HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.	2724 of 2022
Date of filing	10.10.2022
First date of hearing	06.12.2022
Date of decision	07.12.2023

Namita Mahajan
W/o Sh. Rahul Mahajan,
R/o 591-C, Model Town,
Panipat, Haryana-132103. .....COMPLAINANT

VERSUS

Splender Landbase Ltd.
through its Director,
Unit No.501-511,Splender Forum,
5th floor, New Delhi-110025. .....RESPONDENT

CORAM: Dr. Geeta Rathee Singh Member
Nadim Akhtar Member

Present: - Mr. Sachin Miglani, ld counsel for complainant through VC.
Mr. Shobit Phutela, ld counsel for respondent through VC.

ORDER (NADIM AKHTAR– MEMBER)

Present complaint has been filed on 10.10.2022 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

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	Splendor Grande, Sector-19, Panipat
2.	Name of the promoter	Splendor Landbase Ltd
3.	RERA registered/not registered	Registered (lapsed project)
4.	Apartment no.	1002, Tenth Floor, Tower A1
5.	Apartment area	1895 sq.ft
6.	Date of apartment buyer agreement	05.03.2014

7.	Due date of offer of possession	05.03.2018 (inclusive of grace period)
8.	Possession clause in BBA	*"Clause 11.2* *That the developer shall, under normal conditions, complete construction of tower in which the said unit is located within period of 42 months from the date of start of construction or execution of agreement whichever is later beyond which, the developer shall further be entitled to a grace period of another 6 months.*
9.	Total sale consideration	₹50,02,800/-
10.	Amount paid by the complainant	₹26,14,463/-
11.	Offer of possession	No

B. FACTS OF THE COMPLAINT

i. That complainant made an application for allotment of an apartment in group housing project being developed by respondent and paid an amount of ₹10,00,000/- as booking amount.

ii. That respondent allotted apartment in favour of complainant and apartment buyer agreement was executed on 05.03.2014 between the complainant and respondent regarding apartment no.A1-1002 on 10th

floor in Splendor Grande, Sector-19, Panipat , Haryana wherein the terms of payments were construction linked.

iii. As per apartment buyer agreement respondent was under obligation to hand over possession to the complainant within 42 months with a grace period of 6 months from the date of starting of construction or the execution of apartment buyer agreement whichever is later.

iv. Complainant made timely payments with regard to apartment and copies of receipts are annexed as Annexure B.

v. Complainant took loan of ₹44,25,000/- from Indiabulls Housing Finance Ltd, out of which an amount of ₹7,90,527/- was disbursed to the respondent on instruction of the complainant. On one hand complainant has not got the possession of the booked apartment and on other hand she was forced to pay the loan which she has taken to purchase the said apartment. Copies of loan agreement and account statement are annexed as Annexure C.

vi. That no construction was going on in the tower in which the complainant booked the apartment and therefore after considerable delay complainant wrote letter dated 24.07.2020 requesting for refund of money with interest. Complainant again wrote letter dated 09.09.2022 demanding refund. However, respondent did not pay any heed to the letters sent by the complainant. Copies of letter dated 24.07.2020 and 09.09.2022 are annexed as Annexure D.

vii. After considerable delay of more than 4 years, the complainant has not received the possession of booked apartment nor any construction is going on in the said tower in which the complainant had booked the apartment. Therefore, complainant approached this Authority.

C. RELIEF SOUGHT:

i. Direct the respondent to refund the amount received from the complainant along with interest as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017.

ii. Direct the respondent to pay ₹5,00,000/- as compensation for mental and emotional harassment suffered due to illegal act of the respondent.

iii. Direct the respondent to pay ₹1,00,000/- as litigation charges.

iv. Any other or further order which this Hon'ble Authority deems fit in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

i. Admittedly, in present case respondent wrote a letter dated 01.02.2017 to the complainant offering allotment of apartment in the said project on same price and on same terms and conditions in accordance of apartment buyer agreement dated 05.03.2014.Vide said letter it was further requested to the complainant to visit the office of the respondent which is situated at the project site itself for execution of documentation and other formalities. Said letter has been suppressed by the complainant from this Hon'ble Authority. Complainant neither

responded to the said letter nor contacted the respondent after receipt of letter, as the complainant was not interested in taking allotment of alternative apartment in the said project or had any query or issue with the offer of allotment of apartment made to him by the respondent vide said letter dated 01.02.2017, complainant should have raised her objections to the same. However, the complainant failed to come forward or even respond to the said letter which tantamount to acceptance of the contents of the said letter. Copy of the said letter dated 01.02.2017 is annexed as Annexure R-2. That the Hon'ble High Court of Himachal Pradesh in CWP No. 11367 of 2011 'Jafar Khan v. Distt. Audit Officer-cum-Liquidator' 2019 SCC Online HP 1269 has held that silence amounts to acceptance. Long period of silence and inaction on the part of the petitioner amounts to acquiescence and estoppel, more particularly, when there is no explanation for his long silence.

ii. That the present complaint filed by the complainant is beyond the period prescribed in Article 113 of the Limitation Act, 1963. The complainant has raised the claims which are hopelessly time barred and it is settled law that the limitation for filing of the complaint shall start from the day it accrued. That in the present case the limitation for filing the present complaint started from 1st February 2017 when letter dated 01.02.2017 was despatched to the complainant, in which respondent

offered the complainant to shift her allotment and ended on 5th February 2020 (the period taken in delivery of the said letter to the complainant is included). Admittedly the present complaint had been filed before this Hon'ble Authority on 10th October 2022, i.e., more than two and half years after expiry of prescribed period of limitation, hence the same is liable to be dismissed on this ground alone. That it is settled law that when a special Act or local law do not prescribe the period of limitation, the limitation period prescribed under the Limitation Act shall be applicable. Accordingly, the period of limitation as prescribed under Article 113 of the Limitation Act is applicable to the present complaint. Admittedly, the present complaint is hopelessly barred by limitation and is liable to be dismissed on this ground alone. That Section 88 of the RERA Act, 2016 provides that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. That since the complainant had been left with no remedy under civil law, the complainant has filed the present complaint to abuse the process of law and indulge in forum hunting. The complainant is well aware that she has exhausted the remedies available to her under civil law and no civil court will entertain her plaint as the same would be hopelessly barred by limitation.

iii. It is submitted that when the respondent commenced the construction of the said project, the RERA Act was not in existence, therefore, the respondent could not have contemplated any violations and penalties thereof, as stated in the RERA Act.

iv. That it is further submitted that the RERA Act, 2016, 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 catena of judgments. 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 a well settled law that the retrospective operation of statute may introduce such element of unreasonableness as was held in ***"State of WB vs. SC Bose" [1954SCR 5787]*** and ***"Express Newspapers P Ltd vs. UOI"[1959 SCR 12]***. Therefore, the Act being a substantial new legislation ought to operate prospectively and not retrospectively and accordingly no action can be lawfully initiated for anything before the Ld. Authority related to period prior to registration of the project under the RERA.

v. It is pertinent to mention that complainant in instant complaint only claims refund with untenable interest and compensation which shows that complainant is a speculative investor and was never interested in taking the possession of the apartment and only interested to make commercial gin.

vi. In view of statutory provisions and position of law, the complainant seeking compensation is not maintainable before this Ld. Authority as this Hon'ble Authority has no jurisdiction to entertain the said relief and on this ground alone complaint is liable to be dismissed.

vii. Complainant having read all the terms and conditions as contained in the application form duly consented to and signed the same and further submitted the said applications with the respondent. It is pertinent to mention that clause 6 of the application form categorically stated that construction of the said project was yet to commence. It clearly established that complainant at the time of signing of the application form was fully aware that the construction of the said project was yet to begin.

viii. In pursuance of the application submitted by the complainant for allotment of apartment in the said project , respondent provisionally allotted unit no.1002 in tower A-4 in the project for total sale consideration of ₹63,76,325/- excluding service tax, VAT and other

applicable taxes, if any, vide apartment buyer's agreement dated 05.04.2014 executed between the parties.

ix. As per clause G, 11.2 and 11.9 of the agreement executed between the parties, complainant was well aware that respondent project is still in the process of development and accordingly it was duly understood and agreed by the complainant that the location of the unit allotted to her was tentative and subject to change during construction of the said project.

x. Complainant had paid total amount of ₹26,14,463/- including service tax of ₹69565/- to the respondent from the period January 2013 to June 2014 after sending various demand letters to her. Copies of demand letters are annexed as Annexure R-3(Colly).

xi. It is stated that complainant made default in payments and delay in payment of outstanding amounts as per construction link payment plan and there is outstanding principal amount of ₹2,08,536/- from the complainant for which demand letters were sent.

xii. Respondent also wrote letter dated 01.02.20217 to the complainant offering her to get her above booking shifted from tower A-4 to either Tower A-3 or Tower B-1, as may be convenient to her, which is near completion, at the same price, area and on the same terms and conditions on which the booking of the said unit was made by her, by

visiting the respondent office at Panipat, which is situated at project site. Copy of said letter dated 01.02.2017 is annexed as Annexure R-2.

xiii. That above non-payment of outstanding dues by the complainant coupled with similar non-payment of outstanding dues by various other applicants of flats in the said tower and some other reasons as mentioned herein below had unduly stalled construction of the said tower in which the said unit is situated as has been informed to the complainant by the representatives and property consultants of the respondent from time to time. The other reasons as mentioned above are as under;

i) delay in receipt of requisite approvals from the concerned regulatory authorities;

ii) while the respondent was undertaking the construction of the said project, the respondent had to revise the building plans of the said project twice due to low potential, poor response of prospective buyers for multi-story flats in Panipat and market conditions by scrapping four high rise towers and increasing 108 low rise row housing flats in place thereof. That even the available FAR of the said project had to be sacrificed during this revision. The Revised Building Plans of the said project was approved by the department vide Memo No. ZP-390/SD(DK)/2015/17318 dated 10.09.2015 and secondly vide

Memo No. ZP-390/AD(NK)/2019/17360 dated 22.07.2019. The repeated revision in the building plan has attributed to delay in construction of the Project and further constrained the respondent to develop the said project in phases.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

Ld counsel for both the parties reiterated the facts as stated in complaint and reply. Further, counsel for complainant orally submitted that complainant had made payment of ₹26,14,463/- to the respondent against the total sale consideration and same can be ascertained from the account statement attached at page no.38 of the reply.

F. OBSERVATIONS AND DECISION OF AUTHORITY

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 that respondent has taken the following objections w.r.t maintainability of the complaint :

(i) Respondent has raised an objection that provisions of RERA Act, 2016 are applicable with prospective effect only and therefore same were not applicable as on 05.03.2014, when the complainant was allotted apartment no.1002, tenth floor, tower A-1, in project of the company under the name "Splendor Grande" at sector-19, Panipat. Authority

observes that 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:-

> "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."

(ii) Furthermore, the respondent in its reply has contended that the complainant is "speculative buyer" who has invested in the project for monetary returns and taking undue advantage of RERA Act, 2016 as a weapon during the present down side conditions in the real estate

market and therefore he is not entitled to the protection of the Act of 2016. In this regard, Authority observes that as per section-31 of the RERA Act, 2016 "any aggrieved person" can file a complaint against the promoter, if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainant is an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term 'allottee' under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

In view of the above-mentioned definition of "allottee" as well as upon careful perusal of builder buyer agreement dated 05.03.2014, it is clear that complainant is an "allottee" as apartment no.1002, tenth floor, tower A-1, in project of the company under the name "Splendor

Grande" at sector-19, Panipat was allotted to her by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there are definitions of "promoter" and "allottee" only. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled **as *M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.*** had also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of promoter that allottee being investor is not entitled to protection of this Act also stands rejected.

(iii) Respondent has taken a plea that complaint is time barred by Limitation Act,1963. In this regard, it is observed that since the promoter till date has failed to fulfil its obligations to hand over the possession of the booked apartment in its project as per apartment buyer agreement, the cause of action is re-occurring and the ground that complaint is barred by limitation stands rejected. Further, the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 titled as ***M.P Steel Corporation v/s Commissioner of Central Excise*** has held that

the Limitation Act applies only to courts and not to the tribunals.

Relevant para is reproduced herein:

> *"19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963.'"*

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, thus, would not be applicable to the proceedings under the RERA Act, 2016 as the Authority established under the Act is a quasi-judicial body and not a Court.

In view of the aforesaid observations there remains no doubt that the complaint is maintainable as per provisions of RERA Act, 2016 and the Authority has complete jurisdiction and mandate to adjudicate the same on merits.

(iv) Admittedly, vide apartment buyer agreement dated 05.03.2014 complainant had been allotted the apartment no.1002, tenth floor, tower A-1, in project of the company under the name "Splendor Grande" at Sector-19, Panipat for a total sale consideration of ₹50,02,800/- against which an amount of ₹26,14,463/- has been paid by the complainant as per account statement annexed as Annexure R4 at page no.38 of reply. Out of said paid amount, last payment of ₹2,08,536/- was made to respondent on 25.03.3015 by the

complainant which implies that respondent is in receipt of total paid amount till the year 2015 whereas fact remains that no offer of possession of the booked apartment has been made till date.

(v) In its written statement, the respondent has admitted that possession of the booked apartment has not offered till date to the complainant, however vide letter dated 01.02.2017, respondent stated that non-payment of construction linked dues from the complainant and other allottees had unduly stalled construction of said tower in which apartment of complainant is booked after casting of basement roof and offered the complainant to shift the apartment from tower A1 to either tower A3 or B1 which are near completion, at the same price, area and on same terms and conditions on which allotment of said apartment made to the complainant. In regard to delay caused, it is stated that delay in receipt of requisite approvals from the concerned regulatory authorities and twice revision of building plans resulted in delay in construction of the project and constrained the respondent to develop the said project in phases. Authority observes that allotte is not concerned with the delay cause in revision of plan and requisite approvals. These are the obligations of the respondent to obtain the requisite approvals from the concerned departments. Further, respondent stated that vide letter dated 01.02.2017, respondent offered alternative apartment to the complainant in tower A3 or B1,

however, complainant is not interested in the alternative apartment and specifically claim the relief of refund.

(vi) Authority observes that the builder buyer agreement got executed between the complainant and respondent on 05.03.2014 and in terms of clause 11.2 of it, the respondent was supposed to handover possession within a period of 42 months from the start of construction or execution of agreement whichever is later beyond which, the developer shall further be entitled to grace period of another 6 months. As per record, there is no specific date for start of construction, therefore, due date of possession is to be calculated form date of execution of agreement and accordingly, due date of possession comes to 05.03.2018 (42 months + 6 months grace period). In present case, respondent failed to honour its contractual obligations of offering possession of the allotted apartment within stipulated time without any reasonable justification. Further, respondent has not committed any specific timeline even in its reply regarding delivery of possession. Complainant has unequivocally stated that she is interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

(vii) 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.

(viii) The project/unit in question did not get completed within the time stipulated as per agreement nor specific date for handing over of possession has been committed by the respondent. In these circumstances the complainant cannot be kept waiting endlessly for possession of the unit, therefore, Authority finds it to be fit case for allowing refund along with interest in favor of complainants.

(ix) 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;

(x) The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is

reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

(xi) 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".

(xii) 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. 07.12.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

(xiii) Thus, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of ₹26,14,463/- 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 10.75% (8.75% +

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 10.75% till the date of this order and total amount works out to ₹./- as per detail given in the table below:

Sr.no	Principal Amount in Rs.	Date of payment	Interest Accrued till 07.12.2023
1.	₹5,00,000/-	25.01.2013	₹584476/-
2.	₹5,00,000/-	28.02.2013	₹579469/-
3.	₹10,56,174/-	26.12.2013	₹1130410/-
4.	₹5,58,289/-	25.03.2015	₹522880/-
	Total= ₹26,14,463/-		₹28,17,235/-
Total amount to be refunded by respondent to complainant = ₹26,14,463/- + ₹28,17,235/- = ₹54,31,698/-			

(xiv) The complainant is seeking compensation on account of mental and emotional harassment caused for delay in possession and litigation charges. 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 complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

G. DIRECTIONS OF THE AUTHORITY

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 an amount of ₹54,31,698/- to the complainant as specified in the table provided in para (xiii) of this order. It is further clarified that respondent will remain liable to pay the 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.

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

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

.....
NADIM AKHTAR
[MEMBER]