HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**3000 of 2019**
Date of filing:	**06.01.2020**
Date of first hearing:	**06.02.2020**
Date of decision:	**09.01.2025**

1. Mr. Amit Aggarwal
   S/o Sh. Satish Aggarwal
   R/o E-533, 2nd floor, Greater Kailash-2
   New Delhi-110048

2. Mrs. Santosh Aggarwal
   W/o Sh. Satish Aggarwal
   R/o E-533, 2nd floor, Greater Kailash-2
   New Delhi-110048

....COMPLAINANT(S)

VERSUS

Rise Projects Pvt. Ltd. through its Chairman/Managing Director
Registered Office 195(Basement),Ram Vihar,
New Delhi- 110095

....RESPONDENT

Complaint no.:	**3001 of 2019**
Date of filing:	**06.01.2020**
Date of first hearing:	**06.02.2020**
Date of decision:	**09.01.2025**

1. Mrs. Esha Aggarwal

W/o Sh. Himanshu Arora
R/o 518, Mount Kailash, Tower-III, 3RD Floor
New Delhi

....COMPLAINANT

VERSUS

Rise Projects Pvt. Ltd. through its Chairman/Managing Directors
Registered Office 195(Basement),Ram Vihar,
New Delhi- 110095

....RESPONDENT

CORAM: **Parneet Singh Sachdev** **Chairman**
Nadim Akhtar **Member**
Dr. Geeta Rathee Singh **Member**
Chander Shekhar **Member**

Present: Adv. Kirti Mewar, Counsel for complainants in both the complaints.
Adv. Venket Rao, Counsel for respondent through VC in both the cases.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Captioned complaints are taken up together for hearing as these complaints involve similar issues and pertain to the same project- **'Clarks Residences Complex at Rise Sky Bungalows,'**. This final order is being passed by taking complaint no. 3000/2019 titled as "Amit Aggarwal & Santosh Aggarwal vs Rise Projects Pvt Ltd." as the lead case.

2. Present complaint has been filed on 06.01.2020 by the complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of the unit booked by complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Clarks Residences Complex at Rise Sky Bungalows, MCF Land in Revenue Estate of Village Sarai Khawaja, Sector-41, Tehsil and District Faridabad, Haryana
2.	RERA registered/not registered	Registered, vide no. 267/2017 dated 09.10.2017
3.	Unit no.	10-VS-11
4	Unit area	3100 sq. ft
5.	Date of builder buyer agreement executed	24.01.2014

6.	Due date of possession (42 Months from flat buyer agreement-24.01.2014 /start of excavation- [not revealed by respondent in its written statement], whichever is later)	*24.07.2017* Clause (i) of 'Possession of Apartment' of allotment cum builder buyer agreement, *possession of Apartment is proposed to be delivered by the Developer to the Allottee(s) within 42 months of date of Flat Buyer Agreement /Start of excavation (whichever is later) subject to Force Majeure or circumstances beyond the control of the Developer, provided all amounts due and payable by the Allotees as provided herein have been paid to the Developer. It is, however, understood between the parties that various Towers comprised in the Complex shall be ready and completed in phases and handed over, accordingly. The Developer shall be entitled to a grace period of 180 days, after the expiry of 42 months for finishing construction work and applying for the occupation certificate in respect of the project from the concerned authority."*
7.	Basic sales consideration	₹2,56,93,355/-

8.	Amount paid by Complainants	₹ 96,06,255/- (Rs 51,66,335 from loan account as per Annexure C-12-customer ledger) and Rs 44,39,920/- paid by complainants from their own pocket) claimed by complainants in their complaint pleadings. Complainants vide an application filed in the registry of the Authority on 30.12.2024 clarified that respondent had settled with the bank so refundable amount as on date to complainants is ₹ 44,39,920/-
9.	Offer of possession	Not given till date.
10.	Cancellation letter	12.06.2019

B. FACTS AS STATED IN THE COMPLAINT

4. Complainants had booked an apartment in the project advertised by the respondent promoter under the name and style of "Rise Sky Bungalows" situated at MCF land in Revenue Estate of Village Sarai Khawaja, Sector-41,Tehsil and District, Faridabad, Haryana by paying an initial booking amount of Rs.8,00,000/- by way of cheque no. 0028 dated 19.06.2013. On payment of the booking amount, a welcome letter for unit no. VS-7 was issued by the respondent on

13.07.2013. Thereafter, allotment cum agreement was executed on 24.01.2014 and apartment no. VS-11-Bungalow-10, 10th floor, area measuring 3100 sq.ft. was allotted to the complainants in the respondent's project, "Clarks Residences, Rise Sky Bungalows" Sector 41, Faridabad, Haryana. As per the agreement, total sale price of the unit was ₹2,56,93,355/-. Complainants have claimed to have paid Rs 96,06,255/- (Rs 51,66,335 from loan account and Rs 44,39,920/- paid from their own pocket). As per Builder Buyer Agreement respondent was under a contractual obligation to deliver the possession of said apartment within a period of 42 months from the date of flat buyer agreement/start of excavation (whichever is later) and a grace period of 180 days was also provided to the developer for finishing construction work and applying for the occupation certificate.

5. That the complainants got the loan sanctioned and the same was disbursed to the respondent vide cheque dated 05.11.2014. Receipt of such disbursement of payment of Rs 51,66,335/- is attached as Annexure C-12 with the complaint.

6. That respondent without complying with the requisite pace of construction had raised another demand for balance amount. The project being on-going got registered under RERA, but respondent had not executed an agreement to sell in the format prescribed in the

Act. Respondent has also invited payment from the complainants in excess of the specified limits. Under the prevailing circumstances and considering the status of project, the complainants decided to withdraw from the project.

7. That the complainants had also served a legal notice dated 09.10.2017 for refund of entire amount paid to the respondents and copy of same is attached as Annexure C-15. The construction of the project is not likely to be delivered in near future. The project is already delayed by more than two years and the priorities of the complainants got changed. Banker of the complainants had issued a letter dated 12.06.2019 for invoking Cancellation clause of TPA attached as Annexure C-16. Hence, the present complaint for refund of paid amount has been filed before this Hon'ble Authority.

C. RELIEFS SOUGHT

8. The complainants in their present complaint have originally sought following reliefs:-

a) Refund of entire amount with interest 18% per annum with effect from the date of actual payment made by the complainants, till the date of actual realization.

b) Compensation for mental harassment and cost of litigation.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT:-

Learned counsel for the respondent filed a detailed reply on 13.01.2021 pleading therein as under :-

9. That, the RERA Authority does not have the jurisdiction to decide upon the subject matters arising out of tripartite agreement entered into between the builder, buyers and the bank thus the present complaint is liable to be dismissed on this ground alone.

10. That on account of non-payment of Equated Monthly Installments (EMI) by the complainants their home loan account had already turned NPA and by seeking a direct refund from the Authority, the complainants are trying to perpetuate a fraud upon the bank. It is to mention that the complainants also availed the loan facility from Axis Bank and accordingly, an amount of Rs 51,66,335/- was disbursed by Axis Bank to fund the flat in question.

11. That the complainants have made payments only till the 3rd installment and severely failed to honour the subsequent demands raised towards the cost of the flat in question. Respondent sent repeated reminder letters dated 15.01.2015, 01.02.2015 and 15.03.2015, however, the complainants deliberately failed to make the scheduled payments as envisaged in the payment plan. Upon receiving no response from complainants for almost a year, the respondent once again approached

the customer vide demand letter dated 10.02.2016 and requested them to clear the outstanding dues. Despite repeated reminder the complainants did not pay the single installment towards the cost of said flat.

12. That the complainants instead of fulfilling their part of obligation under the Buyers agreement and to the Bank chose to sit silently for almost one and a half year and thereafter with the malicious intention to cover their own fault sent an ill-advised and misguided notice dated 09.10.2017 to the respondent alleging delay in the delivery of said project and lack of road connectivity (Issue of road connectivity and situation of force majeure occasioned on account of non-action on part of Municipal Corporation of Faridabad).

13. That the complainants seem to have no intention to fulfill their obligations arising out of Buyers Agreement and the Tripartite Agreement entered into with the bank. This fact is evident from the notice dated 12.06.2019 sent by Axis Bank to the respondent thereby asking the respondent to fulfill its obligations under the Tripartite Agreement.

14. That the project of the respondent is at the final stage and ready for handing over for fit outs and is delayed because of 'force majeure' situation occasioned on account of non-action on the part of "Municipal Corporation of Faridabad". It is pertinent to mention that

the Respondent has time and again approached the 'Municipal Corporation, Faridabad (MCF)' for resolution of 'force majeure' situation but despite assurances, the 'MCF' authority has taken no action to resolve the existing situation.

15. That left with no option but to accept the dominant and one sided allotment letter by MCF, the respondent complied with the terms of the allotment letter by getting approvals/licenses/sanctions on time and thereby commencing the work at site. However, the MCF did not commence any development work/services at the project site as was promised to the respondent. The respondent started to face severe hardships in developing the project due to lack of development work, which the respondent was supposed to provide within nine years of the date of allotment letter.

16. That the respondent has regularly followed up with the 'MCF' and has requested them to complete the development work in entirety, so that the project can be completed and the possession of the apartments/ units can be handed over to the allottees.

17. The respondent humbly submits that due to increasing levels of air pollution in the Delhi NCR region, the National Green Tribunal (NGT) vide its various orders and notifications had completely banned any form of construction activity for varying periods each year since 2015. In addition to it, movement of diesel vehicles including

trucks carrying construction materials like cement, sand, grit etc. was also banned thereby disrupting the supply chain of the raw material required for the construction of the project.

18. That ban on construction activities even for a few days completely derails the construction pace. Even though the ban is only for a few days or weeks or couple of months, as the case may be, its takes double the time to mobilises the labour and material and recommence the construction activities.

19. A detailed chart is provided by the respondent showing the days of construction ban since 2015 to 2021, and its effect on time taken to mobilise the labour and resources and restart the construction activity which is reproduced as below:

S.No	Year	Order on construction ban	Order on construction restart	Days	No. of days to mobilise the resources and restart work
1	2016	08.11.2016	15.11.2016	8	30
2	2017	08.11.2017	17.11.2017	10	35
3	2018	31.10.2018	26.12.2018	56	76
4	2019	25.10.2019	14.02.2020	114	140
5	2021	15.11.2021	20.12.2021	36	30
TOTAL				224	310

It has been claimed on the basis of the above chart that the respondent was unable to carry on any construction activities for almost a year. The respondent for no fault on its part had to stop the construction work resulting into a force majeure situation beyond the control of the developer/

respondent for which he is entitled to corresponding extension of time for the completion of project.

20. That the construction activities have been severely hit by Covid -19 pandemic. Above all the reverse migration of the labourers added to the vows of the real estate sector and severely affected construction and development of the ongoing projects. That this Hon'ble Authority vide its office orders dated 26.05.2020 and 02.08.2021 declared the period from 25.03.2020 till 24.09.2020, and from 01.04.2021 till 30.06.2021 as force majeure period.

21. That the delay has occurred due to delay caused by MCF and time to time construction ban by Hon'ble Supreme Court and Pollution Control Authorities, National Green Tribunal (NGT), and COVID-pandemic. The respondent despite their best efforts and endeavours could not overcome the force majeure conditions as stated above. It is submitted without admitting that, granting refund with interest without taking into consideration the " force majeure" situation, due to MCF, Ban on construction and COVID -19 would cause miscarriage of justice to the respondent.

22. That it was specifically agreed in the agreement dated 24.01.2014 that the timely payment shall be the essence of the transaction and allotment. However, the complainants regularly defaulted in payment of instalments.

E. ADDITIONAL DOCUMENTS FILED BY THE PARTIES.

23. Rejoinder filed by the complainants in the registry on 15.02.2021 wherein averments of the complaint has been reiterated and photographs of project and unit are placed on record.

24. Application for hearing filed by the complainants in registry on 13.09.2021 stating that case was adjourned sine die whereas pleadings of same have been completed so it has been requested that case be listed for hearing on merits.

25. Application for placing on record additional documents and information has been filed by the respondent in the registry on 04.10.2022 wherein, it has been stated as under -

- Complainants did not approach the Authority with clean hands as they intentionally did not close about the EMI payments made by the respondent on behalf of the complainant and has further failed to attached the Statement of Accounts which were necessary for proper adjudication of present matter. Same is placed on record as Annexure-A to application.
- Total sale consideration of the unit is Rs 2,56,93,355/- against which total paid amount is Rs 92,04,289/-. Out of said total paid amount,

Rs 49,23,115/- has been disbursed by the Financial Institution as a Home loan with respect to unit in question.

- Complainants after taking the loan from the Financial Institution faced financial distress and were not able to pay the EMI against the loan and started defaulting in EMIs. Therefore, complainants in fear of adverse action by the Financial Institution requested the respondent to pay the EMI dues on behalf of complainants to the Financial Institution for a certain period of time.
- On request of the complainants, the respondent paid a total EMI of Rs 54,93,552/- to the Financial Institution starting from 30.05.2016 to 30.04.2019. In the facts and circumstances, the complainants are liable to refund the total EMI of Rs 54,93,552/- paid by the respondent on behalf of the complainants along with interest at the rate of SBI MCLR+2%.
- Respondent received the request from the Financial Institution for cancellation of the Allotment letter cum Agreement dated 24.01.2014 and thereby recalling the amount disbursed, in terms of the Tripartite Agreement executed between the complainants, the respondent and the Financial Institution. As per the terms and conditions of the Tripartite Agreement, the respondent is under an obligation to refund the money to the Financial Institution and after making permissible deductions.

26. Application for placing on record additional documents and information along with necessary calculations has been filed by the respondent in registry on 08.05.2023 wherein it has been stated as follows:

- Respondent paid EMIs amounting to Rs 54,93,552/- on request of complainants. However, it was the responsibility of complainants to pay the EMIs against the loan. But complainants again defaulted in making payments of EMIs to Financial Institution. This resulted in the Financial Institution invoking the terms of TPA and recalling its loan. Financial Institution sent a letter dated 12.06.2019 to the respondent intimating invocation of clause 4,6, 8 and 12 of the TPA and a request to cancel the property allotted to the complainants and closure of the loan account. Copy of letter dated 12.06.2019 issued by the Axis Bank is annexed as Annexure-4.
- As agreed in the TPA by all the parties, the respondent in terms of the cancellation notice received from the Financial Institution, sent a cancellation to the complainants intimating that the respondent is under an obligation to refund the money to the Financial Institution after making permissible deductions. Copy of cancellation letter dated 14.09.2022 is attached as Annexure A-5.
- Financial Institution had also initiated recovery proceedings through O.A no. 890 of 2017 against the complainants before the Hon'ble

Debt Recovery Tribunal, Delhi, where the respondent was also made a party. Said recovery proceedings finally reached the Hon'ble Debt Recovery Appellate Tribunal vide Misc. Appeal No. 166 of 2020 titled as 'Axis Bank Ltd vs Dheeraj Gupta& Ors.'

- During the pendency of the Appeal before the Hon'ble Debt Recovery Appellate Tribunal since the complainants were incapable of paying the total outstanding dues of the Financial Institution, a settlement was proposed by the Financial Institution. In view of the settlement proposal as well as to avoid the prolonging of the litigation, the total debts/outstanding dues of the complainants were cleared and paid off by the respondent on behalf of the complainants.
- The total debt/outstanding dues of the complainants against which the recovery proceedings were initiated, amounted to Rs 26,69,924.26/- . This amount has now been fully paid off and settled by the respondent on behalf of the complainants, by paying an amount of Rs 7,13,977/-. The Financial Institution also issued a settlement letter dated 19.12.2022 in favour of the complainants intimating that the outstanding amount, i.e. Rs 26,69,924.26/- has been settled. Copy of said letter is annexed as Annexure-6.
- After reaching at an amicable settlement the respondent and the Financial Institution filed a Joint Application dated 20.12.2022 to record the settlement and for consent decree before the Hon'ble Debt

Recovery Appellate Tribunal in Misc. Appeal no. 166 of 2020. Copy of application is attached as Anenxure-7.

- Since the unit of the complainants stands cancelled as on date and dues to the Financial Institution have already been paid off on behalf of the complainants, the same may be taken into consideration in calculation of the amounts refundable, if any, to the complainants.
- As per the 'Earnest money' clause of the Buyers Agreement, 10% of the unit cost, i.e. Rs 25,69,335/- be deducted as earnest money along with adjustment of interest accrued on the delay payments and brokerage paid on booking of the unit and other administrative charges.
- For the convenience of the Authority a detailed calculation is provided herein below:-

Sr. No.	Particulars	Amount (Rs.)	Amount (Rs.)
	Total sale consideration of the Unit		**2,56,93,355/-**
A.	Total amount paid by the complainants from his funds (after tax)	42,81,175/-	
B.	Total amount paid by the bank(after tax)	49,23,115/-	
C.	**Sale consideration received (A+B)**		**92,04,290/-**
D.	**Deductions**		
D1.	**EMI paid by Rise on behalf of**	**54,93,552/-**	

	customer from 30.05.2016 till 30.04.2019		
D2.	**Total outstanding amount settled by the respondent with the Financial Institution on behalf of the complainant**	**26,69,924/-**	
D3.	**Deduction of 10% earnest money**	**25,69,335/-**	
D4.	**Less Brokerage paid and administrative charges***	**12,00,000/-**	
D5.	**Interest on the EMI paid by Rise @ SBI MCLR +2% (10.7%) recoverable from the allotee**	**31,92,473/-**	
E.	**Total deductions (D1+D2+D3+D4+D5)=**		**1,51,25,284/-**
F.	**Total amount payable by the Allotee to Rise (C-E)=**		**59,20,994/-**

*details pertaining to interest calculation on EMI paid is annexed as Annexure-9.

- After making necessary payments/deductions as illustrated in the aforementioned table, it is the complainant who has to pay an amount of Rs 59,20,994/-. wherein averments of the complaint has been reiterated and photographs of project and unit are placed on record.

27. Respondent had filed an application in registry on 08.05.2023 seeking impleadment of MCF as necessary party, i.e., respondent no. 2 to complaint for effective adjudication of complaint on the ground that this Authority vide its order dated 24.11.2022 passed in ***Complaint no. 430 of 2020 titled as Rise Projects Pvt. Ltd. v. Municipal corporation***

Faridabad categorically held that MCF is a co-promoter with respect to the individual allottees of the respondent.

28. Application filed by the complainants in registry on 30.12.2024 as reply to the application filed by respondent on 08.05.2023 for placing on record additional information and documents.

- Construction of the project was not carried as per the scheduled commitment by the respondent, however, the respondent kept on raising demands for payment, It will not be out of place to mention that periodical payments were reciprocal to the pace of timely construction. Though the pace of construction was not as per the agreement, the complainants in order to not commit any default kept on making the payments as demanded by the respondent.
- Loan taken by the Axis Bank is admitted. Further stated that complainants have already withdrawn from the said project and requested for refund of the amount paid by them, therefore, no question of default in payment of EMIs by the complainants can arise.
- When the builder had defaulted in completing the said project, it was open for the Bank to take measures to ensure that project is revived and the project is completed because the Bank was also anxious to recover its money. It is in that backdrop that the Financial Institution/ Axis Bank filed a case before the Ld. Debt Recovery Tribunal-II

Delhi bearing O.A. no. 890 of 2017 titled as Axis Bank Lts vs Dheeraj Gupta and Ors. Builder was also made party to the said proceedings. Complainants were not made party to said proceedings. Complainants had already withdrawn their booking and had sent a legal notice to the respondent seeking refund of the amount already paid.

- Respondent entered into settlement with the Financial Institution without any intimation to the complainants. Neither any intimation for the settlement was given to the complainants nor any undertaking/consent was obtained from them. Upon getting to know about the alleged settlement from the respondent, the complainants sent an email in June, 2023 to Axis Bank Ltd. Same has not been replied till date.
- It is denied that complainants allegedly asked the respondent to pay on their behalf. Complainants already withdrew their booking with the respondent for said unit and sent a legal notice on 09.10.2017. There could have been no occasion for the respondent to make any alleged payments on behalf of the complainants beyond 09.10.2017.
- It is denied that there was any request by the complainants to respondent to pay any amount to the Financial Institution. It is vehemently denied that complainants are liable to refund any alleged amount paid by the respondent on behalf of complainants. In fact, it is

the respondent who is liable to pay the complainants an amount of Rs 44,39,920/- after deducting the amount paid by the Financial Institution, i.e. Rs 51,66,334/-. Since the respondent has settled with Financial Institution/Bank, the complainants are not seeking the amount paid by the Financial Institution/Bank to the respondent, provided the Financial Institution/Bank will not claim the same from the respondent.

- Receipts of amount paid by the complainants from their own sources are annexed as Annexure C-4 to C-9 to complaint.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

29. During oral arguments, ld. counsel for the complainants submitted that in the present complaint, subject matter is refund of paid amount and hence, respondent herein cannot initiate the recovery proceedings against complainants. In respect of loan amount, she stated on instructions that said amount/account has been settled. She further argued that respondent has not produced anything in writing which reflects that builder on the request of complainants have acted on their behalf and paid instalments on their behalf to the Bank. They fail to understand as to why the builder was being nice to me. There was no occasion of respondent paying to Bank on their behalf. It is the Bank

who ultimately went to DRT because of some default of builder. She pressed upon refund of amount paid by complainants from their own sources, i.e. Rs 44,39,920/-.

30. In rebuttal, ld. counsel for respondent stated that unit herein was not booked under subvention scheme rather it was bought by way of tripartite agreement. Complainants defaulted in making payments and Bank has written letter to the builder/respondent on 12.09.2013. Accordingly, builder/respondent issued cancellation letter to complainants, despite that complainants chosen to remain silent. As such builder was never obligated to pay the instalments. During course of DRT proceedings, builder paid the amount to the Bank under settlement proposal. He referred to page 7 of application dated 08.05.2023 to mention the details of payable amount. Details of which are reproduced in aforesaid para no. 26. He insisted that whatever amount be refunded to complainants, it should be only after making the adjustment of recoverable amount mentioned in table. In respect of DRT and payment of EMIs, he stated that complainants were impleaded as party to said complaint and were aware of payment of EMIs by the builder to the Bank. Complainants herein defaulted in making payment/EMIs much before the deemed date of possession so they are not entitled to relief of refund without making deductions.

At this stage, a query was raised to ld. counsel for complainants whether some instalments were paid by the complainants or not and whether complainants had approached the Bank for settlement. In reply, she stated that few of the instalments were paid by the complainants. Complainants were aware that builder was paying EMIs to the Bank. But Bank never approached complainants nor did complainants made any efforts for any settlement.

G. ISSUES FOR ADJUDICATION

31. (i) Whether the Authority has jurisdiction to entertain the present complaint?

(ii) Whether the Complainants are entitled to refund of the amount deposited by them along with interest in terms of Section 18 of RERA Act of 2016?

H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

32. Respondent has raised an objection that the Authority does not have jurisdiction to decide the complaint because relationship between the parties in terms of the tripartite agreement is a contractual relationship which does not fall within the purview of the RERA Act,2016 as it is

not that of a promoter and allottee. Respondent herein does not fall under the definition of promoter as defined under section 2 (zk). Similarly complainants herein do not fall under the category of allotee as per section 2 (d) of the Act in respect of the tripartite agreement. In this regard, Authority observes that, firstly, it needs to be examined whether respondent (Rise Projects) falls under the definition of promoter provided in RERA Act, 2016 and whether there exists a relationship of allottee and promoter between the complainants and respondent. For this purpose, definition of "promoter" under section 2(zk) needs to be perused. Definition is provided below:

> *(zk) "promoter" means,—*
>
> *(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
>
> *(ii)* ***a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or***
>
> *(iii) any development authority or any other public body in respect of allottees of—*
>
> *(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) ***any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or***

(vi) such other person who constructs any building or apartment for sale to the general public.

Plain reading of the definition given under section 2(zk) makes it clear that any person who develops land into a project and constructs apartments/floors/structures for selling it to public is a promoter in respect of allottees of those structures. Here, respondent is a developer who is constructing and selling the apartments to public. In furtherance of said process accepted the registration application from complainant on 19.06.2013 and issued allotment letter cum agreement dated 24.01.2014 for unit no. VS-11/Bungalow-10, of an area measuring 3100 sq ft in its project-'Clarks Residences', bungalow (serviced by clarks Inn group of hotels) complex located at Rise Sky Bungalows a group housing project on GH-02, MCF land in revenue estate of Village Sarai Khawaja, Sector-41, Faridabad.

Hence, respondent-Rise is duly covered under the definition of promoter under section 2(zk).

33. In the present matter complainants were allotted unit no. VS-11/Bungalow-10, of an area measuring 3100 sq ft in the respondent's project mentioned in above paragraph, therefore Complaints fall within the ambit of definition of allottee. Further, the unit was allotted by the respondent to the complainants-allotee for the sale consideration of Rs 2,56,93,355/-, and as per S.2(d) of the RERA Act, "allottee" is defined as follows:

> *(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;*

Further, as per Section 2(zj) & (zn) of the RERA Act,2016. "project" & "real estate project" are defined respectively as follows:

> *(zj) "project" means the real estate project as defined in clause (zn);*
>
> *(zn) "real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;*

A conjoint reading of the above sections shows that respondent-Rise is a promoter in respect of allottees of units sold by it in its real estate project-Clarks Residences at Rise Sky Bungalows and therefore there exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainants and respondent is established and the issues/transaction pertains to the real estate project developed by respondent, hence, provisions of RERD Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter. Furthermore, the preamble of the Real Estate (Regulation and Development) Act, 2016 provides as under.

> *An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto;*

The Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e., allottee) and seller (i.e., promoter) of real estate, i.e., plot, apartment or building, as the case may be and matters

incidental thereto. Thus, the issues involved in complaint and relief sought are well within the ambit of the Authority. It is pertinent to mention here that the tripartite agreement relied upon by the respondent was executed post execution of allotment cum buyers agreement dated 24.01.2014. Tripartite agreement came into picture only for purpose of raising financial assistance/funds. This agreement does not vitiate the relationship between the allottee and the promoter. For reference clause pertaining to possession of apartment mentioned in allotment cum buyer agreement is reproduced below for reference:-

> *"Clause (i) of 'Possession of Apartment' of allotment cum builder buyer agreement, possession of Apartment is proposed to be delivered by the Developer to the Allottee(s) within 42 months of date of Flat Buyer Agreement /Start of excavation (whichever is later) subject to Force Majeure or circumstances beyond the control of the Developer, provided all amounts due and payable by the Allotee(s) as provided herein have been paid to the Developer. It is, however, understood between the parties that various Towers comprised in the Complex shall be ready and completed in phases and handed over, accordingly. The Developer shall be entitled to a grace period of 180 days, after the expiry of 42 months for finishing construction work and applying for the occupation certificate in respect of the project from the concerned authority."*

34. Above referred clause clearly provides that respondent was obligated to deliver possession of apartment/unit to complainants after completing construction work. So, the allotment and possession of apartment was the basis for transactions carried out between the parties. Buying of residential property in a project is a real estate transaction and duly covered under the ambit of RERA Act,2016. So, objection raised by respondent in respect of maintainability of complaint stands dealt with and is declared devoid of merit.

35. On merits, it is not disputed by any of the parties that the complainants had booked a bungalow in respondent's project named, 'Rise Sky Bungalows' at MCF Land , Sector- 41, Faridabad by paying an initial booking amount of Rs.9,00,000/- by way of cheque no. 490085 dated 19.06.2013 to the respondent-promoter. On payment of the booking amount "allotment letter cum agreement" was executed on 24.01.2014. As per clause (i) of "possession of apartment", possession was to be handed over within a period of 42 months from the date of flat buyer agreement or from the start of excavation, whichever is later subject to force majeure or circumstances beyond the control of the developer. Further, there shall be a grace period of 180 days, after the expiry of 42 months for finishing construction work and applying the occupation certificate in offering the possession of the unit. The date of excavation has not been revealed by respondent in its reply, so taking

period of 42 months from allotment cum buyer agreement dated 24.01.2014, works out to 24.07.2017. The agreement further provides that promoter shall be entitled to a grace period of 180 days after expiry of 42 months for filling and pursuing the grant of occupation certificate with respect to the project from the concerned authority. However, there is nothing on record to show that the respondent has applied for occupation certificate within the time limit prescribed by the respondent/promoter in the allotment cum apartment buyer agreement, i.e, immediately after completion of construction works within 42 months. Thus, the period of 42 months expired on 24.07.2017. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

36. Complainants have alleged that they have fulfilled their part of the contract by paying all amounts as and when demanded by the respondent and have so far, paid an amount of Rs. 96,06,255/- (Rs 5166335/- from loan account + Rs 4439920/- from own sources). Though, the respondent promoter had not disputed the amount paid by the complainants, it has rebutted the claim of the complainants that they have made all payments. It is the stand of the respondent that it is the complainants who have defaulted in making timely payments and even in payments of EMIs towards the loan account. Respondent has stated that complainants have approached him during their financial crunch and requested to bear the burden of EMIs.

Considering request of complainants, respondent paid EMIs to the tune of Rs 54,93,552/- w.e.f 30.05.2016 to 30.04.2019. Thereafter, neither respondent-builder nor complainant paid instalments. Considering default in payment of instalments, the Bank approached Hon'ble Debt Recovery Tribunal for the recovery/settlement of loan account which ultimately was settled by the respondent by paying Rs 7,13,977/- (complaint no. 3000/2019) and Rs 28,44,473/- (complaint no. 3001/2019), same is reflected in order dated 20.12.2022 passed by Hon'ble Debts Recovery Appellate Tribunal, Delhi. Complainants in their oral and written submissions denied the fact that they requested the respondent to pay EMIs on their behalf. However, complainants accepted that loan amount as on date stands settled but neither did they approach bank nor bank approached them for settlement of loan account. As on date, issue arises herein is that respondent is relying upon the amount paid by him on behalf of complainants and is seeking recovery/adjustment of same along with other amount mentioned in table reproduced at page 18 of this order while granting refund of paid amount (from complainant's own sources) to the complainants. Complainants on the other hand are arguing that they neither approached bank nor respondent in respect of EMIs or loan settlement so they are now entitled to refund of paid amount of Rs 44,39,920/- (paid from own sources) with interest.

37. The Authority has perused the relevant documents including the builder buyer agreement, tri-partite agreement, cancellation letter dated

14.09.2022, order dated 20.12.2022 passed by Hon'ble Debts Recovery Appellate Tribunal, Delhi. Fact remains that complainant purchased the unit in respondent's project and availed loan for payment of same. For said loan, tripartitie agreement was executed between the parties on 05.11.2014 and amount of Rs 51,66,335/- was disbursed to the respondent on 08.11.2014. Said disbursal is clearly reflected in customer ledger attached at page no. 26 of reply. Respondent did not offer the possession of the unit within stipulated time, i.e. upto 24.07.2017 so, complainant sent a legal notice dated 09.10.2017 for seeking refund of total paid amount. Respondent did not act upon said legal notice so complainant choose to file present complaint for refund of paid amount (amount paid from own sources). Respondent in its written reply has taken a stand that refund, if any admissible to the complainant is subject to deductions mentioned in para 26 at page no. 17 and 18 of this order. Details of said table needs to evaluated in light of facts and circumstances of present case. It is pertinent to mention here that respondent herein claimed to have paid EMIs on behalf of complainants. However, the cause of making payment has not been explained out by the parties. In fact, complainant deny the fact that they requested the respondent to make payment of EMI on their behalf. Moreover, the recovery proceedings initiated by Bank has also attained finality by way of settlement order dated 21.12.2022. Complainants deny their knowledge about such settlement/proceedings before Hon'ble Debt recovery Tribunal. Such

disagreement/civil dispute especially in case of lack of documentary evidence requires proper process to be followed for effective adjudication and cannot be dealt in a summary manner. Hence, parties are at liberty to approach the proper forum for resolution of their grievances pertaining to loan amount, its repayment and recovery. Further, respondent herein is seeking deduction of earnest money to the tune of Rs 25,69,335/- and brokerage paid plus administrative charges to the tune of Rs 12,00,000/-. Earnest money is defined in buyer agreement as *'EARNEST MONEY: the payment of earnest money is to ensure fulfilment of the terms and conditions as stipulated in the Application and as provided herein. An amount equivalent to 10% of the consideration of the flat/Apartment shall always be deemed to have been paid by the allotees as ad by way of Earnest Money and shall be non-refundable'*. Event specified for deduction of said earnest is as follows : *'FAIURE/ DELAY IN PAYMENT:in the event, allotee fails to pay any instalments with interest wihthin 3months from the due date, the developer shall have the right to cancel the allotment and forfeit the entire amount of Earnest Money deposited by the Allotee and the Allottee shall be left with no right or lien on the said apartment and the developer shall be free to sell/dispose of the same in favour of a third person. The amount paid, if any over and above the earnest money shall be refunded by the developer, without interest after adjustment of interest accrued on the delayed payment, if any due from the allotee and after the company is able to*

dispose of the allotment of the apartment'. It is pertinent to mention here that respondent is in receipt of last payment of Rs 5,51,146/- paid on 21.03.2014 and loan amount of Rs 51,66,335/- on 08.11.2014 from complainant. It is not brought on record by respondent that demand in consonance with payment plan was raised by the respondent which was not honoured by complainant and due to said fault respondent was constrained to cancel the unit after forfeiture of earnest money and it is not the case in hand. The payment plan was linked indelibly to the quantum of construction. It is clear that there was a delay in construction. Fault of complainant in making the payment after last payment has not been proven on record. Hence, the respondent is not entitled to forfeit the earnest money. Similarly, no explanation has been provided by the respondent as to why brokerage cum administrative charges of Rs 12,00,000/- needs to be deducted from account of complainants. Therefore, respondent is not entitled to the deductions claimed by him. Fact remains that respondent did not offer the possession of unit within stipulated time, i.e. 24.07.2017 so complainant by virtue of Section 18 of RERA Act,2016 is well within its right to claim refund of paid amount (amount paid from own sources).

38. Further, respondent has stated that delay in completion of project has been caused due to reasons beyond control of the respondent. The reasons for delay as pleaded by the respondent promoter are:-

a) Default by the Municipal Corporation:

Respondent has averred that the project is at final stage and ready for handing over for fit outs but it is delayed because of non-action on the part 'Municipal Corporation Faridabad' i.e., development works have not been carried out by MCF. In this regard, Authority observes that present dispute/complaint is inter se between the allotee-complainants and promoter-respondent for violation of contractual obligations in terms of allotment letter cum agreement. Both parties were obligated to honor/ fulfill terms of said agreement. Complainants have fulfilled their part by making 55% payment of total sale consideration as demanded by the respondent. However, the respondent failed to fulfill its obligations by delivering possession of apartment within stipulated time, i.e., 24.07.2017. On account of said failure on part of respondent, the allotees are within their rights to invoke the provision of Section 18 of RERA Act,2016 which provides that if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with terms of agreement then promoter shall be liable on demand to return the amount received by him in respect of that apartment, plot or building with interest as such rate as may be prescribed. Further, on perusal of allotment cum agreement, it is evident that the construction of the apartment was the obligation of the respondent, amount for said purpose was received by respondent not by MCF. As per the allotment letter cum agreement, the respondent was under an obligation to construct

the unit. In the present case, the question involved is completion and handing over of the apartments which is the sole obligation of the respondent. Here construction of the unit has not been completed itself by respondent as is evident from customer ledger and statement of account issued by respondent. Demand pertaining to offer of possession has not been raised by respondent as no offer of possession has been issued by respondent to complainants till date. Respondent has not carried out the construction of the unit to its complete finishing extent without any detailed justification for it. Casting liability upon MCF for non-completion of project at this stage is not appropriate. Hence the plea of the respondent promoter, i.e., the project got delayed due to fault by MCF is rejected.

b) Ban imposed by the NGT on construction activities:

Respondent has stated that the project got delayed due to ban imposed by NGT on any form of construction activities. Perusal of table reproduced in paragraph 19 of this order reveals that the ban imposed by NGT before the deemed date of possession,i.e., 24.07.2017 was for only 8 days. How, eight days ban could delay the project by years is not evidenced at all. Hence, the plea of the respondent that the project got delayed due to bans imposed by NGT is rejected.

c) COVID- 19 Pandemic:

Respondent has raised a plea that construction activities got severely hampered by pandemic Covid-19 due to reverse migration of the labourers. As a matter of fact, Covid-19 pandemic had resulted into nation wide lockdowns w.e.f. March, 2020. In this case, the deemed date of possession was 24.07.2017, which was way before the outbreak of COVID-19 pandemic. Any circumstances or conditions which took place after expiry of period of deemed date of possession cannot be counted towards delay in agreed date of possession of the project. As far as delay in construction, due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (I) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020*** dated 29.05.2020 has observed that:

> "69. *The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since septemeber,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.*
>
> *The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic*

cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself. "

So, the pleas of respondent to consider force majeure conditions discussed above towards delay caused in delivery of possession is without any basis and the same are rejected.

39. Respondent had filed an application on 08.05.2023 seeking impleadment of MCF as necessary party, i.e., respondent no. 2 to complaint for effective adjudication of complaint on the ground that this Authority vide its order dated 24.11.2022 passed in ***Complaint no. 430 of 2020 titled as Rise Projects Pvt. Ltd. v. Municipal corporation Faridabad*** categorically held that MCF is a co-promoter with respect to the individual allottees of the respondent. In this regard, Authority observes that agreement for sale, i.e., allotment letter cum agreement was entered into between the complainants-allotee and respondent wherein respondent itself specified time period for handing over possession of the unit. Said obligation pertaining to construction of the unit and handing over of possession was only upon the respondent, MCF was never involved towards the phase of construction of the unit/apartment. It is only for the developments works/amenities such as roads, sewage disposal line, water supply, storm water drainage etc. the MCF was under obligation to complete them. Authority in its order dated 24.11.2022 passed in complaint no. 430 of 2020 has stated that the development works in the project can only be undertaken by MCF when

Rise developers-respondent completes the construction of the project. In case of failure on part of respondent-promoter to deliver possession, Section 18 of the RERA Act,2016 comes into picture wherein it is stated that, *If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein then respondent shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.* Looking to facts of this case in light of aforesaid section, it is apparent that respondent-Rise Projects Pvt Ltd failed to complete the construction of the unit which was a specific obligation cast upon it in terms of allotment cum agreement meaning thereby that respondent has failed to give possession of unit to complainants in terms of allotment letter cum agreement and therefore, respondent is under an obligation to return the paid amount with interest. The role of MCF vis-à-vis the construction part of the unit is not at all established, as obligation to undertake/carry out the construction of the unit was always entrusted upon the respondent and not the MCF. Scope of MCF was limited only for the purpose of developments works of the project which were to be carried out after completion of construction, which in this case has not got completed to

the extent of stage of 3rd floor casting as 5th installment pertaining to stage of floor casting was never raised by respondent. MCF has nothing to do with the obligations cast upon respondent in terms of allotment letter cum agreement specifically pertaining to construction and delivery of possession of unit/apartment. Respondent under the garb of external development works cannot be allowed to shirk the responsibilities cast upon it. Moreover, stage of external development works has not yet been arrived in this particular case as construction of the unit is still lying incomplete which is evident from the photographs of the project placed on record by complainants and fact that 5TH installment pertaining to stage of 'offer of possession' has not been raised till date. Accordingly, Authority decides that MCF was never entrusted upon the construction work of the unit as it was specific obligation upon respondent only, thus Authority is of the considered view that MCF is not a necessary party to the complaint and therefore, the application for impleadment of MCF as respondent no. 2 stands rejected.

40. Factual position of the case clearly establish that respondent failed to honor its obligations to deliver possession of booked apartment as per the time stipulated in the agreement for sale (allotment letter cum agreement), i.e., by 24.07.2017 without any valid/reasonable justification. Respondent is in receipt of paid amount of Rs 44,39,920/- since 21.03.2014 even after termination of allotment of unit on 14.09.2022. In light of these facts, complainants have prayed for relief of refund of the amount paid by them

from their own sources along with prescribed rate of interest from the date of respective payments for inordinate delay in completion of project.

41. With respect to the rights of the allotee to seek refund from the Authority, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others " 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.

42. Keeping in view the aforesaid observations, Authority is of the view that complainants are well within their rights to seek refund of the money paid by them by the virtue of Section 18 of the RERA Act, 2016. Thus, the Authority considers, it is a fit case for grant of refund of amount paid by the complainants from their own sources along with interest at the prescribed rate. Therefore, as per provisions of Section18 of the Act, relief of refund as sought by the complainants deserve to be granted.

43. 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;

44. 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. 09.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

45. 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".*

46. Thus, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of Rs 44,39,920/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10% (9.10% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 9.10% till the date of this order and total amount of interest works out to Rs 56,01,875/- as per detail given in the table below:

Complaint no. 3000/2019

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 09.01.2025
1.	8,00,000	19.06.2013	1027404
2.	9,00,000	19.06.2013	1155829

3.	8,88,774	26.08.2013	1123033
4.	5,00,000	26.08.2013	631788
5.	8,00,000	01.10.2013	1002102
6.	5,51,146	21.03.2014	661719
7.	Total=44,39,920/-		Total= 56,01,875/-
8.	Total Payable to complainant	4439920+5601875 =	1,00,41,795/-

Complaint no. 3001/2019

Complainant claim to have paid an amount of Rs 28,34,831/- from its own sources in application filed in registry on 30.12.2024. However, perusal of complaint file reveals that receipts for said amount are not attached in it. Respondent in its reply admits payment of Rs 27,33,576/-. Details of said amount including date of each amount and its figure is incorporated at page 4 of Allotment cum buyer agreement dated 24.01.2014. Accordingly, paid amount of Rs 27,33,576/--is taken as final amount for calculation of interest.

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 09.01.2025
1.	13,98,156	19.06.2013	17,95,589/-
2.	2,22,326	19.08.2013	2,81,399/-
3.	7,71,397	02.09.2013	9,73,076/-
4.	3,41,697	08.03.2014	4,11,601/-
5.	Total=27,33,576/-		Total= 34,61,665/-
6.	Total Payable to complainant	2733576+3461665 =	61,95,241/-

47. The complainants are seeking compensation and cost of litigation on account of mental harassment and agony. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as

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

H. DIRECTIONS OF THE AUTHORITY

48. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA, Act,2016 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 paid amount with interest to the respective complainants as calculated in aforesaid table in para 46 of this order. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which, legal consequences would be followed.

49. Both the complaints are, accordingly, **disposed of.** 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]

.....
NADIM AKHTAR
[MEMBER]

.....
PARNEET SINGH SACHDEV
[CHAIRMAN]