HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**853 of 2023**
Date of filing:	**18.04.2023**
First date of hearing:	**08.08.2023**
Date of decision:	**04.11.2024**

Munni Devi

W/o Sh. Bhim Singh

R/o VPO, Chausana, Tehsil Kairana,

District- Shamli, Uttar Pradesh .....COMPLAINANT

Versus

RAS Developments Pvt. Ltd.

Registered Office: 812 & 812A,

Chiranjeev Tower, 43, Nehru Place,

New Delhi-110019 .....RESPONDENT

CORAM: Nadim Akhtar **Member**

Chander Shekhar **Member**

Hearing: 5th

Present: - Adv. Mandhir Singh Virk, counsel for the complainant through VC.

Adv. Shubhnit Hans, counsel for the respondent through VC.

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed by the complainant on 18.04.2023 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the RERA, 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 and location of the project	"Ras Residency", Sector 35, Karnal, Haryana
2.	Name of the promoter	M/s RAS Developments Pvt. Ltd.
3.	RERA registered/not registered Unit No.	Unregistered
4.	Flat No.	R-303, third floor in Tower no. R

6.	Apartment area (Super area)	2400 Sq. Ft.
7.	Date of application form	30.07.2013
8.	Date of Flat Buyer Agreement	01.12.2014
9.	Deemed date of possession	01.12.2017 (36 months from the date of execution of Flat Buyer Agreement, i.e., 01.12.2014)
10.	Possession clause in Flat Buyer Agreement	*"Clause2.2 that the developer shall endeavour to complete the construction work of the said unit within a period of 'thirty six' (36) months from the date hereof or the date of sanctioning of building plans or approvals from the Ministry of Environment/ Department of fire fighting/ local authorities or any other sanction by the competent Authority, whichever is later……."*.
11.	Total sale consideration	₹52,80,000/-
12.	Amount paid by complainant	₹19,05,114/-
13.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

1. Case of the complainant is that in the year 2013, respondent widely advertised their proposed project "RAS Residency" (hereinafter referred to as "Project") located near Palm Residency, Sector-35, Karnal, (Haryana). The

advertisements specifically promised that possession of the units would be handed over within 36 months from the date of signing the application form.

2. The complainant booked Flat No. 303-R, measuring 2400 sq. ft. (super area), at the rate of ₹2200/- per sq. ft., resulting in a total sale consideration of ₹52,80,000/-. The Application Form, along with the terms and conditions of allotment, was signed on 30.07.2013. The complainant opted for a Construction-Linked Payment (CLP) plan and paid a booking amount of ₹2,64,000/- on the same day. The payment details were duly acknowledged by the respondent. (Application Form annexed as Annexure A-1).

3. That on 02.12.2014, the complainant and respondent executed a Flat Buyer's Agreement. The agreement stipulated a construction-linked payment schedule, and payments were to be made as per the progress of construction and subsequent demands raised by the respondent (Agreement annexed as Annexure A-2).

4. That according to the agreement, possession of the flat was to be delivered within 36 months, making the due date for possession 02.12.2017. However, the possession has not been delivered to date and the project remains incomplete despite the lapse of six years from the promised possession date.

5. The complainant has made payments totalling ₹21,12,000/- as per the demand raised by the respondent, up to 10.02.2015. Copies of demand letters and

payment receipts are annexed as Annexure A-3 (Colly.) and Annexure A-4 (Colly.).

6. The respondent continued to accept payments from the complainant with assurances of timely possession, despite having no intention to deliver possession. After February 2015, there has been no further construction progress at the project site. Additionally, the respondent neither raised further payment demands nor provided any updates on the status of possession to the complainant. Despite repeated follow-ups by the complainant, respondent failed to resume or complete the construction work.

7. The agreement contains a specific clause ensuring compensation for delays in possession at the rate of ₹5/- per sq. ft. per month of the super area of the flat. However, the respondent has not paid any compensation to the complainant till date.

8. On 14.06.2019, the complainant issued a legal notice to the respondent, demanding possession of the flat or a refund of the entire paid amount, along with 24% interest per annum, compounded half-yearly (the same rate of interest charged by the respondent). A copy of the legal notice is annexed as Annexure A-5. The respondent replied through their counsel on 09.07.2019, admitting that construction of Tower R (where Flat No. 303-R is located) was incomplete. They offered an alternative flat in Tower P, which was also under

construction and unavailable for possession. A copy of the reply is annexed as Annexure A-6.

C. RELIEFS SOUGHT

9. Complainant has sought following reliefs:

i. Direct respondent to hand over the possession of the flat no. R-303 in Ras Residency, Sector 35, Karnal to the complainant as per allotment & Flay Buyer Agreement (with approvals qua completion) along with penalty for delayed possession @ Rs. 5 per Sq, ft. per month to the complainant as agreed by both the parties in the agreement, along with interest @ 21 % per annum compounded half yearly (interests rate levied by the respondent) for every year of delayed possession calculated proportionately to every day of delay from date of payment till realization.

ii. *In alternate* Refund of the payments of Rs. 19,05,114/- made by the complainant along with interest @ 24% per annum compounded half yearly (interest's rate levied by the respondent) from date of payment till realization.

iii. Direction to the respondent to pay complainant for the torture, sufferings, harassment and embarrassment etc caused to the complaint for their neglectful attitude in dealing with the complainant.

iv. To award compensation to the complaint and penalty upon the respondent for the said unfair trade practice and deficiency in service.

v. Any other relief (s) which this Hon'ble Authority may deem fit and proper may also be granted in favour of the complainant and against the respondent.

D. REPLY ON BEHALF OF RESPONDENT

10. Respondent has filed a detailed reply on 05.07.2024 stating therein that the said compliant is not maintainable before the Authority on several grounds:

i. The complaint does not fall within the purview of the Real Estate (Regulation and Development) Act, 2016 (RERA). They argue that the RERA Act, which came into effect in 2016, cannot be applied retrospectively to agreements executed prior to its enactment.

ii. The complainant invested in the project solely for speculative purposes and profit-making rather than personal use. As such, the complaint is liable to be dismissed.

iii. The complaint is barred by limitation and suffers from delay and laches, rendering it non-maintainable before the authority.

11. The respondent highlighted that, as per Clause 2.1 of the agreement dated 01.12.2014, possession of the flat was tentatively scheduled to be delivered within three years from the date of approval of the building plans, subject to

force majeure conditions. Thus, the possession timeline was not absolute but conditional. The respondent asserted that unforeseen circumstances, including the COVID-19 pandemic, severely disrupted construction activities:

i. First Wave: The pandemic hit in March 2020, bringing the country to a standstill.

ii. Second Wave: In April 2021, the second wave further exacerbated delays.

iii. Construction restrictions imposed by local authorities, the National Green Tribunal (NGT), and market fluctuations also affected progress. To address the situation, the Haryana Real Estate Regulatory Authority granted:

iv. A general six-month extension from 25.03.2020 to 24.09.2020, pursuant to a state advisory (*Memo No. 1/32/2020-ITCP dated 15.05.2020*).

v. A special three-month extension from 01.04.2021 to 30.06.2021, following a resolution passed on 02.08.2021.

12. The respondent applied for a second extension under Section 7(3) of the RERA Act for the registration of *RAS Residency-1*, a group housing colony spread over 5.1875 acres in Sector-35, Karnal, Haryana. The project, registered under No. 23 of 2018 (valid up to 30.12.2021), received its first extension (including nine months due to force majeure) valid up to

29.09.2023. A further extension was applied for on 13.09.2023. The respondent maintain that there was no deliberate or willful delay in project completion.

13. The respondent offered the complainant an alternative flat in Tower P with the same specifications, dimensions, and facilities as the originally allotted flat. However, the complainant declined this offer without providing valid reasons.

14. The respondent claim that the complainant defaulted on timely payments, despite receiving multiple reminders. As a result, the allotment of the originally booked flat was cancelled in the year 2023 vide letter dated 04.06.2023. A cancellation letter dated 04.06.2023 was sent to the complainant (*Annexure R-2*).

15. The respondent sent several reminder letters urging the complainant to clear outstanding dues and warning of potential interest charges for delayed payments. However, the complainant allegedly failed to comply and fulfill their obligations. Copies of these reminders are annexed as Annexure R-1 (Colly.). The respondent argue that the complainant has not furnished sufficient documentary evidence to substantiate allegations against them, including proof of adherence to the payment schedule. The respondent reiterate that delays in the project were caused by unavoidable circumstances.

Furthermore, they emphasize that the complainant's defaults in payment contributed to the cancellation of the unit, which was duly communicated on 04.06.2023 *(*Annexure R-2*)*.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

16. Learned counsel for complainant stated that the complainant booked a Flat No. 303-R in *RAS Residency*, Sector-35, Karnal, in 2013 for ₹52,80,000/-, with possession promised by 02.12.2017. Despite paying ₹21,12,000 as per the construction-linked plan, the respondent failed to deliver possession, and the project remains incomplete over six years past the deadline. No compensation for the delay, as per the agreement, has been paid. Following a legal notice in 2019, the respondent admitted the flat's construction was incomplete and offered an alternative flat, which was also unavailable. Thus, complainant prays for a **relief of refund** of the amount paid by complainant along with interest.

17. The Authority inquired from the learned counsel for the complainant regarding the relief sought in the complaint. The complainant primarily requested possession along with delay interest, or alternatively, a refund with interest. The Authority sought clarification on the specific relief being pursued. The learned counsel for the complainant submitted that, since the

project remains incomplete, the complainant is primarily seeking a refund along with interest from the Authority.

18. On the other hand, the learned counsel for the respondent argued that the original unit booked by the complainant was not constructed at the time possession was due. Consequently, an alternate unit was offered to the complainant, which the complainant refused to accept. The respondent further alleged that the complainant failed to make timely payments as per the agreement. Lastly, the respondent stated that they have applied for the grant of the occupation certificate from the competent authority.

F. ISSUE FOR ADJUDICATION

19. Whether the complainant is entitled for refund of the amount deposited by her along with interest in terms of Section 18 of RERA, Act of 2016?

G. OBSERVATIONS AND DECISION OF AUTHORITY

20. The 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 the complainant booked an apartment in the real estate project; "RAS Residency" being developed by the promoter namely; "RAS Developments Pvt. Ltd." and in consonance to the same, complainant was allotted flat no. R-303, third floor in Tower no. R, admeasuring 2400 sq. ft. in the project known as "RAS Residency" situated

at Sector-35, Karnal, Haryana via Application form dated 30.07.2013. The Flat Buyer Agreement was executed between the parties on 01.12.2014. Complainant has paid a total sum of ₹21,12,000/- against the total sale consideration of the unit amounting to ₹52,80,000/- .

21. As per clause 2.2 of the agreement *"that the developer shall endeavour to complete the construction work of the said unit within a period of 'thirty six' (36) months from the date hereof or the date of sanctioning of building plans or approvals from the Ministry of Environment/ Department of fire fighting/ local authorities or any other sanction by the competent Authority, whichever is later……."*. However, neither of the parties has mentioned the exact date of sanctioning of building plans or approvals from the Ministry of Environment/ Department of fire fighting/ local authorities or any other sanction by the competent Authority in their files. Thus, to calculate a deemed date of handing over of possession, Authority deems appropriate to ascertain 36 months from date of execution of flat buyer agreement, i.e., 01.12.2014. Therefore, 36 months comes out to be 01.12.2017. Further, the respondent argued that the delay in the delivery of possession was due to force majeure, specifically the COVID-19 pandemic, which began in March 2020 and was followed by a second wave in April 2021. The pandemic led to nationwide lockdowns and restrictions, disrupting various industries, including the

construction sector. The respondent claimed that these unprecedented circumstances, beyond their control, should be considered a valid reason for the delay in construction and delivery of possession. However, the Authority thoroughly examined the situation and noted that the agreed-upon date for possession, as per the Flat Buyer Agreement, was 01.12.2017, which was well before the pandemic started in 2020. The key issue here is that the respondent had a contractual obligation to deliver possession within 36 months of the execution of the agreement, which would have been by December 1, 2017. Therefore, the pandemic, which occurred three years later, could not be invoked as a reason for failing to meet the original deadline. Since the date for possession was already due by 2017, and the pandemic started only in 2020, the Authority rejected the respondents' claim that the COVID-19 pandemic constituted a valid force majeure event that could justify the delay. The obligation to deliver possession by **01.12.2017** still stands, as the force majeure defense raised by the respondent is not valid given that the pandemic occurred after the stipulated possession date.

22. Furthermore, respondent has challenged the maintainability of the case on following grounds:

i. *The complaint does not fall within the purview of the Real Estate (Regulation and Development) Act, 2016 (RERA). They argue that the RERA*

Act, which came into effect in 2016, cannot be applied retrospectively to agreements executed prior to its enactment.

With regard to the above objection, 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.

ii. *Secondly, the complainant invested in the project solely for speculative purposes and profit-making rather than personal use. As such, the complaint is liable to be dismissed.*

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 and regulations. In the present case, complainant is aggrieved person who have filed a complaint under section 31 of the RERA Act, 2016 against the promoters 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 the term allottee under the RERA Act 2016, reproduced below:-

> *"Section 2(d): **Allottee:** in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."*

In view of the above mentioned definition of allottee as well as upon careful perusal of application form dated 30.07.2013 and flat buyer agreement dated 01.12.2014, it is clear that complainant is an allottee as flat no. R-303, third floor in Tower no. R, admeasuring 2400 sq. ft. in the project known as "RAS Residency" situated at Sector-35, Karnal, Haryana was allotted to them by the respondent promoter. The concept/ definition of investor is not provided or referred to in 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 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 Anr.** had also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of the promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

iii. *Thirdly, the complaint is barred by limitation and suffers from delay and laches, rendering it non-maintainable before the authority.*

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.

> *"It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963.'" 20. In Kerala State Electricity Board v. T.P"*

The promoter has till date failed to fulfill his obligations because of which the cause of action is re-occurring. RERA is a special enactment with particular aims and objects covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963 are not 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.

In the light of the above-mentioned reasons, the Authority is of the view that the objection of the respondent stands rejected.

23. Authority observes that complainant had opted for a *CONSTRUCTION LINKED PAYMENT PLAN*, under which payments were to be made in alignment with the progress of the project. According to the complainant's pleadings and the respondent's admission, the construction of the original unit allocated to the complainant was not completed. The Authority observes that there was no construction work carried out as per the agreed-upon plan, and as a result, the complainant rightly stopped making further payments. Instead of completing the project within the stipulated time, the respondent issued a cancellation notice to the complainant on 04.06.2023, informing them that the complainant's unit had been cancelled. This notice was issued even though no significant progress had been made on the construction of the project, and the

respondent failed to deliver the possession by 2017, as per the agreement. In fact, possession has not been offered to the complainant till date, and the respondent failed to communicate updates on the construction status. Given the inordinate delay (6 years beyond the agreed possession date), the respondent's cancellation notice cannot be sustained in the eyes of the law. It is the respondent who has failed to fulfill their contractual obligations, and thus they are responsible for the delay. The complainant had no obligation to continue payments when no progress was made, and they had already been deprived of their rightful possession long after the contractual deadline. Furthermore, the respondent has failed to prove that any amount paid by the complainant was refunded after the unit was cancelled. Simply issuing a cancellation notice without fulfilling financial or possession obligations is not legally valid in this case. During the hearing, the respondents' counsel mentioned that the respondent had applied for an Occupation Certificate (**OC**) from the competent authority. However, the mere application for the **OC** does not suffice to justify the respondents' failure to deliver possession. It is important to note that as of the hearing, the OC has not been issued, and the project is still not complete. The complainant cannot be expected to wait indefinitely for possession when the respondent has not demonstrated any significant progress in construction. Thus, the inordinate delay in completing

the project and the failure to deliver possession justify the complainant's request for a refund of the amounts paid along with interest. Given the circumstances, the Authority finds that the complainant is entitled to a refund of the money paid, as well as compensation for the delay caused by the respondents' negligence in completing the project.

24. 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.

25. 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;*

26. 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".

27. 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., 04.11.2024 is 9.1%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.1 %.

28. From above discussions, it is amply proved on record that the respondent have not fulfilled its obligations cast upon them under RERA Act, 2016 and the complainant is entitled for refund of her deposited amount along with interest as per RERA rules, 2017. Accordingly, respondent will be liable to pay the interest to the complainant from the dates when amounts were paid till the actual realization of the amount. Hence, Authority directs the respondent to refund the paid amount to the complainant 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 11.1% (9.1% + 2.00%) from the date amounts were paid till the actual realization of the amount.

Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 11.1% from the date of payment till the date of this order, which comes to **₹41,81,228/-** (**₹19,05,114/-** (principal amount) **+₹22,76,114/-** (interest accrued till 04.11.2024). According to the receipts/statement of accounts provided by the complainant, details of which are given in the table below –

Sr.no	Principal amount (in ₹)	Date of payments	Interest accrued till 04.11.2024 (in ₹)
1.	288000	2014-01-28	344554
2.	264000	2013-07-30	330453
3.	264000	2013-08-31	327884
4.	271914	2013-10-26	333082
5.	272000	2013-12-23	328390
6.	274000	2014-05-20	318472
7.	271200	2015-02-10	293279
Total	**1905114**		**2276114**
Total amount to be refunded by respondent to complainant= **₹19,05,114/- + ₹22,76,114/-= ₹41,81,228/-**			

29. Further, the complainant is seeking compensation for the torture, sufferings, harassment and embarrassment etc caused to the complainant for neglectful attitude of the respondent in dealing with the complainant and penalty upon the respondent for the said unfair trade practice and deficiency in service. 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.

H. DIRECTIONS OF THE AUTHORITY

30. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount deposited by the complainant along with interest of @11.1 % to the complainant as specified in the table provided above in para no. 28 from the dates when amounts were paid 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.

31. Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.

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CHANDER SHEKHAR
[MEMBER]

.....
NADIM AKHTAR
[MEMBER]