HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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Complaint no.:	**1718 of 2022**
Date of filing:	**08.08.2022**
First date of hearing:	**29.09.2022**
Date of decision:	**18.03.2025**

Dr. Prem Sagar,
S/o Sh. Ramdayal,
R/o House no. 669, Sector- 15-A,
Hissar, Haryana

....COMPLAINANT

VERSUS

M/s BPTP Limited
Registered office-
M-11, Middle Circle, Connaught Circus,
New Delhi- 110001

....RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** **Member**

Chander Shekhar **Member**

Present: - None for the complainant

Adv. Tejeshwar Singh, Proxy counsel for Adv. Hemant Saini, Counsel for the respondent.

Rathee

ORDER:

1. Present complaint has been filed on 08.08.2022 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill 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.	Parklands Pride,Sector-77 Faridabad
2.	Nature of the project.	Residential group housing project
4.	RERA Registered/not registered	Unregistered
5.	Details of allotted unit.	Unit No.- PB-240-GF, measuring 1365 sq.ft.

6.	Date of allotment Letter	25.11.2011
7.	Date of Buyer Agreement-	N.A.
8.	Total/Basic sale consideration	50,13,005.48/-
9.	Paid amount	₹ 62,75,231.90/-
10.	Terminated Unit	17 .08.2019
11.	Occupation Certificate	19.06.2018
12.	Offer of Possession	21.08.2018

B. FACTS OF THE PRESENT CASE AS STATED BY THE COMPLAINANT IN THE COMPLAINT:

3. That the complainant booked an independent flat bearing unit No. PB-240-GF, measuring 1365 sq. ft. in the respondent's project namely "Parkland Pride, Sector-77, Faridabad, Haryana," vide allotment letter dated 25.11.2011. The basic price of the flat was ₹ 50,13,005.48/-, against which the complainant paid ₹62,75,231.90/- by the year 2018. The allotment letter dated 25.11.2011 is attached as Annexure C-1 and ledger account is annexed as Annexure C-4 to the complaint book. Respondent gave assurances that construction would commence within a month and possession would be

delivered within 30 months from date of execution of buyers agreement+ 180 days grace period. An advance payment of Rs. 4,00,000/- was made on 22.04.2011, followed by Rs. 6,31,112/- on 01.08.2011. The complainant received a pre-drafted flat buyer's agreement (Annexure C-3), which states that in case of a delay in possession, the respondents would provide compensation.

4. Despite this, respondents later demanded 20% extra on the base sale price, falsely categorizing the unit as "preferred," compelling the complainant to pay Rs. 10,31,00.88/-. Additionally, on 19.05.2012, Rs. 1,39,661.95/- were demanded as Enhanced External Development Charges (EEDC). This issue was adjudicated in RERA complaints No. 348/2019 & 560/2019 and is currently sub judice before the Punjab & Haryana High Court. Furthermore, Rs. 77,318/- was paid for club membership on 13.08.2013, however no club was ever built, and RERA Panchkula held in complaint no. 348/2019 vide order dated 27.11.2019 that club membership fees can only be charged once the facility is functional.

5. That as per flat buyer's agreement clause, respondent had to give physical possession of unit within 30 months from allotment i.e. from 25.11.2011 to 25.11.2014 (30 months plus 180 days grace period) but same was not given within time, however same has been offered after delay of 3 years, 8 months, and 20 days, vide possession letter dated 21.08.2018 (Annexure C-5). The

complainant demands 18% interest for the delay, the same rate imposed by respondents for delayed payments. Further, respondent had unilaterally drafted one-sided contract favoring the respondent. Such as Clause 5.3 of agreement, which provided that respondent shall have to pay compensation at the rate of only Rs. 10 per sq. ft. per month as compensation for the delay. Furthermore, respondent had charged Rs. 64,201/- for an alleged increase in area from 1365 sq. ft. to 1382 sq. ft., without official certification or justification.

6. Upon receiving the possession letter dated 21.08.2018 along with illegal demand of ₹ 11,93,998.53/-, the complainant objected the same via email (15.09.2018, Annexure C-6 Colly), stating that the unit was not in a habitable condition. After receiving no response from respondent, complainant again sent an email dated 10.10.2018 objecting the above said offer of possession. Respondent rather than replying to the emails sent by complainant surprisingly sent another letter dated 17.08.2019 (Annexures C-8) vide which respondent had unilaterally cancelled the allotment of the complainant. In response to the same, complainant sent email dated 10.09.2019. (Annexure C-9). Complainant subsequently sent another email on 26.08.2020 (Annexure C-10) to respondent seeking settlement of the matter and deposit the amount for the same. Respondent replied to the said

email on 31.08.2020 stating complainant to pay an amount of ₹ 1,193,998/- for restoration of the unit in question.

7. Moreover, respondent wrongly charged VAT of Rs. 57,209 and later demanded Rs. 2,27,878/- as GST, despite GST not applying to purchases made before its enactment. The complainant asserts that the respondent acted in bad faith, imposed arbitrary financial burdens, and failed to deliver possession on time. Therefore, the complainant seeks a full refund of Rs. 62,75,231.90/- with 18% annual interest, as per Sections 18(1)(a) & 19(4) of RERA Act, 2016, and Haryana Real Estate Rules, 2017. Furthermore, the complainant refers to a consumer complaint no. 2035/2018 filed by parklands pride buyers association before Hon'ble National consumer Dispute Rederessal Commission, New Delhi vide judgment dated 14.02.2022, vide which respondent was directed to refund deposited amount with interest to allottees who are unwilling to take possession.

C. RELIEF SOUGHT:

8. That the complainant is seeking following reliefs and directions to the respondent:

i. To direct the respondent to refund the entire deposited amount of Rs. 62,75,231.90/- which has been deposited against the property in question so booked by the complainant, along with 18% interest on the amounts

compounded annually from the respective dates of deposit till its actual realization according to Section 18(1) Real Estate (Regulation and Development) Act 2016 read with Rule 15 & 16 of Haryana Real Estate (Regulation & Development) Rules.

ii. To direct the respondents to pay a sum of Rs. 20,00,000/- on account of grievance and frustration caused to the complainant by the miserable attitude of the respondents and deficiency in service and for causing mental agony to complainant along with interest from the date of filing the present complaints till its realization.

iii. The registration, if any, granted to the Respondent for the project namely, "Parklands Pride", situated in the revenue estates of Faridabad, District Faridabad, Haryana, under RERA read with relevant Rules may kindly be revoked under Section 7 of the RERA for violating the provisions of The Act.

iv. The complainant may be allowed with costs and litigation expenses of Rs. 2,50,000/-;

v. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint. Any other relief that this Hon'ble authority deems fit in the facts and circumstances.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

9. Learned counsel for the respondents submitted a detailed reply filed on 05.06.2023 in the registry pleading therein:

Respondent stated that as per clause 24 of the booking form terms and conditions, possession was due within 30 months from the execution of the buyer's agreement, with an additional grace period of 180 days for obtaining approvals. Admittedly, buyers agreement was sent to the complainant, however, the complainant did not signed and aver that the respondent had agreed to deliver possession of the unit to complainant as alleged.

Further, respondent had given timely discount of ₹ 1,80,509/- on various occasions. Hence, the total amoun received by respondent from the complainant is different as alleged. Further, complainant had intentionally concealed the receipt of final demand letters dated 11.02.2019, 29.04.2019, and reminder notices dated 06.10.2018,16.11.2018 and 18.12.2018 annexed with reply whereby respondent had raised payment and requested complainant for payment of outstanding dues against the booked unit. Hence complainant had infringed Section 19(6) of the RERA Act, 2016.

Respondent further stated that construction of the project was going on in full swing, however, same got affected by the circumstances beyond the control of the respondent such as ban on construction by the Hon'ble

Supreme Court of India in the case titled as "**M.C. Mehta v. Union of India**", ban on construction by the Principal Bench of NGT in **Vardhaman Kaushik v. Union of India** and ban by Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR. Further, the construction of the project has been marred by the present pandemic, i.e., Covid-19, whereby, the Government of India imposed an initial country-wide lockdown on 24/04/2020 which was then partially lifted by the Government on 31/05/2020. Thereafter, the series of lockdowns have been faced by the citizens of India including the complainant and respondent herein. Otherwise, construction of the project was going on in full swing, however, the same got affected initially on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority.

10. The complainant booked an independent flat in the project "Parkland Pride," Sector 77, Faridabad, under a Construction Linked Plan, by paying an initial booking amount of Rs. 4,00,000 on 22.04.2011. The respondent issued a payment receipt for this amount (Annexure R/1). The complainant willingly made this booking without any external influence. Subsequently, a payment request of Rs. 6,57,550.44/- was due within 90 days of booking, accordingly demand was raised by the respondent, and the complainant paid the same of

Rs. 6,31,112/- on 01.08.2012, for which a receipt was issued (Annexure R/2). Following this, the allotment of unit no. PB-240-GF (1365 sq. ft.) was confirmed via an allotment letter dated 25.11.2011 (Annexure R/3). Further payment request due within 150 days of booking was raised, and the complainant paid Rs. 7,64,101.17/- on 14.12.2011, evidenced by a payment receipt (Annexure R/4). The respondent later issued another demand, which was paid by complainant of ₹ 7,64,101/- on 21.12.2011(Annexure R/5).

11. Thereafter, upon start of construction, the respondent raised a payment demand of Rs. 7,79,966.4/- and the complainant made payments: Rs. 7,79,965.17/- on 29.03.2012 for which receipt was issued dated 29.03.2012 (Annexure R/6). Additionally, the respondent demanded Rs. 1,39,661 for enhanced external development charges (EDC), which the complainant paid, as per receipt dated 09.06.2012 (Annexure R/7). Further, payment request for Rs. 7,95,503.22/- for casting the ground floor slab. The complainant paid Rs. 7,61,634/- on 25.09.2012, as per Annexure R/8. Further payment requests for Rs. 7,79,946.95/- for casting the first floor slab and Rs. 7,87,142.68/- for casting the second floor slab were raised(AnnexureR-9 and 10). The complainant made payments, including Rs. 7,79,946.57/- on 30.10.2012 and Rs. 7,87,142.57/- on 16.11.2012 after a timely payment discount of Rs. 25,508.57/- (Annexure R-9 and 10).

12. For the completion of brickwork, a payment request of Rs. 5,90,305.64/- was raised, and the complainant made payments of Rs. 5,90,305.57/- on 23.02.2013, receiving a discount of Rs. 25,508.57/- (Annexure R/11). Further, upon completion of internal flooring, the respondent demanded Rs. 5,54,266.47/-, and the complainant made a payment of Rs. 358266.32/- and Rs. 1,96,000/- on 31.01.2018 (Annexure R/12). After receiving the occupation certificate on 19.06.2018, the respondent issued a valid offer of possession on 21.08.2018, asking the complainant to clear outstanding dues. It was also communicated that the unit size had increased from 1365 sq. ft. to 1382 sq. ft., leading to a total sale price of Rs. 77,17,370.30/- out of which Rs. 62,75,230.77/- had been received, leaving an outstanding balance of Rs. 11,93,998.53/- (Annexure R/13).

13. Since the complainant did not comply with the possession offer, reminder notices dated 06.10.2018, 16.11.2018, 18.12.2018, 11.02.2019 and 29.04.2019 were sent to complainant (Annexure R14- 18), however same were not replied, resultantly unit got cancelled on 17.08.2019 (Annexure R/19).

D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

14. Argument submitted by both the parties stands recorded vide order dated 03.09.2024. Relevant portion of the order is reproduced below for ready references:

"2. Sh. Hemant Saini counsel for respondent stated that there is no agreement executed between parties till date. Respondent counsel briefly stated the facts that occupation certificate for the unit in question was obtained on 19.06.2018 from concerned department, thereafter offer of possession was made to complainant on 21.08.2018. Further, various reminders were sent to complainant from the year October 2018 to April 2019 but complainant never come forward to take the possession. On 17.08.2019, unit allotted to complainant was terminated on account of non-payment of outstanding dues. Further, respondent counsel stated that complainant has never challenged the termination letter rather filed the present complaint on 08.08.2022 i.e. after delay of almost 3 years from termination of the unit. He further referred to model agreement of HRERA Act clause 9.3 which states that if allottee defaults in making payment as per plan opted by complainant, respondent is well within his rights to cancel the allotment and refund the paid amount after forfeiting the earnest money. He also referred to Section 19(10) of RERA Act, which states that every allottee is under obligation to take physical possession within a period of two months of occupation certificate, however complainant in the captioned complaint did not even bothered to reply to any of the reminders or termination letter issued in year 2019 by respondent. Now, after lapse of three year complainant cannot simply pray for paid amount along with interest since complainant was at fault since year 2018. Counsel for respondent made reference to judgment passed by Hon'ble Apex Court in case of ***"Bharathi Knitting Company Vs Dhl Worldwide Express Courier" AIR 1996 SUPREME COURT*** *and stated that agreement executed between parties states certain clause for complainant as well as for respondent. While giving effect to said agreement, Authority may enforce the agreement in totality for both the parties.*

3. Adv. Anu Garg, learned counsel for complainant stated that all the contention raised above by respondent counsel hold no merits since

complainant had paid an amount of ₹ 62,75,231.90/- by year 2018 to respondent against basic sale price of ₹ 50 lakhs approximately i.e. more than the agreed sale price, therefore, termination of unit vide letter dated 17.08.2019 is illegal and arbitrary. Complainant counsel further stated that possession offered in year 2018 was not accepted by the complainant since unit in question was not in habitable condition. In this regard, complainant counsel referred to page no. 40-51 of complaint book, whereby copy of various emails sent to respondent have been annexed illustrating the grievances of the complainant before and after termination in year 2019. Since respondent never replied to any of the emails, complainant has left with no option but to file the present complaint seeking relief of refund of paid amount along with interest."

E. ISSUES FOR ADJUDICATION

15. Whether the complainant is entitled for refund of the amount paid by them along with interest in terms of Section 18 of RERA, Act of 2016?

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

16. 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 there is no dispute regarding the fact that the complainant booked a flat in the real estate project; "Parkland Pride, Sector 77, Faridabad, Haryana" being developed by the respondent. Thereafter, respondent issued an allotment letter dated 25.11.2011 vide which complainant was allotted Unit no. PB-240-GF, admeasuring 1365 sq. ft. for an basic sale price of ₹ 50,13,005.48/- against which complainant has paid an amount of ₹ 62,75,231.90/- between years 2011-2018. As per clause 24 of the broad terms as agreed upon between the parties in the booking

form, respondent had promised to delivery possession of the unit within 30 months from date of execution of buyer agreement along with grace period of 180 days. On the other hand respondent had stated that due to default on part of complainant buyer's agreement was never executed between parties. Respondent has further averred that since no buyer's agreement was executed, the due date for possession was never triggered and no breach of RERA Act's provisions have taken place.

In this regard, Authority observes that it is an admitted fact that no builder buyer agreement has been executed between parties, though a booking form dated 22.04.2011 was signed between parties wherein terms and conditions are mentioned with regard to the unit in question, nevertheless the booking form dated 22.04.2011 is a comprehensive document that provide an exhaustive list of terms agreed between parties including the period within which respondent shall hand over the possession of the unit to complainant. Thus, the period provided in the broad terms and conditions shall be considered for the purpose of assessing due date for possession. A period of 30 months from the date of booking form i.e. from 22.04.2011 shall come to 22.10.2013. Meaning thereby that this period is considered wherein respondent was under an obligation to handover possession by 22.10.2013.

17. Further, respondent in its reply has also taken a plea that grace period be allowed to respondent since, occupation certificate for the unit in question was obtained on 19.06.2018 from concerned Authority.

With regard to grace period of 180 days, Authority observes that respondents were obligated to complete the construction within 30 months from execution of agreement/ booking form, respondents were to apply for occupation certificate within 180 days. It is a matter of fact that the respondent did not apply for grant of occupation certificate right after expiry of 30 months period from execution of agreement/ booking form i.e. 22.10.2013. Infact, it is admitted by respondent that occupation certificate was received on 19.06.2018 i.e. after delay of 4 years from due date for completion of construction of unit. Time period of 4 years taken by respondent to complete the construction work and to receive occupation certificate is not a reasonable duration. Respondent herein is claiming benefit out of its own wrong. Such a proposition is not acceptable being devoid of merit. Hence, plea of respondent to grant grace period is rejected.

18. Further, respondent in its reply has taken a plea that possession of unit was subject to occurrence of force majure conditions therefore, respondent has claimed relaxation for interest charges to be allowed to complainant for period which stands covered by force majeure conditions. In present case,

due date of possession has worked out to be 22.10.2013 (as explained in preceding paragraphs of this order). Admittedly, there is a delay on the part of the respondent and respondent had attributed the same to the various reasons such as the NGT order dated 19.07.2016 and orders dated 07.11.2017 passed by environment Authority etc. It is pertinent to mention that both the above stated events pertains to the date subsequent to the passing of deemed date of possession. Therefore, respondent cannot be given benefit of such statutory orders that were issued after lapse of due date of possession.

19. In view of above, it is concluded that respondent should have delivered possession of the unit latest by 22.10.2013, however same was not delivered within the time stipulated in agreement/booking form dated 22.04.2011. Further, respondent in its reply has admitted the fact that occupation certificate for unit in question was obtained by respondent on 19.06.2018 and the offer of possession was made to the complainant on 21.08.2018, along with demand of ₹11,93,998.53/-. Respondent has averred that since the offer of possession was made after obtaining occupation certificate, the offer was a legally valid offer of possession. However, it is the complainant who defaulted in accepting the same, therefore, complainant infringed the provision Section 19(6) and 19(10) of RERA Act 2016. Infact, respondent had also sent various demand letters and reminders dated 06.10.2018,

16.11.2018, 18.12.2018, 11.02.2019 and 29.04.2019 to the complainant, however complainant did not come forward to take the possession after paying outstanding amount and due to non-payment of outstanding dues by complainant, the allotment got cancelled on 17.08.2019.

Section 19(6) is reproduced below for ready references:

> 19(6)*"Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."*

With regard to the objection raised by the respondent that complainant had infringed Section 19(6) of the Real Estate (Regulation and Development) Act, 2016, Authority observes that in the present complaint, complainant had opted for a construction linked payment plan and made payments as per the demands raised by the respondent during each construction stage. Demand letters annexed with reply from year 2011 to 2018 reveals that complainant had paid all the demand on time, due to which respondent even had given timely discount on various occasions to complainant. Hence, the contention of respondent that complainant did not paid charges on time cannot be said to be justified. Further, respondent admits in its reply that the complainant had paid a total amount of

₹62,75,231.90/- by year 2018, against flat's basic value of ₹ 50,13,005.48/- (as per page 79 of reply), which indicates that the complainant had already paid more than the basic sale consideration. Hence, respondent objection, that the complainant is a defaulter under Sections 19(6) of the RERA Act, 2016 lacks merit.

20. Now, issue with regard to validity of offer of possession i.e. 21.08.2018 is concerned, complainant has stated that offer of possession made on 21.08.2018 was not valid and therefore not accepted by complainant for two fold reasons. Firstly, said offer was made after an inordinate delay of almost 5 years from deemed date of possession i.e. 22.10.2013, secondly said offer was accompanied with illegal demand of ₹ 11,93,998.53/-. Complainant stated that an amount of ₹ 62,75,231.90/- out of basic sale price of ₹ 50,13,005.48/- stands paid by him from year 2011-2018. Since, more than the basic sale price stands paid to respondent till year 2018, then demands raised in year 2019 cannot said to be valid. Accordingly, cancellation letter issued by respondent on account of non-payment holds no sanity in eyes of law.

21. In this regard Authority observes that respondent obtained occupation certificate from competent authority on 19.06.2018. After receiving occupation certificate, an offer of possession was made to the complainant on 21.08.2018 with the request to pay the outstanding dues. Apparently it

appears that offer made by the respondent was a legally valid offer of possession as per the provisions of RERA Act of 2016. However, allegedly complainant did not accept the same for reason that same was accompanied with illegal demand of ₹11,93,998.53/-. To adjudicate whether the complainant had rightly not accepted the offer or not, it is important to refer to the communications made by complainant after issuance of offer of possession and reminder letter issued by respondent. At page 40 of complaint book, complainant had annexed an email dated 15.09.2018, challenging the offer of possession on the grounds that flat is not in a habitable condition; no information on occupation certificate was provided, no necessary approvals from department were annexed etc. Subsequently, another email dated 10.10.2018 was sent by complainant stating the same reasons mentioned above along with further list of twelve points seeking further information on approvals, facilities in the flat including justification on GST, VAT charges. Thereafter cancellation/ termination letter was issued by respondent on 17.08.2019, which was replied by complainant via email dated 10.09.2019 and 26.08.2020, wherein complainant stated that he had paid 85% of the amount as and when demanded by respondent, however no possession has been handed over till date. Further, complainant asked respondent to tell how much refund will he get after delay of 9 years or can still they can reach to any acceptable agreement. Further, complainant asked

for exact amount to be deposited to effect the settlement, which was replied by respondent vide email dated 31.08.2020, stating complainant to pay amount of ₹ 11,93,998/- for restoration of the cancelled unit. Thereafter, no communication has been place on record by complainant.

22. Authority is of the view that in none of the above mentioned emails replied by complainant shows that request for refund of the paid amount on account of delay in delivery of the unit was made by complainant. Further, in its email dated 10.10.2018, 26.08.2020 complainant per se did not challenge the demands for further payments, but was rather agitated by the fact that he did not find the flat in habitable condition so as to accept it for possession. Also, complainant has failed to place on record even a single document which shows that as per Section 19(10) of RERA Act, 2016, complainant within two months of offer of possession dated 21.08.2018 instead of taking possession has conveyed his intention to respondent to withdraw from the project on account of inordinate delay. Rather emails referred above shows that complainant was interested in taking possession, since complainant is repeatedly seeking information for occupation certificate, facilities and necessary approval with regard to the unit in question. Further, complainant has not placed on record any written communication made by him seeking refund after lapse of deemed date of possession i.e. 22.10.2013 till filing of captioned complaint on 08.08.2022.

23. Authority further observes that complainant has failed to place on record any documentary proof proving that the unit was not complete at the time of offer of possession made by the respondent. The fact that occupation certificate which is a public document issued by the DTCP on 19.06.2018 is a conclusive proof unless proved contrary that the unit in question was fit for occupancy. In above situation, it is important to refer sub section 19 (10) of RERA Act of 2016, which state that complainant is also under an obligation to accept the offer of possession within two months. In case allottee does not want to continue with the project he may exercise his unqualified right to seek refund. However, the unqualified right also has to be exercised within a time limits. Section 18(1) clearly provides that the promoter shall be liable "on demand" to the allottee, in case the allottees wishes to withdraw from the project, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest. Meaning, thereby the complainant had to demand refund on lapse of deemed date of possession. Raising demand of refund within reasonable time of passing of deemed date of possession establishes the intention of an allottee to withdraw from the project. However, in the present case, complainant did not conveyed his intention to withdraw from the project and not exercised his right of refund of its amount even after being offered legally valid offer

of possession dated 21.08.2018 as provided under Section 19(10) of RERA Act, 2016, it shows that complainant choose to continue with the project.

24. Further, complainant remained silent on the termination letter issued by respondent on 17.08.2019 and had again failed to exercise his right to seek refund rather choose to explore the possibility of settling the matter. Thereafter, complainant files the present complaint for refund. In these circumstances, Authority observes that all amount paid by the complainant has been utilized towards construction of the unit. Though, the right of the complainant to claim refund cannot be fettered. However in such circumstances same is allowed after deduction of 10% of the paid amount. Further, it is important to refer to judgment dated 24.03.2023 passed in **Appeal no. 292/2019 titled as Experion Developers Pvt Ltd vs Sanjay Jain & Smt. Kokila Jain** wherein Hon'ble Real Estate Appellate Tribunal has observed that forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the Real Estate i.e. apartment/plot/building. Relevant part of the order is reproduced below for reference:-

> *"17. The legal position with regard to the earnest money has been dealt in detail by Hon'ble Supreme Court in citations Maula Bux v. Union of India (1969)(2) SCC 554, and Satish Batra's case (supra) and the same can be condensed as follows:- "Earnest money is part of the purchase price when the transaction goes forward; it is forfeited*

when the transaction falls through, by reason of the fault of failure of the vendee. Law is, therefore, clear that to justify the forfeiture of advance money being part of earnest money the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the 13 Appeal No.292/2019 & 35/2021 depositor to be forfeited in case of non-performance, by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get the double the amount, if it is so stipulated. In other words, earnest money is given to bind the contract, which is a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of the default or failure of the purchaser."

18. The perusal of Article I Clause 1(xiii) of the agreement dated 11.11.2014 shows that it has been specifically stipulated that earnest money would be 15% of the basic sale price which was meant to ensure performance, compliance and fulfillment of obligations and responsibilities of the buyer. Though, the allottees have taken the stand that the earnest money in the present case is Rs.11,00,000/- which was deposited by them at the time of booking of the plot, but the same cannot be attached any credence because the booking is only request for allotment and does not constitute a final allotment or agreement.

19. Now, the question to be determined is that whether the earnest money to the tune of 15% of the basic sale price, as stipulated in the Agreement of 11.11.2014 can be termed as reasonable or not? In citation Pioneer Urban Land and 14 Appeal No.292/2019 & 35/2021

Infrastructure Ltd.'s case (supra), the Hon'ble Supreme Court has laid down that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between the parties, who are not equal in bargaining power. A term of a contract will not be final and binding if it is shows that flat purchaser had no option but to sign on the dotted line, on a contract framed by a builder. Further, incorporation of one-sided clauses in an agreement constitutes an unfair trade practice since it adopts unfair methods or practices for the purpose of selling the flat by the builder.

20. In citation DLF Ltd.'s case (supra), the Hon'ble National Consumer Disputes Redressal Commission, while discussing the cases of Maula Bux's case (supra), Satish Batra's case (supra) and other cases as mentioned in para No.10 of the said order, has clearly laid down that only a reasonable amount can be forfeited as earnest money in the event of default on the part of the purchaser and it is not permissible in law to forfeit any amount beyond a reasonable amount unless it is shown that the person forfeiting the said amount had actually suffered loss to the extent of the amount forfeited by him. Further, it was held that 20% of the sale 15 Appeal No.292/2019 & 35/2021 price cannot be said to be a reasonable amount which the petitioner company could have forfeited on account of default on the part of the complainant unless it can show it had suffered loss to the extent the amount was forfeited by it. In absence of evidence of actual loss, forfeiture of any amount exceeding 10% of the sale price, cannot be said to be a reasonable amount.

21. In his last desperate attempt, learned counsel for the promoter has submitted that since the allottees had specifically agreed to pay 15% of the sale price as earnest money, the forfeiture to the extent of 15% of the sale price cannot be said to be unreasonable as the same is in consonance with the terms agreed between the parties. He has also submitted that so long as the promoter was acting as per the terms and conditions agreed between the parties, it cannot be said to be deficient in rendering services to the allottees. This aforesaid submission as put forward by the learned counsel for the promoter, was also submitted before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in DLF's case (supra) and while dealing with the same, it was observed that forfeiture of the amount which cannot be shown to be a reasonable amount, would be contrary to the very concept of forfeiture of the 16 Appeal No.292/2019 & 35/2021 earnest money and if the said contention is accepted, then, an unreasonable person in a given case may insert a clause in Buyer's Agreement whereby say 50% or even 75% of the sale price is to be treated as earnest money and in the event of the default on the part of the buyer, he may seek to forfeit 50% sale price as earnest money. It was further observed and held that an agreement for forfeiting more than 10% of the sale price would be invalid since it would be contrary to the established legal principle that only a reasonable amount can be forfeited in the event of default on the part of the buyer. Here, it is also pertinent to mention that the deduction of 10% of the total sale consideration of the unit, out of the amount deposited by the allottees, is also inconformity with the Regulations 2018, as notified by the Authority, wherein, it has been stipulated that forfeiture amount of the

earnest money shall not exceed more than 10% of the consideration amount of the Real Estate i.e.apartment/plot /building."

Accordingly, respondent can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainant. In this case agreement has not been executed, though respondent has annexed statement of account along with offer of possession dated 21.08.2018, wherein basic sale price of the unit is provided as Rs 50,13,005.48/-. Accordingly, earnest money of 10 % of the basic sales price is liable to be deducted from the amount paid by the complainant which works out to be Rs. 5,01,300.55/-.

25. On the rest of the remaining amount, interest shall be awarded at such rate as may be prescribed. 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;

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

> ***"Rule 15:"****"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 (NCLR) 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"."*

26. 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. 18.03.2025 is 9.10 %. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

27. Hence, Authority directs respondent to pay refund to the complainant 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 of various payments till actual realization of the amount.

28. Authority has got calculated the interest on the total paid amount from the date of respective payments till the date of this order i.e., 18.03.2025 at the rate of 11.10 % and said amount works out to ₹ 83,59,266/-. Complainant shall be entitled to interest at the rate of 11.10% on the paid amount till realization of the refund amount.

It is pertinent to mention that complainant has claimed to have paid an amount of ₹ 62,75,230.77/- to the respondent in lieu of booked unit. Respondent also in statement of account shows that amount of ₹ 62,75,230.77/- was received from complainant. However, perusal of record reveals that total of receipts annexed with reply shows that an amount of 61,88,134.2/- stands paid by the complainant. Said amount is inclusive of timely payment discount of ₹ 1,29,620.2/-. Difference in the receipts and amount claimed to have been received by the respondent (as per statement of accounts dated 21.08.2018 annexed at page 79 of the reply) is ₹87,096.57/-. Since receipt for this amount is not available it is appropriate that this amount may be deemed to be paid on 21.08.2018 (i.e, date of statement of accounts) and interest from this date only be calculated on ₹87,096.57/-.

Fact is that timely payment discount is a discount given by the respondent to the allottees who make requisite payments on time and receive benefit of the same towards the sale consideration. This amount is made a part of the payment made towards sale consideration of the booked unit. This amount

is never actually paid by the allottee nor received by the respondent. It is just an added benefit towards the booked unit. Captioned complaint pertains to refund of the paid amount as the complainant is not continuing with the project, therefore, this amount cannot be entertained as payment made towards sale consideration. Only the actual amount paid by the complainant is taken for consideration in order to award refund to the complainant.

Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till 18.03.2025 (in ₹)
1	4,00,000/-	22.04.2011	6,17,951/-
2.	6,31,112/-	01.08.2011	9,55,606/-
3.	7,64,101/-	21.12.2011	11,25,602/-
4.	7,79,965.17-25381.17(timely payment discount)=7,54,584/-	29.03.2012	10,87,258/-
5.	1,39,661/-	09.06.2012	1,98,176/-
6.	7,61,634/-	25.09.2012	10,55,725/-
7.	7,79,946.57-25,508.57(timely	30.10.2012	10,37,720/-

	payment discount)=7,54,438/-		
8.	7,87,142.57-25,508.57(timely payment discount)=7,61,634/-	16.11.2012	10,43,681/-
9.	5,90,305.57-25,508.57(timely payment discount)=5,64,797/-	23.02.2013	7,56,947/-
10.	5,54,266.32-27,713.32(timely payment discount)= 5,26,553/-	31.01.2018	4,16,978/-
11.	87,096.57/-	21.08.2018	63,622/-
Total:	**Total=₹ 61,45,610.57/-**		**Total= 83,59,266/-**
13.	Total amount of refund + interest= 1,45,04,876.57/-		
14.	Total amount (1,45,04,876.57)– earnest money(5,01,300.55)= 1,40,03,576/-		
15.	Total amount to be refunded by respondent to complainant= ₹ 1,40,03,576/-		

G. DIRECTIONS OF THE AUTHORITY

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

i. Respondent is directed to refund the amount of ₹ 1,40,03,576/- (calculated till date of order i.e., 18.03.2025) to the complainant. Interest shall be paid as per Section 2(za) of RERA Act,2016.

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.

30. 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]

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