HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**599 of 2021**
Date of filing:	**07.06.2021**
Date of first hearing:	**06.07.2021**
Date of decision:	**14.10.2024**

Mr. Hitesh Aggarwal,
R/o A-1/116, Sector-8, Rohini,
New Delhi-110085

....COMPLAINANT

VERSUS

TDI Infracorp Limited.
Vandana Building, Upper Ground Floor
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001

....RESPONDENT

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

Present: - Mr. Tarun Talwar, Counsel for the complainant through VC.
Ms. Mehak Ghnahgas, proxy counsel for Mr. Ajay Ghangas,
Counsel for the respondent no. 1, through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed on 07.06.2021 by the 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

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	Waterside Floor in TDI Lake Grove City, Kundli, Sonipat
2.	RERA registered/not registered	Registered with registration no. 43 of 2017
3.	Unit no	WF-136/FF
4.	Unit area	1400 sq. ft. or 130.06 sq. mtrs.
5.	Date of booking	15.04.2013
6.	Date of builder buyer agreement (executed with complainant)	01.10.2016
7.	Due date of offer of possession (30 months)	01.04.2019
8.	Possession clause in BBA (Clause 28)	Clause 28 *.....However, if the possession of the apartment is delayed beyond the*

		stipulated period of 30 months and a further period of 6 months granted as a grace period from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then thereafter for every month of delay, the buyer shall be entitled to a fixed monthly compensation/ damages/penalty quantified @ Rs.5 per square foot of the total super area of the apartment. The Buyer 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 apartment
9.	Total sale price	₹ 52,99,280/-
10.	Amount paid by complainant	₹ 53,59,478/- Complainant claims refund of amount of Rs 53,59,478/- along with interest. However, as per order dated 10.08.2023, complainant claims to had paid an amount of ₹53,45,376/- to the respondent and respondent also admit the same amount. But perusal of statement of account attached at page 18-19 of the complaint file, amount of ₹53,35,083/- is paid by the complainant and one receipt of ₹24395/- at page no.36 of complaint file which is not included in statement of account, also taken on record. Therefore, amount of Rs 53,59,478/- is taken as final for passing of this order.
11.	Offer of possession	Valid offer of possession not given.
12.	Occupation Certificate	30.06.2023

B. FACTS OF THE COMPLAINT

2. Facts of the present complaint are that complainant booked a unit/floor in the respondent's project, namely, "Water Side Floors" in TDI Lake Grove City, Kundli, Sonipat by making the payment of Rs 5,00,000/- vide cheque dated 12.04.2013.

3. That in pursuance of the application, respondent issued allotment letter dated 27.08.2016 after receiving almost full payment which was in itself breach on respondent part as only 20% payment was to be made before allotment as per construction linked payment plan and rest of the payments were payable on achieving a particular milestone of construction after issuance of allotment. That after receiving approximately 80% of payment respondent issued allotment latter dated 27.08.2016 and the complainant was allotted floor no. WF-136/FF, having an area of 1400 sq.ft. on 1st floor of the building in the project in question. Thereafter, Builder Buyer Agreement (BBA) was executed between the parties on 01.10.2016. As per clause 28 of the agreement, possession of the floor was to be made within 30 from the date of execution of agreement, thus deemed date of delivery comes out to 02.04.2019. An amount of Rs 53,59,478/- has been paid by the complainant against total sale price of Rs 52,99,280/-.

4. That till date respondent failed to hand over possession of the floor to the complainant and being aggrieved by the fraudulent and illegal acts of the respondent complainant issued legal notice dated 25.04.2021 claiming refund along with interest and compensation but no reply to the notice have been received till date. Feeling aggrieved with the actions of respondent, present complaint has been filed by the complainant before this Authority.

C. RELIEFS SOUGHT

5. Complainant in his complaint has sought following reliefs:

(a) To direct the respondent to refund the amount of Rs. 53,59,478/- along with interest from the date of each payment till the same is realized to the complainant as per Section 18(1), 19 (4) of the RERA Act r/w Rule 15;

(b) To provide the cost of litigation to the tune of Rs. 1,00,000/-.

(c) To provide compensation to the tune of Rs. 10,00,000/- on the account of mental agony and monetary loss suffered by the complainant.

(d) That this Hon'ble Authority may kindly be pleased to pass any such order in favor of the complainant and against the respondent as it deems fit as per rules of Real Estate Regulation and Development Act, 2016.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO.1

6. Learned counsel for the respondent filed a detailed reply on 15.07.2021 pleading therein:

(i) That the complainant herein is an investor and not a consumer.

(ii) That the provisions of the RERA Act,2016 are prospective in nature and not retrospective.

(iii) That complainant has deliberately failed to make timely payment of instalment as and when it became due or demand raised as per the agreed payment schedule. That complainant was not punctual in making timely payment of instalment resulting in accrual of interest and amount of ₹11,57,546/- is still outstanding against the complainant.

(iv) That the respondent had made huge investments in obtaining approvals and carrying on the construction and development of the project. Despite several adversities respondent is in the process of completing the construction of project and the possession of the unit is expected to be delivered within 1-2 months subject to payment of balance payment by the complainant.

(v) That respondent has not made any illegal demand before allotment. There is no malafide intention to cheat on the part of respondent. No deficiency in service or failure on part of

respondent. It is pertinent to mention that complainant has paid ₹53,45,376/-.

(vi) It is denied that respondent entered into one sided agreement after receipt of entire amount from the complainant. The delay if any is due to the reasons beyond the control of the respondent which include holding of funds by Indiabulls who was the financer, slowdown in real estate markets, shortage of funds and Covid-19 pandemic. That construction of the allotted unit has already been completed and respondent is likely to offer possession to the complainant in the next 1-2 months.

(vii) Complainant has no right to claim refund alongwith interest from the respondent when complainant himself make default in making payment.

E. REJOINDER FILED BY THE COMPLAINANT

7. As per rejoinder dated 04.08.2021, complainant made following submissions:

(i) That the provisions of the RERA Act are very much clear to deal with the complaints that are filed under RERA Act. The provisions of Section 18 and various other provisions of the RERA Act uses the word 'allottees' which clearly proves that the interest of the allottee is to be protected by the RERA Act and the

definition of allottee has been clearly provided u/s 2(d) of the RERA Act. Also, Section 31 of the Act clearly uses the term 'any aggrieved person' which in itself is sufficient to prove that any person can file a complaint in violation of the provisions of the said Act. Thus, the present complaint filed by the complainant falls well within the preview of the RERA Act and is maintainable as per the RERA provisions.

(ii) It is denied that the complainant has not come up with clean hands as the complainant has made timely payments. Moreover, being unaware about the illegal demands of the respondent still the complainant made timely payments. It is to clarify that it was mentioned in the Registration form that only 20% of the amount was to be paid before the Allotment. As per the payment plan (10% +50% EDC/IDC+PLC) the rest of the remaining amount was to be demanded at the time of making allotment and after issuing allotment but respondent had illegally demanded all the payments before issuing the allotment letter to the complainant. That respondent had issued allotment letter dated 27.08.2016 after receiving almost full amount which in itself was a breach on respondent part as only 20% payment was to be made before allotment and rest was to be made at the time and after issuing of the allotment letter. Thus this act of the respondent in itself

shows mala fide intention in order to cheat the complainant and his-hard earned money.

(iii) More importantly the respondent is showing the transactions as 'At the time of allotment from 02.07.2013' onwards in their Statement of Accounts but to a great shock allotment letter or intimation regarding allotment was never issued/made to the complainant on 02.07.2013 as it is showing in the Statement of Account and it was only on 27.08.2016 that allotment letter was issued to the complainant and that too after receiving more that 85% of the amount from the complainant.

(iv) That the total consideration of the floor was decided to be 52,99,280/- out of which 53,59,478/- has already been paid by the complainant. That the price of the floor has been illegally increased and a demand of Rs.11,54,268.22/- as per letter dated 01.06.2021 has been raised and that too without the consent of the complainant.

(v) As per the fresh demand letter dated 01.06.2021, Delayed Payment Charges are nowhere mentioned which clearly proves that there was never a delay on the part of the complainant in making the payments and it is the respondent who has cheated the complainant. The letter dated 01.06.2021,is annexed as C-1 of the rejoinder.

(vi) That on 01.06.2021 the respondent issued a letter to the complainant wherein it is stated that Rs.11,54,268.22 is due and the Floor is 'ready for possession'. This in itself is an illegal act as the Completion Certificate is yet to be obtained by the respondent and moreover it is completely illegal to offer possession without obtaining the Completion Certificate. That respondent has raised illegal demand vide letter dated 01.06.2021 as it is clearly mentioned in the paragraph No.7 of the Written Statement of respondent that possession is expected within 1-2 months. Moreover in the letter dated 01.06.2021, it is mentioned that the unit is Ready for possession and in the Written Statement of the respondent, it is mentioned that possession is expected within 1-2 months. This is sufficient to show the mala fide intentions of the respondent.

(vii) The Construction work is nowhere complete to offer possession and the respondent has issued illegal letter stating Unit is ready for possession.

(viii) That after receiving approximately the entire amount from the complainant, the respondent entered into a one sided Builder Buyer Agreement with the Complainant on 01.10.2016 wherein all the terms and conditions of the Agreement were favouring the respondents only. Moreover Builder Buyer Agreement was

executed after receiving 85% of the amount and most importantly huge amount was paid by 20.09.2015. So, executing the Builder Buyer Agreement after receiving approximately 85% of the total consideration and executing Builder Buyer Agreement after such a long time of receiving the payments clearly shows the mala fide intentions of the respondent. The respondent received approximately 85% of the payments by 20.09.2015 and they executed the Builder Buyer Agreement on 01.10.2016.

(ix) That it is pertinent to mention that the complainant is seriously affected by the acts of the respondent as even after receiving more than 85% of the amount the respondent has not even issued Possession which has caused a great mental agony and monetary loss to the complainant. Therefore, as a matter of right complainant is claiming refund along with interest from the date of each payment till the same is realized in view of the relevant provision of Section 18(1), 19(4) r/w Rule 15.

F. WRITTEN SUBMISSIONS FILED BY COMPLAINANT ON 18.08.2021

8. That submissions made in written submissions filed by the complainant on 18.08.2021 are similar to complaint and rejoinder filed by the complainant.

G. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT

19. During oral arguments learned counsel for the complainant insisted upon refund of paid amount with interest, stating, that respondent has not yet obtained occupation certificate from the competent authority and request the Authority to allow the refund of paid amount alongwith with interest on basis of matter on record. Counsel for the respondent stated that in compliance of order dated 22.07.2024, respondent has filed an application dated 19.07.2024, mentioning about the occupation certificate and latest photographs of the project. Authority inquired from the respondent in which tower the floor of the complainant is situated and whether respondent has received the occupation certificate with respect to that tower. In answer to this, counsel for respondent stated that respondent has received occupation certificate on 30.06.2023 but she needs time to clarify the fact as to whether said certificate includes tower of complainant or not? Further, she stated that in order dated 09.02.2023, Authority observes that refund cannot be allowed in present case.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

21. 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 respect to the objection raised by the respondent that complainant herein is an investor, it is observed that the the complainant herein is the allotee/homebuyer who has made a substantial investment from his hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit in terms of buyer's agreement dated 01.10.2016 but his bonafide belief stood shaken when the promoter failed to handover possession of the booked floor till date without any reasonable cause. At that stage, complainant has approached this Authority for seeking refund of paid amount with interest in terms of provisions of RERA Act,2016 being allotee of respondent-promoter. As per definition of 'allottee' provided in clause 2(d) of RERA Act,2016, present complainant is duly covered in it and is entitled to file present complaint for seeking the relief claimed by him. Clause 2(d) of RERA Act,2016 is reproduced for reference:-

> "***Allotee**-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".

Complainant has been allotted floor in the project of respondent by the respondent/promoter itself and said fact is duly revealed in builder buyer agreement dated 01.10.2016. Also, the definition of allottee as provided under Section 2 (d) does not distinguish between an allottee who has been allotted a floor for consumption/self utilization or investment purpose. So, the plea of respondent to dismiss the complaint on the ground that complainant herein is investor does not hold merit and same is rejected.

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

"41. *The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or*

building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest."

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

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules

applicable to the acts or transactions, which were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

(iii) Initially, complainant in present case has impleaded two respondents, i.e, TDI Infracorp Ltd as respondent no. 1 and TDI Infrastructure Ltd. as respondent no. 2. Authority vide order dated 01.09.2021 directed the complainant to file amended complaint as ld. counsel for respondent no.2 in its short reply stated that respondent no.2 has been arrayed unnecessarily. In compliance of it, ld. counsel for the complainant at the time of hearing has stated that he has no objection if name of respondent no.2 is deleted and also filed amended memo of parties in the Authority on 12.10.2021. Considering said statement of the counsel and application filed by the complainant on 12.10.2021, this order is passed by issuing directions to respondent, i.e, TDI Infracorp Ltd only.

(iv) Admittedly, floor in question was booked by complainant on 15.04.2013 and thereafter allotment letter was issued on 27.08.2016

with respect to floor no. WF-136/FF, having an area of 1400 sq.ft. on 1st floor in the project namely " Waterside Floors in Lake Grove City" at Kundli, Sonipat was allotted to the complainant. Builder buyer agreement was executed between the parties with respect to above said floor on 01.10.2016 for a total sale consideration of ₹ 52,99,280/-/- against which an amount of ₹53,59,478/- has been paid by the complainant. Out of said paid amount, last payment of Rs 24395/- was made to respondent vide cheque dated 06.04.2017 by the complainant which implies that respondent is in receipt of total paid amount since year 2017 whereas fact remains that no valid offer of possession of the booked floor has been made till date.

(v) Authority observes that the floor in question was allotted to complainant by way of executing builder buyer agreement dated 01.10.2016 and in terms of clause 28 of it, respondent was under an obligation to deliver possession within 30 months i.e. latest by 01.04.2019. In present situation, respondent failed to honour its contractual obligations without any reasonable justification.

(vi) Respondent vide letter/email dated 01.06.2021 had offered possession for fit-out to the complainant along with demand of ₹ 11,54,268.22/- but said offer of possession was issued without obtaining occupation certificate. Complainant filed 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. Perusal of email/letter available at page no. 12 of the rejoinder reveals that said offer was issued with a subject-'Intimation of completion and offer of possession for fit outs'. Relevant part is reproduced below for reference:-

> *"We are glad to inform you that your Unit NoWF-136/FF is ready for possession having final super area 1520 Sq ft.*
>
> *It gives us immense pleasure to inform you that the construction of your Floor in the Project Water Side Floors, at The Lake Grove, Sector-63, Kundli, Sonepat, Haryana (hereinafter referred to as the "Unit")is complete and your Unit is now ready for possession. We have duly applied for grant of part Occupation Certificate from the concerned department and the same is expected to be received in due course. To save the precious time, we are, therefore, pleased to offer you the possession of the aforesaid Unit for fit-out to enable you to carry interior works of the unit."*

Aforesaid content of offer of possession provides a clear picture that respondent itself admits that occupation certificate was applied for at the time of offering possession. Authority vide order dated 29.11.2023 directed the respondent to place on record status of occupation certificate and latest photographs of the floor in question. As per office record, an application dated 19.07.2024, has been filed by

respondent. During the course of hearing, counsel for respondent was unable to give any satisfactorily reply to the fact that occupation certificate has been received with respect to the tower in which the floor of the complainant is situated. Now the facts remain that complainant is no more interested in taking possession of the floor and is seeking refund of the paid amount.

(vii) Despite making full and final payment towards booking of floor complainant has 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. Complainant had invested his hard earned money in the project with hopes of timely delivery of possession. However, possession of floor was offered to the complainant after a delay of more than six years and that too without receiving the occupation certificate from the competent authority. Respondent has pleaded that force majeure factors like Covid-19 and lockdowns imposed in order to curb it delayed the construction work. Fact remains that deemed date of possession of floor is in year 2019 whereas the pandemic affected the nation in year 2020. Any activity/lockdowns imposed/initiated post the deemed date of possession cannot be considered towards causing delay. Furthermore, the act of respondent in not completing the construction and receiving of occupation certificate till date, i.e., year 2024 strengthens the belief of complainant as well as the Authority

that possession of booked floor is not possible even in near future and in these circumstances, complainant cannot be forced to wait for an indefinite period in hope of getting possession of unit. Additionally, complainant has unequivocally stated that he is interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

(viii) 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 complainant has not been able to enjoy the fruits of his investment capital as the possession of the floor in question is shroud by a veil of uncertainty. Complainant had invested a huge amount of about ₹53 Lakh with the respondent by the year 2017 to gain possession of a residential floor. Since respondent is not in a position to offer a valid offer of possession in foreseeable future, complainant who has already waited for more than eleven years does not wish to wait for a further uncertain amount of time or a valid possession. Complainant is at liberty to exercise his 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.

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

(x) 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;*

22. 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. 14.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

23. 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".

24. The project in question did not get completed within the time stipulated as per agreement and no 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 favour of complainant. Thus, respondent will be liable to pay the interest to the complainant 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 Rs 53,59,478/- 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 at the rate of 10.10% till the date of this order and total amount of interest works out to ₹1,14,61,345/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 14.10.2024
1.	5,00,000/-	10.05.2013	6,34,981/-
2.	5,51,531/-	11.07.2013	6,90,024/-
3.	6,01,702/-	24.10.2013	7,33,580/-
4.	1,99,640/-	29.11.2013	2,41,211/-
5.	4,00,000/-	31.01.2014	4,75,627/-
6.	1,46,377/-	31.01.2014	1,74,052/-
7.	1,46,377/-	28.04.2014	1,70,180/-
8.	4,00,000/-	28.04.2014	4,65,044/-
9.	1,99,640/-	15.10.2014	2,21,783/-
10.	2,73,188/-	16.12.2014	2,98,337/-
11.	2,73,189/-	12.03.2015	2,91,193/-
12.	2,21,377/-	11.05.2015	2,31,927/-
13.	3,25,000/-	20.05.2015	3,39,599/-
14.	4,99,181/-	21.08.2015	5,07,487/-
15.	4,99,181/-	21.08.2015	5,07,487/-
16.	98,700/-	06.10.2015	98,961/-
17.	24395/-	06.04.2017	20394/-
18.	Total= 53,59,478/-		61,01,867/-
Total amount payable to the complainant = 53,59,478/- +61,01,867/- = ₹1,14,61,345/-			

H. DIRECTIONS OF THE AUTHORITY

25. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the Act to ensure compliance of

obligation cast upon the promoters 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 ₹53,59,478/- with interest of ₹61,01,867/-. 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 against the respondent no.1.

26. **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]