



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Date of decision:</b>	<b>10.02.2025</b>
--------------------------	-------------------

Sr. No.	Complaint No(s).	Complainants	Respondents
1.	703 of 2021	Mrs. Ruchita Darbari, D/o Sh. Rajesh Darbari Ms. Namita Darbari D/o Sh. Rajesh Darbari Smt. Nimmi Darbari W/o Sh. Rajesh Darbari All R/o, D-14, Ashoka Niketan, Delhi-110092	1. Trishul Towers Pvt Ltd, 101, Rohit House, 3-Tolstoy Marg, New Delhi 2. Anushree Home Developers Pvt Ltd C/O- Swantantra Land & Finance Pvt Ltd, M-95, Lower Ground Floor, GK Part-II, New Delhi.
2.	704 of 2021	Mrs. Sunita Chaudhary, W/o Sh. Sandeep Darbari # D-162, Anand Vihar, New Delhi-110092	1. M/s Trishul Towers Pvt Ltd. 101, Rohit House, 3-Tolstoy Marg, Connaught Place, New Delhi 2. M/s Anushree Home Developers Pvt Ltd C/O- Swantantra Land & Finance Pvt Ltd, M-95, Lower Ground Floor, GK Part-II, New Delhi

*(Handwritten signature)*

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

**Present:-** Adv. Parveen Gupta, counsel for complainants (in both complaints)

None for the respondents (in both complaints)

**ORDER (NADIM AKHTAR - MEMBER)**

1. This order shall dispose of above captioned two complaints filed by the complainants before this Authority 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.
2. These two complaints are taken up together as facts and grievances of both the complaints more or less are identical and relate to the same project of the respondents, i.e., "Palm Residency", situated at Sector 76, Faridabad, Haryana. The fulcrum of the issue involved in these cases pertains to failure on the part of respondent/promoters to deliver timely possession of unit in question. Therefore, Complaint No. 703 of 2021 titled "Mrs. Ruchita Darbari



and Ors. versus Trishul Towers Pvt. Ltd.” has been taken as lead case for disposal of these two matters.

**A. UNIT AND PROJECT RELATED DETAILS:**

3. The particulars of the project have been detailed in the following table:

Sr. No.	Particulars	Details
1.	Name and location of project	Palm Residency, Sector 76, Faridabad, Haryana
2.	Nature of the Project	Group Housing Colony
3.	Name of the Promoters	Trishul Towers Pvt. Ltd. and M/s Anushree Home Developers Pvt. Ltd
4.	RERA registered/not registered	Registered vide registration no. 215 of 2017 dated 18-09-2017 (now lapsed project)

4. Further the details of sale consideration, the amount paid by all the complainants and proposed date of handing over of the possession have been given in following table:

Sr. No	Complaint no.	Flat No. and area	DATE OF ALLOTMENT LETTER/ FLAT BUYER AGREEMENT	DEEMED DATE OF POSSESSION	TOTAL SALES CONSIDERATION (IN RS.)	TOTAL AMOUNT PAID BY THE COMPLAINANTS AS PER RECEIPTS (IN RS.)

1	703 of 2021	Flat no. C-5/1801 Area- 115.19 sq. mtr.	Allotment letter- 03.08.2013 FBA- 06.08.2013	06.08.2016 (3 years from the date of execution of the agreement)	₹29,45,000/-	₹29,19,648/-
2	704 of 2021	Flat no. C-5, 1802 Area- 115.09 sq. mtr.	Allotment letter- 20.12.2013 FBA- 10.02.2014	10.02.2017 (3 years from the date of execution of the agreement)	₹48,94,989/-	₹49,69,000/-

**B. FACTS OF THE COMPLAINT No. 703 OF 2021**

5. Case of the complainants is that the complainants were allured by the publicity campaign of the respondent No.1 and decided to book a built-up flat. They submitted an application form on 10.05.2013 alongwith booking amount of ₹1,24,000/- (Annexure C-1).
6. Following the booking, respondent No.1 issued a formal allotment letter on 03.08.2013, confirming that Flat No. C-5/1801, measuring 115.19 sq. meters (1240 sq. ft.), at Palm Residency, Sector-76, Faridabad, was allotted to the complainants. The allotment was subject to compliance with the Flat Buyers Agreement (Annexure C-2).
7. On 06.08.2013, a Flat Buyers Agreement was executed between the complainants and respondent No.1. The agreement specified that M/s



Anushree Home Developers Pvt. Ltd. (in collaboration with M/s Swatantra Land & Finance Pvt. Ltd.) had obtained License No. 61/2007 from the Director, Town & Country Planning, Dept. Haryana, for developing a Group Housing Colony on 10.925 acres of land at Sector-75 and 76, Faridabad. The project "Palm Residency" included 214 flats across Towers C-3, C-4, and C-5, with the complainant's Flat No. 1801, 18th Floor, Tower C-5, booked for a total consideration of ₹29.45 lakhs. The agreement mandated that possession would be offered within 36 months + 6 months grace period from the agreement date and thus possession was to be offered by 06.02.2017. In case of a delay, the developer was to pay ₹5 per sq. ft. per month as compensation (Annexure C-3).

8. During the agreement signing, the complainants sought clarification regarding rôle of respondent No.2. Respondent No.1 assured that since it was collecting all payments, it would be responsible for handing over possession and registering the conveyance deed.
9. Despite the agreed timeline, the respondents failed to offer possession by 06.02.2017, as required. Instead, the occupation certificate (OC) was obtained only on 02.04.2019, causing a delay of 26 months (Annexure C-6). Meanwhile, HRERA Panchkula registered the project under respondent No.2 on 18.09.2017. However, the project was advertised and payments were



collected by respondent No.1, whose name does not appear on the license or OC (Annexure C-6).

10. On 08.04.2019, respondent No.1 issued a full & final payment-cum-possession letter to the complainants (Annexure C-7). Subsequently, on 25.04.2019, respondent No.1 issued a demand notice for ₹3,23,450/-, asking for immediate payment of Rs 3,23,450/- which included basic sale price due of ₹1,24,000/-; electricity connection charges and Fire fighting charges of ₹75,000/-; power Backup Charges of ₹50,000/-; IFMS Rs. 62,000/- plus SGST and CGST. The amount of ₹3,24,450/- demanded by the respondent despite the complainants having already paid ₹29,19,648/- out of ₹29,45,000/-. The complainants objected to the said amount, stating that only ₹1,24,000/- of the basic price remained, and the balance should be adjusted against interest for the 26-month delay (Annexure C-8).
11. On 06.08.2019, respondent No.1 issued notice of possession and payment of holding and maintenance charges, requiring complainants to take possession within 30 days, failing which they would be charged holding and maintenance charges. As per Clause 3.8 of the agreement, these were @ ₹5 per sq. ft. for holding charges and ₹2.50 per sq. ft. for maintenance charges (Annexure C-9).



12. The complainants sent emails dated 09.03.2019 and 08.10.2019 to the Directors of the respondent No.1, requesting for refund of paid amount alongwith interest due to the unjustified delay in possession. They also objected to the maintenance and holding charges, as the delay was caused by respondents, not by the complainants. However, respondents did not respond to the complainants. (Annexure C-10).
13. On 25.08.2020, complainants again sent an email to the Directors respondent No.1, raising concerns that sale deed registrations were not taking place due to disputes between respondent No.1 and respondent No.2. Despite full payments being made to respondent No.1, sale deeds were not registered in favor of any allottee (Annexure C-11).
14. On 30.06.2020 and 15.10.2020, further letters and emails were sent by the complainants for, emphasizing that sale deed registrations had stopped, compensation for delay was not granted, and that respondents had failed to address these issues. Again, no response was received (Annexure C-12).
15. A legal notice was sent addressing these concerns to the Directors respondent No.1 and respondent No.2. The notice highlighted delays, sale deed registration issues, unjustified charges and other grievances. However, letters sent to respondent No.2 were returned undelivered and no reply was received from either of the respondents (Annexure C-15).



16. On 31.08.2021, few residents of Palm Residency filed a police complaint against respondent No.2 for unauthorized disconnection of electricity, which left them without electricity and water for 1-2 days. The dispute between respondent No.1 and respondent No.2 resulted in a situation where respondent No.2, the landowner, could potentially evict allottees, while respondent No.1, who collected all payments, lacked legal ownership (Annexure C-16).
17. Despite obtaining the occupation certificate on 02.04.2019, respondents have failed to refund the complainants' money or execute sale deed registrations. Multiple letters, emails, police complaints and legal actions have been taken by the complainants, yet no resolution has been provided. Out of 214 flats, 50-60 allottees have taken possession, yet none have had their sale deeds registered.
18. The complainants demand either immediate registration of their sale deed or a full refund of ₹29,19,648/- with interest.
19. The respondents have violated the following legal provisions under RERA:
  - i. **Section 15** – Obligation of the Promoter in case of transfer of real estate project to a third party.
  - ii. **Section 17** – Transfer of title to the allottees.
20. The committed date for possession was 06.02.2017, but respondents obtained the OC only on 02.04.2019, causing a delay of 26 months. This suggests an





underhand transfer of the project between respondent No.1 and respondent No.2, as respondent No.2 holds the license, HRERA registration, and OC, while respondent No.1 collected all payments and signed agreements. Despite this, respondents have failed to provide sale deed registrations or refund the complainants' payments.

21. Lastly, complainants have filed a rejoinder dated 19.09.2022, wherein, complainants have reiterated the facts mentioned in the pleadings of the complaint. Authority has duly considered the rejoinder for the proper adjudication of the case.

**C. RELIEFS SOUGHT**

22. Complainant has sought following reliefs:

a. The respondent No.1 be directed to refund full amount of Rs. 29,19,648/- (Twenty nine lacs nineteen thousand six hundred forty eight only) paid by the complainants with interest as allowed under Rules, 2017, from the date of each deposit till its refund. This is required because possession has been delayed by 26 months, all payments have been demanded and received by respondent No.1, agreement signed with respondent No.1, but the Occupation certificate and reg. under RERA is in the name of respondent No.2., There is risk of taking possession of the flat from respondent No.1 because even after taking possession of the



flat, the respondent No.2 can create problems. There is lack of transparency. Without Registration of the Conveyance Deed/Sale deeds, taking the possession of the flat has got no meaning.

- b. To allow litigation expenses of Rs.50,000/- and compensation for mental harassment amounting to Rs.1.00 lac.
- c. To allow any other relief, as deem fit.

**D. REPLY ON BEHALF OF RESPONDENT**

23. Respondent no. 1 has filed a detailed reply on 08.07.2022 stating therein that the present reply is filed on behalf of Trishul Towers Pvt. Ltd. through its authorized representative, Mr. Harish Chandra, as per the Board Resolution dated 18.11.2019 (Annexure R-1).
24. Captioned complaint is not maintainable on the ground that firstly, the Haryana RERA Rules were adopted on 28.07.2017. Since the project was already completed before this date, any alleged violations are not ongoing violations under the Real Estate (Regulation and Development) Act, 2016. Secondly, the complainants booked Flat No. 1801 in Tower C-5 for investment purposes rather than for personal use.
25. That the Flat Buyer Agreement dated 06.08.2013 (Annexure P-3) clearly mentions that the project license (No. 61 of 2007) was issued to M/s Anushree Home Developers Pvt. Ltd. in collaboration with M/s Swatantra Land &



Finance Pvt. Ltd. The complainants were fully aware of this fact. M/s Anushree Home Developers Pvt. Ltd. executed a revocable General Power of Attorney (GPA) dated 30.04.2012 in favor of Trishul Towers Pvt. Ltd. for handling allotments, agreements, and sales related to 2.9 acres of land in the project (Annexure R-2). This GPA was also referenced in the Flat Buyer Agreement.

26. That the project, Palm Residency, Sector 75-76, Greater Faridabad (NCR), is registered under Haryana RERA, Panchkula, with Registration No. 215 of 2017, dated 18.09.2017 (Annexure R-3).
27. According to Clause 3.5 of the Flat Buyer Agreement, possession was to be offered within 48 months + 6 months grace period, making the deemed possession date 06.02.2019. The complainants have paid ₹23,56,000/-, excluding Service Tax ₹1,60,648/- and EDC/IDC ₹4,03,000/-. Clause 3.6 allows for an extension in possession due to force majeure conditions, and Clause 3.7 states that for any delay, the developer must pay ₹5/sq. ft. per month as compensation. However, there was no construction delay. As per Clause 3.8, the complainants were obligated to take possession within 30 days from the possession offer; failing which, they would be charged ₹5/sq. ft. per month as holding charges. The construction was completed as per approved plans, and the developer applied for an Occupancy Certificate (OC) on



27.04.2017 (Annexure R-4). The fit-out offer was issued on 28.09.2017 (Annexure R-5). Due to delays by the competent authority, the OC was granted only on 02.04.2019. Possession was officially offered to the complainants on 08.04.2019, with dispatch recorded on 12.04.2019 (Annexure C-7).

28. That as per the payment plan, complainants were required to pay the balance amount of ₹3,23,450/- at the time of possession. A demand letter dated 05.04.2019 was sent (Annexure C-8), but no payment was received. The complainants have neither paid the balance amount nor taken possession, despite the unit being ready for occupation. Conveyance deeds can be executed only after full payment. Several other flat buyers have already registered their flats at Sub-Registrar, Tigaon, Faridabad. The delay in project completion was partly due to financial indiscipline by some allottees who failed to make timely payments. A criminal complaint was filed by the complainants and the same was dismissed after investigation, as police found no merit in the allegations. Under the GPA dated 30.04.2012, the project includes 214 flats, of which 144 possessions have been handed over, and full payment has been received for 179 units. The OC application was filed on 27.04.2017, and the certificate was issued on 02.04.2019. The delay was due to non-completion of EWS flats, which was beyond the developer's control.



A letter dated 08.04.2019 (Annexure P-6) was sent to the complainants, informing them that the project was complete and that possession was available. However, the complainants have misrepresented this letter by falsely stating that an "Offer-cum-Possession Notice" was issued.

29. Respondent no. 1 has filed an application dated 07.08.2024, wherein the respondent, through an affidavit, has annexed a copy of the executed sale deed/conveyance deed dated 14.04.2021 with other allottees in the same project in question. The Authority has duly acknowledged the said application for the proper adjudication of the case.

30. Lastly, it is observed that respondent no. 2 has neither filed any reply nor appeared before the Authority since the commencement of the proceedings in this complaint.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENTS**

31. Learned counsel for the complainants reiterated the basic facts of the case and stated that as per the last order dated 11.11.2024, both counsels were directed to appear physically for the next hearing, i.e., today. However, the learned counsel for the respondents failed to comply with these directions. He further pointed out that on page no. 8 of the complaint book, the complainants have mentioned the total payment demanded by the respondents for the unit in



question, which amounts to ₹29,45,000/-. Additionally, on page no. 9, the complainants have provided full details of the amount paid, which totals ₹29,19,648/-. Complete receipts for the paid amount have been annexed by the complainants as Annexure C-4 in the complaint book. Another grievance raised by the complainants is that when the respondent issued an offer of possession, they sought interest from the complainants but failed to provide a rebate for the delay caused by the respondent in offering possession. The respondent received the Occupation Certificate from the competent authority on 02.04.2019, which has been annexed as Annexure C-6 in the complaint book.

32. After hearing the submissions of the learned counsel for the complainants, the Authority enquired whether the complainants had communicated any concerns regarding the dispute over the title after the respondents offered possession of the unit. In response, the learned counsel for the complainants stated that such communication was indeed made via letters/emails dated 15.10.2020, 25.08.2020, and 30.06.2020, which have been annexed as Annexure C-12 in the complaint book. The complainants are seeking refund of the amount paid due to a dispute regarding the ownership of the unit.
33. On the other hand, no one marked their presence on behalf of the respondents.



**F. ISSUE FOR ADJUDICATION**

34. Whether the complainants are entitled for refund of the amount paid by them along with interest in terms of Section 18 of RERA, Act of 2016?

**G. OBSERVATIONS AND DECISION OF AUTHORITY**

35. 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 complainants were allotted Flat No. C-5/1801, admeasuring 1240 sq. ft., in the project of the respondent namely, "Palm Residency", situated at Sector-76, Faridabad, via allotment letter dated 03.08.2013. Flat buyer agreement was executed between the parties on 06.08.2013. Complainants have made payment of ₹29,19,648/- qua the unit in question against the total sale consideration of ₹29,45,000/-. Occupation certificate was duly received by the respondents on 02.04.2019 from the competent Authority.
36. A perusal of **Clause 3.5** of the possession agreement reveals that it originally stated:
- "Developer shall offer possession of the said flat to buyer within a period of forty eight months (plus a grace period of six months) from the date of execution of the agreement."*
- However, this clause appears to have been altered manually, as the term "forty-eight" has been struck through and replaced with "thirty-six", which is



handwritten in the agreement. Additionally, a signature has been affixed alongside this modification. The complainants, in their pleadings, have asserted that the respondents were obligated to deliver possession within thirty-six months plus a grace period of six months. However, the respondents, in their reply, have opposed this claim, stating that the agreed timeline was forty-eight months plus a grace period of six months. In light of these conflicting claims, it becomes challenging for the Authority to determine the exact contractual timeline for possession. Especially considering that, the adjudication process under RERA is a summary trial, meaning thereby, complications involving extensive forensic verification of documents or signature cannot be dealt by this forum. To resolve this issue, the Authority refers to the Hon'ble Supreme Court's judgment in *M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr., 2018 STPL 4215 SC*. In line with the principles laid down therein, the deemed date of possession is calculated as three years from the date of booking or allotment. Accordingly, in the present case, the deemed date of possession is taken as three years from the date of execution of the Flat Buyer Agreement, i.e., 06.08.2013, which turns to 06.08.2016. Consequently, the respondent was obligated to deliver possession of the flat to the complainants by **06.08.2016**.

37. Respondent no. 1 has challenged the maintainability on the ground that:





- i. *Firstly, the Haryana RERA Rules were adopted on 28.07.2017. Since the project was already completed before this date, any alleged violations are not ongoing violations under the Real Estate (Regulation and Development) Act, 2016. RERA does not apply retrospectively to agreements made before its implementation and cannot alter the binding terms of the pre-existing FBA. The Haryana RERA Rules, 2017, also clarify that ongoing projects must disclose existing agreements, but such disclosures do not affect the validity of those agreements.*

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 18stoppels18ng 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 complainants booked Flat No. 1801 in Tower C-5 for investment purposes rather than for personal use.*

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, complainants are 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 flat buyer agreement dated 06.08.2013, it is clear that complainants are an allottee as Unit no. C-5/1801, admeasuring 115.19 sq. mtr. in the project known as "Palm Residency" 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 stands rejected.

38. The first issue that needs to be adjudicated by the Authority is determining which respondent is responsible for refunding the amount paid by the complainants. To address this, the Authority has carefully examined the General Power of Attorney dated 30.04.2012. Clause 1 of this document explicitly states that "*Respondent No. 1, i.e., Trishul Towers Pvt. Ltd., is responsible for executing allotment letters, flat buyer agreements, conveyance/sale deeds, and any other documents required for the transfer or*



*sale of the flats. Additionally, Respondent No. 1 is authorized to receive the consideration amount and issue receipts in this regard.*" This clearly establishes that Respondent No. 1 was entrusted with the execution of the terms and conditions related to the unit in question. Furthermore, the receipts for payments annexed by the complainants and the Flat Buyer Agreement (FBA) have been issued/ executed by Respondent no. 1 with the complainants. Based on these facts, the Authority concludes that Respondent No. 1 has received the payments from the complainants and is therefore, liable to refund the amount accordingly.

40. Authority observes that, Respondent No. 1 in its reply has stated that an application for the grant of an occupation/completion certificate was submitted to the competent authority on 27.04.2017 and fit out offer of the said unit was made to the complainants on 28.09.2017. However, it is pertinent to note that merely applying for an occupation certificate does not automatically render the unit fit for possession by the complainants. The fact remains that the Department of Town and Country Planning, Haryana granted the occupation certificate only on 02.04.2019. Legally, any offer of possession made by the respondent prior to this date would hold no validity, as possession can only be offered after obtaining the required approvals from the competent authority. Furthermore, as established in Paragraph 36 of this



order, the respondents were contractually obligated to deliver possession of the unit by 06.08.2016. The timeline set forth in the agreement, makes it evident that the respondents were bound to ensure the timely completion and handover of the unit. From the facts and circumstances placed on record, it is undeniably clear that the respondents have failed to fulfill their duty of delivering possession by the stipulated date of 06.08.2016. The delay in obtaining the occupation certificate and the subsequent delay in offering legal possession have resulted in a substantial breach of contractual obligations, thereby causing undue hardship to the complainants. Thus, Authority deems appropriate to declare offer of possession dated 28.09.2017 as invalid.

41. Further, the respondent has contended that after obtaining the occupation certificate, another offer of possession was made to the complainants on 08.04.2019. Under normal circumstances, any offer of possession accompanied by an occupation certificate is legally valid. However, in the present case, the complainant had already expressed their intent to withdraw from the project well before the issuance of the occupation certificate. This intention was formally communicated through a letter of surrender dated 26.03.2018. Since this letter was sent prior to the grant of the occupation certificate, it is evident that the complainant had already decided to exit the project and seek a refund of the amount paid. Therefore, the offer of



possession made on 08.04.2019 holds no relevance in this case, as it was issued after the complainant had exercised their right to withdraw. Moreover, it was made beyond the agreed-upon timeline for handing over possession, i.e., 06.08.2016 as per the terms of the agreement, further reinforcing its lack of legal significance in the present complaint.

42. Upon perusal of the complaint book, the Authority has observed that the complainants had repeatedly approached the respondent seeking a refund of their paid amount. This is evident from various letters dated 26.03.2018, 19.04.2019, 25.04.2019, 26.04.2019, 10.08.2019, 03.09.2019 and 05.11.2020. Despite multiple written requests and reminders, the respondent failed to acknowledge or act upon the complainants' demands for a refund. This persistent inaction on the part of the respondent reflects a lack of due diligence and accountability, further aggravating the grievances of the complainants.
43. Authority also observes that complainants had opted for "construction linked payment plan". Payments were supposed to be made as and when project moves ahead. Further, complainants have made more than 90% of the payment out of the total sale consideration till December, 2014 whereas even after making timely payments, respondent has miserably failed to handover the possession of the unit to the complainants on time. As per the terms and



conditions of the agreement respondent was under an obligation to deliver the possession of the unit by 06.08.2016. However, no document/ evidence have been submitted by the respondent proving that a legally valid offer of possession was made to the complainants within prescribed period of time. Further, respondent claims that an offer of possession was made to the complainants on 08.04.2019, after obtaining occupation certificate by the competent Authority on 02.04.2019. Meaning thereby, respondent has made a considerate delay of 3 years from the deemed date of possession to offer possession to the complainants.

44. Lastly, fact remains that till date neither respondent has offered the possession of the unit on time and nor has refunded the paid amount to the allottee. Now, the innocent allottees who had invested their hard earned money in the project with the hope to get a flat and who were to get possession of the unit by 06.08.2016 cannot be forced/ compelled to accept possession of the unit in the project even if respondents have completed the project now after delaying it for more than 3 years. The complainants 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 refund of the amounts paid along with interest. Given the





circumstances, the Authority finds that the complainants are entitled to a refund of the money paid, as well as compensation for the delay caused by the respondents' negligence in completing the project.

45. 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 complainants wish to withdraw from the project of the respondent; therefore, Authority finds it to be fit case for allowing refund in favour of complainants.

46. 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;*

47. 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".*

48. 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., 10.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10 %.
49. 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 complainants are 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 complainants 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 complainants 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 to be refunded along with interest calculated at the rate of 11.10% from the date of payment till the date of this order which comes to ₹63,94,990.28/- (₹29,19,648.28/- (principal amount) + ₹34,75,342/- (interest accrued till 10.02.2025) in Complaint no. 703 of 2021 and ₹1,07,71,673/- (₹48,94,989/- (principal amount) + ₹34,75,342/- (interest accrued till 10.02.2025) in Complaint no. 704 of 2021. According to the receipts/statement of accounts provided by the complainants details of which are given in the table below –

**i. In Complaint no. 703 of 2021**

S.No.	Principal Amount	Date of payment/ transfer	Interest Accrued till 10.02.2025
1.	124000	2013-08-03	158757
2.	124000	2013-08-09	158531
3.	2388926	2014-06-09	2833332
4.	16790.28	2013-09-10	21303
5.	132396	2014-09-22	152798
6.	133536	2014-12-17	150621
7.	<b>Total- 29,19,648.28/-</b>		<b>Total- 34,75,342/-</b>

Total amount which has to be refunded to the complainant in Complaint no. 703 of 2021 comes out to be ₹63,94,990.28/-.



**ii. In Complaint no. 704 of 2021**

S.No.	Principal Amount	Date of payment/ transfer	Interest Accrued till 10.02.2025
1.	425000	2013-10-22	533788
2.	244610	2014-02-20	298222
3.	300000	2014-05-12	358363
4.	3481136	2014-05-13	4157306
5.	425000	2014-05-24	506130
6.	19243	2014-05-31	22875
7.	<b>Total- ₹4894989/-</b>		<b>₹5876684/-</b>

Total amount which has to be refunded to the complainant in Complaint no. 704 of 2021 comes out to be **₹1,07,71,673/-**.

50. Further, the complainants are seeking compensation of ₹50,000/- on account of cost of litigation and ₹1,00,000/- on account of mental harrasment. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2021 titled as "M/s Newtech Promoters and Developers Pvt. Ltd.V/s State of U.P. & ors.", 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 complaint in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of compensation harassment, mental agony and undue hardship to complainants and litigation cost.

#### **H. DIRECTIONS OF THE AUTHORITY**

51. 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 no. 1 is directed to refund the entire amount along with interest of @ 11.10% to the complainant as specified in the tables provided above in Paras no.49 of this order).
  - (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.



These complaints are, accordingly, disposed of. Files be consigned to the record room after uploading of the order on the website of the Authority.

Chander  
CHANDER SHEKHAR  
[MEMBER]

Nadim  
NADIM AKHTAR  
[MEMBER]

