vii) Authority further observes that though the BBA was signed between the complainant and respondent no.1, however complainant has also made M/s Movish Realtech Pvt. Ltd. as a necessary party on the ground that the name of the company M/s Ashiana Realtech Pvt. Ltd. has been changed to Movish Realtech Pvt. Ltd. Complainant has also impleaded Mr. Mohit Garg as a necessary party as he is the director for respondent no.1 and respondent no. 2 companies. Therefore all three respondents are liable to pay refund and interest. This fact with regard to change in name has not been denied or contested by the respondents. However in the common reply filed on behalf of respondent no.1,2 and 3 it has specifically been denied that respondent no.3 is privy to contract thus he is not a necessary party. In this regard Authority observes that a company is a separate legal entity from its directors,



who are natural persons. Privity of contract was between respondent no.1 and complainant. Respondent no.3 was not directly a party to the builder buyer agreement dated 07.05.2013. Therefore he cannot personally be held for the act/omission by the company respondent no.1 who is a different legal entity. Authority further observes that it is not disputed by respondents that only the name of Ashiana Realtech Pvt. Ltd. has been changed to M/s Movish Realtech Pvt. Ltd. Also the board resolution annexed to the reply is on the letter head of M/s Movish Realtech Pvt. Ltd and depicts that it was formally known as Ashiana Realtech Pvt. Ltd. Accordingly, it is held that respondent no. 2 is liable to refund the amount along with interest to the complainants in both complaints as per Section 18(1) of the RERA Act, 2016 read with Rule 15 of Haryana Real Estate(Regulation and Development) Rules, 2017.

(viii) 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;

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(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;

- (ix) 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".

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., 12.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

- (x) Therefore, Authority allows refund of paid amount along with interest to the all the complainants 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 11.10% (9.10% +

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2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amounts along with interest as per detail given in the table below:

Sr. no.	Complaint no.	Amount paid	Interest	Total amount to be given to complainant
1.	544 of 2023	Rs. 42,13,860	Rs. 47,58,879/-	Rs.89,72,739/-
2.	545 of 2023	Rs.36,24,051/-	Rs. 40,65,771/-	Rs.76,89,822/-

(xi) It is pertinent to mention that in complaint no.545 of 2023, complainants claimed refund of ₹36,24,051/- alongwith interest. To substantiate the amount of ₹36,24,051/-, complainants have filed receipts of Rs. 33,17,043/- however in demand letter dated 15.02.2016 respondent has admitted that till date an amount of Rs. 26,19,779/- has been received from the complainant. After 15.02.2016 complainant has made two payments on 01.03.2016 (Rs.6,70,092/-) and 02.06.2016 (Rs.3,34,180/-) amounting to Rs. 10,04,272/-. Total of the payment acknowledged vide demand letter dated 15.02.2016 and receipts dated 01.03.2016, 02.06.2016 works out to Rs. 36,24,051/-. Therefore for an amount of Rs. 5,77,008/- for which receipt is not available but the same is acknowledged by the respondent date of payment will be taken as 15.02.2016.

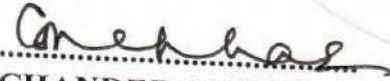
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DIRECTIONS OF THE AUTHORITY

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

- (i) Respondent no. 2 M/s Movish Realtech Pvt. Ltd is directed to refund the amount to the complainants as specified in the table provided in para 30(x) of this order. It is further clarified that respondent will remain liable to pay the interest to the complainants till the actual date of 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 be taken against the respondent.

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


.....
CHANDER SHEKHAR
[MEMBER]


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