



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

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| Complaint no.: | 34 of 2023 |
| Date of filing: | 19.01.2023 |
| Date of first hearing: | 29.03.2023 |
| Date of decision: | 02.12.2024 |

1. Late Mrs. Ratana Mantoo W/o Late Dr. Hira Lal Shahabadi
through her legal representatives/heirs,
Ravinder Kumar Shahabadi and Ashwani Kumar Shahabadi
R/o G-201, Arya Apartment, Sector-15,
Rohini, Delhi-110089

2. Ravinder Kumar Shahabadi S/o Late Dr. Hira Lal Shahabadi
R/o G-201, Arya Apartment, Sector-15,
Rohini, Delhi-110089

3. Ashwani Kumar Shahabadi S/o Late Dr. Hira Lal Shahabadi
R/o G-201, Arya Apartment, Sector-15,
Rohini, Delhi-110089

....COMPLAINANTS

VERSUS

TDI Infrastructure Limited.
TDI House G-7, Outer circle,
Connaught Place,
New Delhi- 110001
2nd Address- 10, Shaheed Bhagat Singh Marg,
Gole Market,
New Delhi- 110001

....RESPONDENT

CORAM: **Nadim Akhtar** **Member**
 Chander Shekhar **Member**

Present: - Mr. Vimal Sharma Proxy Counsel for Adv. Vikas Singh,
 Counsel for the Complainants through VC.
 Mr. Ashwani Kumar Shahabadi, Complainant through
 VC.
 Mr. Shubhnit Hans, Counsel for the respondent through
 VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainants on 19.01.2023 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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



| S.No. | Particulars | Details |
|-------|-------------------------------------|--|
| 1. | Name of the project | "Espania Royale Floors", NH-1, Sonipat. |
| 2. | Name of the promoter | TDI Infrastructure Ltd |
| 3. | RERA registered /un-registered | Un-Registered. |
| 4. | DTCP License no. | 70 of 2012 |
| | Licensed Area | 10.83 acres |
| 5. | Unit no. | RF-27-FF, |
| 6. | Unit area | 1224 sq. ft. |
| 7. | Date of allotment | 05.01.2013 |
| 8. | Date of builder buyer agreement | 04.03.2013 |
| 9. | Possession clause in BBA -30 months | Clause 28 <i>".....However, if the possession of the Floor is delayed beyond a period of 30 months from the date of execution thereof and the reasons of delay are solely attributable to the wilful neglect or default of the company then for every month of delay, the purchaser shall be entitled to a fixed monthly compensation/ damages/ penalty quantified @ Rs 5 per square foot of the total super area of the Floor. The purchaser agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the Floor."</i> |
| 10. | Due date of offer of possession | 04.09.2015 |
| 11. | Total sale consideration | ₹ 29,99,084/- |
| 12. | Amount paid by the complainant | ₹ 37,95,705,- Complainant in his pleadings claims to have paid an amount of Rs 37,92,555/-. But as per Statement of Account filed in registry on 19.04.2024 total paid amount is |



| | | |
|-----|-------------------------------|--|
| | | Rs 37,95,705/-. For passing of this order total paid amount of Rs 37,95,705/- is taken into consideration. |
| 13. | Offer of possession (fit-out) | 04.04.2019 |
| 14. | Occupation Certificate | Not obtained. |

B. FACTS OF THE COMPLAINT

3. Facts of the present complaint are that complainants-Ratana Mantoo and Ravinder Kumar Shahabadi had booked a residential built-up floor in the project of the respondent namely; Espania Royale Heights situated at NH-1, Sonipat by making payment of ₹3,00,000/- on 12.06.2012. Following which Builder Buyer Agreement (BBA) was executed between complainants- Ratana Mantoo and Ravinder Kumar Shahabadi and respondent on 04.03.2013. In terms of clause 28 of it, possession was supposed to be delivered within 30 months, i.e., up to 04.09.2015. Copy of agreement is annexed as Annexure C-3.
4. Complainants have paid a total amount of ₹37,95,705/- against total sale consideration of ₹29,99,084/- but respondent has failed to abide by the timeline of construction and the construction was delayed way behind the schedule. Thereafter, respondent after delay of around 4 years offered fit –out possession to the complainants on 04.04.2019.



- Said possession offer was not true to its letter and spirit as the project has not received completion certificate from the competent authority.
5. That the project is still incomplete as the connection of water including drinking water had not been provided and a permanent electric connection had not yet been provided at site. The parking lot of the apartments gets flooded whenever there is heavy rainfall which is dangerous to the life and limbs of the residents. It is pertinent to mention here that the respondent had not yet obtained the completion/occupation certificate from the concerned department due to which complainant is restrained from selling the allotted flat.
 6. That mother-Ratana Mantoo, of the complainants with whom he jointly booked flat died on 27.11.2021. Her death certificate is placed on record as Annexure-5. Complainants had purchased the unit for the sake of her mother only as she wanted to live peacefully in a less polluted location outside Delhi, as she was suffering from various ailments. As such the main motive of buying the flat stood defeated as on date.
 7. That complainant had served a legal notice dated 27.03.2021 upon the respondent seeking refund of paid amount. But respondent did not bother to revert on it nor refunded the amount till date. Hence the present complaint has been filed by the complainant before this Authority.



C. RELIEFS SOUGHT

8. Complainants in their complaint have sought following reliefs:
- a. Direct the Respondent to pay to the Complainants Rs. 37,92,555/- (correct figure of paid amount is Rs 37,95,705/-) along with interest @ 18% p.a. from the date of booking till date towards refund of the money paid to the builder.
 - b. That the Respondent may kindly be directed to pay interest/charges towards delay in possession to the Complainants for the period of delay (i.e., from September 2015) calculated at the prescribed rate of interest on the total amount deposited with the Respondent till the delivery of possession of the said units in question.
 - c. That the Respondent may kindly be directed to pay pending Assured Investment Return in terms of the Buyer's Agreement dated 04 March 2013 with interest.
 - d. That the Respondent may kindly be directed to deliver copies of occupancy certificate, deed of declaration and copies of all approvals from the competent authorities to the Complainants at the time of offer of possession of the said units in question.
 - e. That this Hon'ble Authority may kindly declare that the Buyer's Agreement dated 04 March 2013 is arbitrary, unjust, unilateral and unfair and consequently, not binding upon the Complainants.



f. That the Respondent may kindly be directed to pay an amount of Rs. 1,10,000/- as litigation expenses incurred by the Complainants.

g. That the respondent may kindly be penalized for contravention of the provisions of the Act as well as for cheating and defrauding the allottees, including the complainant.

h. That the respondent may kindly be penalized for not registering the said project before the Hon'ble Authority.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 05.07.2024 pleading therein as under:-

9. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely-Espania Royale Floors, Main NH-1, Sonipat, Haryana.
10. That the builder buyer agreement between the complainants and the respondent has been executed on 04.03.2013 which is much prior to the date when the RERA Act, 2016 came into existence. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
11. That complainants herein are investors, have accordingly invested in the project of the Respondent Company for the sole reason of investing,



earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine.

12. That respondent had vide its letter dated 31.03.2017 applied for grant of occupation certificate before the Director, Town & Country Planning Department, Haryana. Vide letter dated 22.02.2021, respondent had also paid a substantial amount of ₹10,00,000/- requesting the Ld. DTCP to compound the offence of offering the possession with occupation certificate. Copy of said letter is annexed as Annexure R-6.
13. That complainants have concealed that vide letter dated 04.04.2019, respondent has already offered possession for fit out of the booked floor. Copy of letter is annexed as Annexure R-4. Respondent had issued various reminder letters to the complainants to clear their outstanding dues but the complainants did not come forward to clear their outstanding dues.
14. That handing over of possession has always been tentative and subject to force majeure conditions and the complainant has been well aware about the same.
15. That the present complaint is barred by limitation and the same is not maintainable before the Ld. Authority.

E. ADDITIONAL DOCUMENT FILED BY COMPLAINANTS

16. Complainants have filed affidavit for impleading Sh. Ashwani Kumar Shahabadi as necessary party to complaint in registry on 25.09.2024



alongwith no objection certificate signed by Sh. Ashwani Kumar Shahabadi to the effect that he has no objection if decree is passed in favour of Sh. Ravinder Kumar Shahabadi and amount/compensation is released in favour of Sh. Ravinder Kumar Shahabadi. Thereafter, affidavit has been filed by Sh. Ashwani Kumar Shahabadi in compliance of order dated 30.09.2024 in registry on 29.11.2024. Relevant part of order dated 30.09.2024 is reproduced below for reference:-

"As per office record, complainant has placed on record application for impleading Mr. Ashwani Kumar Shahbadi as necessary party. Amended memo of parties has also been filed in registry on 25.09.2024. Said application is accompanied with an affidavit dated 28.06.2024, executed by Mr. Ashwani Kumar Shahbadi wherein he stated that he has no objection if any decree/amount is being issued in favor of Mr. Ravinder Kumar Shahbadi.

Since there is no document on record to verify the signatures of Mr. Ashwani Kumar Shahbadi and for better clarification of the case, Authority directs that two public documents bearing signatures of Sh. Ashwani Kumar Shahbadi be produced before Authority on next date of hearing so that signatures can be verified. Further, it is directed that Sh. Ashwani Kumar Shahbadi shall appear personally or through video conferencing to confirm the fact that he has no objection to passing of decree of refund only in favor of Mr. Ravinder Kumar Shahbadi."

F. ARGUMENTS OF COMPLAINANTS AND LEARNED COUNSEL FOR RESPONDENT

17. During oral arguments, Id. Counsel for the complainants submitted that the possession of the unit was supposed to be delivered by the year 2015. However, respondent has offered fit-out possession to the complainant on 04.04.2019 that too without obtaining occupation



certificate from the concerned department. A valid offer of possession is yet to be made to the complainants. Even in its reply respondent has failed to provide surety in regard to the grant of occupation certificate. Complainants who have already waited for so many years does not wish to wait endlessly for delivery of possession of flat and insists upon refund of paid amount with interest alongwith litigation cost. Further, Mr. Ashwani Kumar Shahabadi has stated that he has no objection if order pertaining to amount/compensation in respect of unit in question is issued only in favour of his brother Sh. Ravinder Kumar. His statement is taken on record.

18. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further stated that application for grant of occupation certificate is still pending with the DTCP. It is the complainants who are at fault by not coming forward to accept possession of the floor after making payment of outstanding dues.

G. ISSUE FOR ADJUDICATION

19. Whether the complainants are entitled to refund of the amount deposited by them along with interest in terms of Section 18 of RERA Act, 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY



20. 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 as follows:

(i) 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 as on 05.01.2013 when the complainant was allotted unit bearing No. RF-27/FF, Espania Royale Floor, Sonipat, 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:-

"51. Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.

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."

(ii) The respondent in its reply has contended that the complainants are "speculative buyers" who have invested their hard earned money 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 they are not entitled to the protection of the Act of 2016. In this regard, Authority observes that "any aggrieved person" can file a complaint against a 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;

(iii) In view of the above-mentioned definition of "allottee" as well as upon careful perusal of allotment letter dated 05.01.2013 and builder buyer agreement dated 04.03.2013, it is clear that complainants are "allottee" of unit bearing no. RF-27-FF, situated in the real estate project "Espania Royale Floor", Sonipat. 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 will be "promoter" and "allottee" and there cannot be a party having a status of an investor. 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 Another** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.



(iv) Respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of Hon'ble 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 its 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.

(v) Admittedly, complainants-Ratana Mantoo and Ravinder Kumar Shahabadi had purchased the floor in the project of the respondent in June,2012 against which a total amount of ₹37,95,705/- has been paid to the respondent. Out of said paid amount, last payment of ₹3,02,000/- was made to respondent on 24.05.2019 which implies that respondent is in receipt of total paid amount since year 2019 whereas fact remains that no valid offer of possession duly supported with occupation certificate of the booked floor has been made till date.



(vi) Authority observes that the floor in question was allotted by respondent on 05.01.2013. Builder buyer agreement was executed between the parties on 04.03.2013 and in terms of Clause 28 of BBA, respondent was under an obligation to deliver the possession to the complainant within 30 months, i.e., latest by 04.09.2015. In present situation, respondent failed to honour its contractual obligations without any reasonable justification.

(vii) Respondent vide letter dated 04.04.2019 had offered fit-out possession to the complainants but said offer of possession was issued without obtaining occupation certificate. The complainants- Late Ratana Mantoo through its legal heirs and Sh. Ravinder Kumar Shahabadi had filed the present complaint seeking refund of paid amount along with interest, as the respondent failed in its obligation to deliver possession as per the terms of buyer's agreement. Respondent in its reply has stated that possession got delayed due to force majeure conditions. However, no circumstances/events have been specified in reply which can be considered as force majeure for delay caused. Mere writing of term force majeure does not establish the fact that it is not due to the fault of respondent that construction of project got delayed.

(viii) Despite making full and final payment towards booking of floor, the complainants have sought relief of refund of paid amount



for the reason that respondent is not in a position to deliver a valid possession of the floor. Complainants had invested their hard earned money in the project with the hopes of timely delivery of possession of the floor. However, possession of floor was offered to the complainants after a delay of more than four years. Fact remains that respondent is yet to receive occupation certificate meaning thereby that a valid possession is yet to be offered to the complainants.

(ix) When an allottee becomes a part of the project it is with hopes that he will be able to enjoy the fruits of his hard earned money in terms of a safety and security of his own home. However, in this case due to peculiar circumstances complainants have not been able to enjoy the fruits of their investment capital as the possession of the flat in question is shrouded by a veil of uncertainty. Complainants had invested a huge amount of ₹37 Lakh with the respondent by the year 2019 to gain possession of a residential floor. However, respondent is not in a position to offer a valid offer to the complainants since the project is yet to receive occupation certificate. Since respondent is not in a position to offer a valid offer of possession in foreseeable future, complainants who have already waited for more than eight years does not wish to wait for a further uncertain amount of time for a valid possession.



Complainants are at liberty to exercise their rights to withdraw from the project on account of default on the part of respondent to deliver possession and seek refund of the paid amount.

(x) 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."



21. 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. The complainants wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainant.

22. 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;

23. 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. 02.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.



24. 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".

25. From above discussion, it is amply proved on record that the respondent has not fulfilled his obligations cast upon him under RERA Act,2016 and the complainants are entitled for refund of deposited amount along with interest. It is pertinent to mention here that complainant- Sh. Ashwani Kumar Shahabadi has given up his claim in favour of his brother Sh. Ravinder Kumar Shahabadi. Requisite affidavit in this regard has already been filed in registry on 25.09.2024. Thus, respondent will be liable to pay the complainant-**RAVINDER KUMAR SHAHABADI** interest from the dates when the amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of ₹37,95,705/- 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 ₹41,11,100/- as per detail given in the table below:

| Sr. No. | Principal Amount in ₹ | Date of payment | Interest Accrued till 02.12.2024 |
|---------|------------------------------|----------------------|----------------------------------|
| 1. | 4,00,000 | 12.06.2012 | 554331 |
| 2. | 4,19,566 | 10.07.2012 | 577873 |
| 3. | 3150 | 16.08.2012 | 4303 |
| 4. | 6,22,274 | 19.01.2013 | 613136 |
| 5. | 2,73,189 | 27.08.2013 | 341955 |
| 6. | 2,73,189 | 04.11.2013 | 336222 |
| 7. | 2,73,189 | 17.12.2013 | 332650 |
| 8. | 2,73,189 | 28.01.2011 | 420216 |
| 9. | 2,73,189 | 19.08.2014 | 312295 |
| 10. | 25,925 | 30.03.2017 | 22115 |
| 11. | 6,53,695 | 18.04.2019 | 408722 |
| 12. | 3,02,000 | 24.05.2019 | 185519 |
| 13. | 3150 | 20.11.2019 | 1763 |
| 14. | Total=37,95,705/- | | Total=41,11,100/- |
| 15. | Total Payable to complainant | 3795705 +4111100= | 79,06,805/- |

26. The complainant is seeking cost of litigation. In this regard, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of

2027 titled as “M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & ors.” (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the litigation charges.

27. In respect of relief clause (c) as mentioned in para 8 of this order, the complainant had filed an application in registry on 19.04.2024, seeking deletion of said clause as same got mistakenly printed at the time of filing of present complaint. Respondent has not raised any objection regarding the said application. Accordingly, said application is taken on record and stands allowed. Hence, relief clause (c) is deleted from the prayer clause. In respect of clause (b), (d), (e), (g) and (h) as mentioned in para 8 of this order, it is to mention here that ld. counsel for complainant has neither pressed upon nor argued these reliefs. Hence, no direction is passed against these reliefs.

I. DIRECTIONS OF THE AUTHORITY

28. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA 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 paid amount of ₹37,95,705/- with interest of ₹ 41,11,100/- to the complainant- Sh. Ravinder Kumar Shahabadi. It is further clarified that respondent will remain liable to pay interest to the complainant 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 follow.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]