HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**180 of 2021**
Date of filing:	**10.02.2021**
First date of hearing:	**25.02.2021**
Date of decision:	**14.11.2024**

1. Sushma Rani
W/o Sh. Raj Kumar
R/o House no. 123, Ward no. 11, Rani Mahal
Near Ladla Kuan Gurudwara
District Panipat-132103

2. Raj Kumar
S/o Sh. Om Parkash
R/o House no. 123, Ward no. 11, Rani Mahal
Near Ladla Kuan Gurudwara
District Panipat-132103

.....COMPLAINANTS

Versus

1. M/s Aegis Value Homes Ltd,
Regd. OfficeEF-10, 2ND Floor, Inderpuri
Delhi-110012

2. Divey Sindhu Dhamija, Managing Director
1008, Urban Estate Sector-13, Karnal
132001, Haryana

3. Municipal Corporation, Shakti Colony,
Karnal, Through Executive Officer.

4. State of Haryana through Director Town and Country Planning SCO 71-75, Bridge Market, Sector-17 , Chandigarh 160017

.....RESPONDENTS

CORAM: **Parneet Singh Sachdev** **Chairman**

Nadim Akhtar **Member**

Dr. Geeta Rathee Singh **Member**

Present: - Mr. Aishwarya Bajaj, counsel for the complainant through VC.
Mr. Neeraj Goel, Counsel for the respondent through VC.

ORDER (PARNEET SINGH SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 10.02.2021 by complainants 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	Aegis woods Scheme
2.	Name of the promoter	Aegis Value Homes Ltd
3.	RERA registered/not registered	Unregistered
4.	Unit no. allotted	O-303, Third floor in Oak Tower
5.	Unit area	1000 sq. ft. approx
6.	Date of allotment	26.11.2013
7.	Date of builder buyer agreement	Not executed
8.	Possession clause in allotment letter	Clause 14 of Provisional Allotment letter "Developer shall make all possible endeavour to hand over possession of the apartment to provisional allottee within a reasonable time, may be within 42 months from date of booking,i.e., 28 December,2013+ 6 months grace period, otherwise company will pay penalty of Rs. 8/- per sq.ft per month to provisional allottee."
9.	Due date of offer of	28.12.2017 including grace

	possession	period
10.	Total sale consideration	₹22,27,500/-
11.	Amount paid by complainants	21,40,931/- Complainants in their pleadings claimed to have paid an amount of Rs 25,82,600/-. However, receipts of ₹ 21,40,931/- only has been placed on record in registry on 08.11.2024. So, total paid amount is taken as Rs 21,40,931/- for the purpose of passing of this order.
12.	Offer of possession	Not made till date

B. FACTS AS PER THE COMPLAINT

2. That complainant booked an apartment measuring 1000 sq ft in the respondent's project namely, "Aegis woods Scheme" being developed by the respondent at Karnal, Haryana by paying Rs 2,00,000/- as the booking amount vide cheque no. 710532 dated 27.11.2013 and got the receipt number 00190 dated 28.12.2013 from the respondent. Copy of said receipt is annexed as Annexure C-2.

3. That thereafter respondent allotted an apartment bearing no. O-303, in OakTower to the complainants vide provisional allotment dated 26.11.2013 having approximate area of 1000 sq. ft. for basic sale price of ₹ 22,27,500/-.

Copy of the provisional allotment letter dated 26.11.2013 is annexed as annexure C-1.

4. That as per Clause 14 of provisional allotment letter, respondent was supposed to hand over possession within 42 months from the date of booking,i.e., 05, December 2013+ 6 months grace period. So, as per the terms of allotment the deemed date of possession works out to 28.12.2017. But respondents have failed to handover possession to complainants till date for reasons known best to them.

5. Complainants have paid total amount of ₹ 21,40,931/- against the basic sale price of ₹ 22,27,500/-, however, respondents are not in position to offer possession as construction work is not completed at project site.

6. That the respondent has not completed the project till date; moreover, the respondents are not in position to complete the project in near future as same can be substantiated by the fact that construction work is not going on at site from last 3-4 years.

7. That the Complainants have enquired about the status of project and they were shocked to know that various FIR are pending against the respondent as many innocent buyers were cheated by the respondent.

8. So, now complainant does not wish to remain in the project and thus withdrawing from the project and claiming refund under Section 18 of Real Estate (Regulation & Development) Act, 2016.

C. RELIEF SOUGHT

9. Complainants have sought following reliefs against respondents:

1. That the respondent-developer be directed to refund the consideration amount paid by the complainant alongwith interest @ 24% per annum. A computation sheet depicting the interest and principal amount is placed in file.

2. That the respondent-developer be directed to pay an amount of Rs.5 lakhs to the complainant on account of mental harassment being caused due to the illegal and unlawful conduct of the respondent-developer.

3. That the rate of interest levied on the computation sheet above is the same which the respondent-developer would have otherwise charged from the complainant in case of any default, Section 2(za) of the Act 2016 provides for such levying of rate of interest. It is further submitted before this Hon'ble Authority that the exemplary penalty may be levied on such defaulting promoters, so as to curb the practice of exploitation of innocent buyers.

4. That in addition to the compensation detailed above further compensation on account of legal expenses and other forced misc. expenses also to be paid for an amount Rs.2 lacs.

5. Any other order or direction as this Hon'ble Authority may find reasonable in the facts and circumstances of instant case, may also be granted.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 1

10. A short reply dated 29.05.2023 has been filed by the respondent stating therein that license no. 20/38/2010-3CI dated 30.03.2015 was obtained by JD Universal Infra Limited for 24.94 acres and respondent and JD universal entered into joint development agreement for jointly developing the property of Aegis Woods in the land measuring 1.46 acres out of 24.94 acres.

11. That External development charges were to be paid by M/s JD Universal Infra limited to Directorate of Urban Local Bodies,Panchkula but JD universal failed to pay the above mentioned charges and hence, the project was sealed by the government. But even then project of respondent is complete to extent of 85%.

12. That the respondent is not at fault in delaying the project in any manner. However, the balance payment of the complainant is pending towards the unit in question.

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

i. That the complainant has no cause of action against the respondent and the alleged cause of action was false and frivolous. That the respondent had neither caused any violation of the provisions of the act nor caused any breach of agreed obligations as

per the agreement between the parties. Hence, the present complaint is liable to be dismissed.

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

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

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

- Jat Reservation Agitation: The Jat Reservation agitation was a series of protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which paralyzed the State including city of Gurgaon wherein the project of Respondent is situated for 8-10 days.
- Demonetization of Rs. 500 and Rs. 1000 currency notes: The Real Estate Industry is dependent on un- skilled/semi-skilled unregulated seasonal casual labour for all its development activities. The Respondent awards its contracts to contractors who further hire daily labour depending on their need. On 8th November 2016, the Government of India demonetized the currency notes of Rs. 50 and Rs. 10 with immediate effect. Resulting into an unprecedented chaos which cannot be wished away by putting blame on Respondent.
- GST Implications: It is pertinent to apprise to the Hon'ble Adjudicating Officer that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the Respondent Company due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetisation in last quarter of 2016.
- Directions/Prohibition by NGT: It is noteworthy that on 09.11.2017, in Vardhaman Kaushik vs Union of India & Ors, the National Green Tribunal New Delhi observed The Tribunal had passed a detailed judgment in the case of Vardhman Kaushik on 10th November, 2016 and had clearly postulated the steps that were required to be taken on long term and short-term basis keeping in view the precautionary principle to ensure that the ill-effects and adverse impact of polluted

ambient air quality in the previous year is not repeated in the year 2017.

- Construction Ban: It is noteworthy that in past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
- Covid-19 Pandemic: It is most humbly submitted that even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay. It is most humbly submitted that current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

Ld counsels for both the parties reiterated their submissions as mentioned in the complaint and reply. Further, he submitted that payments proof available with allotees have been placed on record so

paid amount be considered as Rs 21,40,931/-. Ld. Counsel reiterated for respondent submitted that respondent no. 2 to 4 have been arrayed as parties whereas transaction pertaining to booked unit was carried out by complainant only with respect to respondent no.1. So, he requested that respondent no. 2 ,3 and 4 be deleted from array of parties.

G. ISSUE FOR ADJUDICATION

Whether the complainants are entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016? If yes, then the quantum thereof including interest.

H. OBSERVATIONS AND DECISION OF AUTHORITY

13. Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that complainant booked a unit in the project of the respondent no. 1 namely "Aegis woods Scheme" situated at Karnal and provisional allotment letter dated 26.11.2013 for unit no. O-303, Third floor, Oak Tower was issued in favour of the complainants. Against the basic sale price of ₹22,27,500/- complainants had paid total amount of ₹ 21,40,931/-. It is pertinent to mention here that complainants in their complaint and respondent no. 1 in its reply and allotment letter and receipts has not mentioned 'Sector' of Karnal in which project in

question –Aegis woods Scheme is situated. Complainants are aggrieved by the fact that despite making timely payments against the basic sale price, respondent no. 1 has neither handed over the possession of the unit within the stipulated timeline, nor refunded the amount paid by complainants.

14. Respondent no. 1 had only filed short reply dated 29.05.2023 stating therein that the construction and development of the project got delayed due to fault of JD Universal Infra Limited in not paying the EDC External development charges on time; now the project is near completion at it has already been completed to the extent of 85%. No separate reply has been filed by respondent no. 2, 3 and 4. In respect of verbal request of respondent's counsel to delete the name of respondent no. 2,3, and 4 from array of parties, it is observed that complainant has impleaded respondent no. 2 (Director of respondent-company), Respondent no. 3 (Municipal Corporation) and respondent no. 4 (DTCP) but no relief in particular has been sought against each of them. Moreover, all transactions have been carried out between complainant and respondent no. 1 i.e. all amount has been paid to respondent no. 1 against which allotment letter was issued in favour of complainants by respondent no. 1 only. Therefore, no direction is being passed against respondent no 2 to 4 in this order.

15. With regard to plea raised by the respondent that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same were not applicable when the complainant was allotted unit no. A4-606, in Smart Homes Karnal. It is observed that issue regarding operation of RERA Act,2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in ***Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***. Relevant part is reproduced below for reference:-

> *"52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.*
>
> *53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the*

appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.
54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

16. Respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise wherein it was held that Limitation Act does not apply to quasi-judicial bodies. Further, in this case the promoter has till date failed to fulfil his obligations because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

17. As per clause 3.1 of agreement respondent/developer was under obligation to hand over possession to the complainants within 4 years

from the date of approval of building plans or grant of environment clearance whichever is later. Relevant clause is reproduced for reference:

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

Fact remains that both parties in their pleadings have not disclosed the date of approval of building plan or grant of environment clearance. Therefore, taking 4 years from date of building buyer agreement, the deemed date of possession works out to 26.11.2017.

18. It is the stand of respondent that force majeure conditions like-Jat Agitation of February 2016, Demonization in November 2016, GST Act, 2017, Prohibitions by NGT in year 2017 and 2019 and COVID-19 Pandemic affected the project completion. The due date of possession in the present case as per clause 3 of agreement, works out to , therefore, question arises for determination as to whether the said situation or circumstances were in fact beyond the control of the respondent or not.

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

20. In India, it is often referred to as an "act of God". Various courts have, over time, held that the term force majeure covers not merely acts of God, but may include acts of humans as well. The term "Force Majeure" is based on the concept of the Doctrine of Frustration under the Indian Contract Act, 1872; particularly Sections 32 and 56. The law uses the

term "impossible" while discussing the frustration of a contract, i.e., a contract which becomes impossible has been frustrated. In this context, "impossibility" refers to an unexpected subsequent event or change of circumstance which fundamentally strikes at the root of the contract. In the case of Alopi Parshad and Sons Ltd vs Union of India, AIR 1960 SC 588 and the landmark Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors (2017) – 2017 3 AWC 2692 SC, the Supreme Court of India has categorically stated that mere commercial onerousness, hardship, material loss, or inconvenience cannot constitute frustration of a contract. Furthermore, if it remains possible to fulfill the contract through alternate means, then a mere intervening difficulty will not constitute frustration. It is only in the absence of such alternate means that the contract may be considered frustrated.

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

AWC 2692 SC lent further insight into interpreting a Force Majeure situation i.e

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

22. In the present case, due to the various decisions of the Authority, force majeure maybe accepted for the period of Covid, if that event adversely affected the work of the Respondent. However, with respect to other events, the respondent has miserably failed to even discharge his fundamental burden of proof as outlined by the Hon'ble Apex Court. On the contrary, the facts given by the Respondent are themselves contrary to his own arguments. For example, the construction ban was only for 5 days i.e 01.11.2019 to 05.11.2019. How did demonetisation or GST stop

the construction work of the Respondent is not substantiated at all. How the events other than Covid prevented the Respondent from discharging his obligations has not been explained at all.

23. Moreover, the respondent has not given any specific details with regard to latest stage of construction of unit. Construction status with latest photographs has not been placed on record to support the fact that respondent has fulfilled its obligations and it is the complainant who is shying away from his duties/obligations. As of today, the construction is not going on at site from last 3-4 years as informed by complainant's counsel. No rebuttal to said statement has been made by respondent in oral/writing by respondent. Mere pleading of force majeure conditions without fulfilling its obligations, the respondent cannot be allowed to take benefit of his own wrong. So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

24. Perusal of reply dated 29.05.2023 reveals that respondent no.1 had neither disputed the provisional allotment dated 26.11.2013, nor the deemed date of handing over of possession, nor the payment of an amount of Rs. 21,40,931/- against basic sale price of ₹22,27,500/- paid by the complainants. Also, respondent no. 1 has not mentioned any date for completion of project in reply nor argued about the same. Further as per Clause-6 of the provisional allotment letter, allottee was liable to pay

further amount of basic sale price only after approval of the layout plan and grant of all valid licences by the authorities to the developer. Further, an intimation regarding above was to be given by the developer to the allottee. It is important to mention here that on the one hand, vide the said letter of provisional allotment, the promoter had allotted unit no.303, third floor, Oak Tower, measuring 1000 sq.ft. in the project "Aegis woods Scheme", Karnal. On the other hand, the promoter in Clause-6 of the same allotment letter mentioned that the allotment is provisional as the layout/ building plans of the complex have yet not been approved by the competent authority. Further, the developer-Aegis Value Homes Pvt Ltd has not placed on record a valid license for the project. It implies that the promoter had provisionally allotted a unit to the complainant without even having statutory approvals to construct and develop an affordable housing colony in Karnal. Thus, the promoter allotted a unit and collected payment against it even without having the competency and requisite permission to do so.

25. During the course of hearing of complaint cases pertaining to Aegis Value Homes Pvt Ltd on 17.05.2022 inclusive of present complaint case, it was observed by the Authority that both parties i.e. respondent no. 1 and respective complainants failed to produce any document/evidence substantiating their claims w.r.t construction and latest stage of project. Respondent- Aegis value homes, even did not chose to file detailed reply

in the matters. Therefore, the Authority in order to have clear picture regarding status of project had appointed the CTP, HRERA, Panchkula as the Local Commissioner vide its interim orders dated 17.05.2022. Accordingly, CTP, HRERA, Panchkula submitted his report on 07.07.2022, wherein, it is mentioned that the promoter M/s Aegis Value Home Ltd. is developing an "affordable group housing colony" namely "Smart Homes Karnal" on land measuring 5.653 acres in Sector 32-A, Karnal and the same is also registered with the Authority vide registration No.265 of 2017, now valid upto 23.07.2023. It is also mentioned in the report that the Director of the company, Shri Divey Sindhu Dhamija informed that the said project was being marketed/promoted in different names such as "Ananda Phase-I", "Aegis Scheme", "Aegis Smart Value Homes". Further, it has been stated in the report that another project was being executed by Aegis Value Homes Pvt Ltd as informed by Sh. Dhamija, Director, as a part of town planning Scheme approved for JD Universal measuring 25 acres approved by Urban Local Bodies Department. This group housing pocket (Part of the above 25 acres) is being constructed on land measuring 1.46 acres comprising of 104 flats and is being marketed as Aegis Woods. In respect of this project, it has been stated in report that no registered collaboration agreement/power of attorney has been executed by promoter-Aegis value homes pvt ltd with JD Universal who have been

granted permission for the said Town planning scheme. With respect to current stage of project, it is submitted that the structure of the project is complete and project is 40% complete but no construction has taken place at site from last 4 to 5 years. Considering the aforesaid report, it is amply clear that no construction work is carried out on site after completion of basic structure and there is no scope of possession even in near future as respondent is not making any efforts to get it completed.

26. Further, as per clause-14 of the letter of provisional allotment, possession was to be handed over within a period of 42 months from the date of booking i.e. 28.12.2013, which comes to 28.06.2017 plus six months grace period, i.e., by, 28.12.2017. However, the respondent-promoter failed to complete the project and hand over the possession by the said date. Also, during course of hearings, respondent no. 1 has not disclosed a specific date for completion of project. Meaning thereby that respondent no. 1 has failed to fulfill its duty to hand over possession of unit within stipulated time. This gives the right in favour of complainants to withdraw from the project and avail the relief of refund.

27. Further, Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others* " in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of

possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

> *"25.The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. As complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainants.

28. 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;

29. 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. 14.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

30. 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".

31. From above discussion, it is proven on record that the respondent has not fulfilled its obligations pertaining to handing over of possession of booked unit to complainant cast upon it under RERA Act,2016. This

entitles the complainant to seek refund of deposited amount along with interest. Thus, Authority deems it fit to award refund of paid amount with interest to complainant. Therefore, respondent will be liable to pay the complainants interest from the date the amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of ₹21,40,931/- 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 11.10% (9.10% + 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 11.10% till the date of this order and total amount works out to ₹21,09,609/-as per detail given in the table below:

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 14.11.2024
1.	22,500/-	14.12.2013	27295
2.	2,00,000/-	28.12.2013	241767
3.	2,23,000/-	14.12.2013	270520
4.	1,21,699/-	19.03.2015	130608
5.	1,77,370/-	04.06.2015	186201
6.	1,77,375/-	02.06.2015	186314
7.	86,560/-	30.03.2016	82972
8.	86,559/-	30.03.2016	82971
9.	700/-	28.05.2016	658
10.	1,49,100/-	10.06.2016	139656

11.	1,49,100/-	10.06.2016	139656
12.	86,664/-	16.09.2016	78592
13.	86,664/-	16.09.2016	78592
14.	1,49,633/-	11.01.2017	130371
15.	1,49,633/-	15.09.2017	119132
16.	1,49,633/-	11.10.2017	117949
17.	62,371/-	02.12.2017	48178
18.	62,370/-	02.12.2017	48177
Total=	21,40,931/-		21,09,609
Total amount to be refunded to the complainant = ₹21,40,931/- + ₹21,09,609/- = ₹ 42,50,540/-			

32. Further, the complainant is seeking cost of litigation and compensation for mental harassment. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as *"M/s Newtech Promoters and Developers PvL Ltd. V/s State of U.P. & ors."* (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

33. Complainants in their reliefs sought is seeking refund with 24% interest. 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. Hence, complainant is awarded refund with prescribed rate of interest as calculated above in para 31 of this order. In respect of relief clause no. 3 , it is to mention here that ld. Counsel for complainant has neither argued nor pressed upon said relief clause. No mention of any sort in pleadings has been made by complainant against said relief. So, no order is passed against said relief.

I. DIRECTIONS OF THE AUTHORITY

34. 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 ₹21,40,931/- with interest of ₹21,09,609/- to the complainants in equal share. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

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

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

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DR. GEETA RATHEE SINGH
[MEMBER]

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NADIM AKHTAR
[MEMBER]

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PARNEET SINGH SACHDEV
[CHAIRMAN]