HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2682 of 2022**
Date of filing:	**04.10.2022**
First date of hearing:	**24.11.2022**
Date of decision:	**11.02.2025**

Mr. Ram Nath Kakkar,
S/o Sh. Ramdayal,
R/o 20/21, M, Fruit Garden,
HNo.H-15, Faridabad Haryana ....COMPLAINANT

VERSUS

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

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh Member

Chander Shekhar Member

Present: - None for the complainant

None for the respondent

ORDER:

1. Present complaint has been filed on 04.10.2022 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Parklands Pride,Sector-77 Faridabad
2.	Nature of the project.	Residential group housing project
4.	RERA Registered/not registered	Unregistered
5.	Details of allotted unit.	Unit No.- PB-212-GF, measuring 1365 sq.ft.

6.	Allotment Letter-	25.11.2011
7.	Date of Buyer Agreement-	N.A.
8.	Total/Basic sale consideration	₹ 50,13,005.48/-
9.	Paid amount	₹ 56,57,414/-
10.	Terminated Unit	10.12.2019
11.	Occupation Certificate	26.06.2018
12.	Offer of Possession	19.07.2018

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

3. That the complainant booked an independent flat bearing unit No. PB-212-GF, measuring 1365 sq. ft. in the respondent's project namely "Parkland Pride, Sector-77, Faridabad, Haryana," vide allotment letter dated 25.11.2011. The basic price of the flat was ₹ 50,13,005.48/-, against which the complainant paid ₹56,57,414/- by the year 2017. The allotment letter dated 25.11.2011 is attached as Annexure C-1 and ledger account is annexed as Annexure C-11 to the complaint book. Respondent gave assurances that construction would commence within a month and possession would be

delivered within 30 months + 180 days grace period. An advance payment of Rs. 4,00,000/- was made on 22.04.2011, followed by Rs. 6,31,112/- on 21.07.2011. The complainant received a pre-drafted flat buyer's agreement (Annexure C-2), which states that in case of a delay in possession, the respondents would provide compensation.

4. Despite this, respondents later demanded 10% extra on the base sale price, falsely categorizing the unit as "preferred," compelling the complainant to pay Rs. 5,15,500.44/-. Additionally, on 19.05.2012, Rs. 1,39,661.95/- were demanded as Enhanced External Development Charges (EEDC). This issue was adjudicated in RERA complaints No. 348/2019 & 560/2019 and is currently sub judice before the Punjab & Haryana High Court. Furthermore, Rs. 77,318/- was paid for club membership on 23.02.2013, but no club was ever built, and RERA Panchkula ruled in complaint no. 348/2019 vide order dated 27.11.2019 that club membership fees can only be charged once the facility is functional.

5. That as per flat buyer's agreement clause, respondent had to give physical possession of unit within 30 months from allotment i.e. from 25.11.2011 to 25.11.2014 (30 months plus 180 days grace period) but same was not given within time, however same has been offered after delay of 3 years, 8 months, and 20 days, vide possession letter dated 19.07.2018 (Annexure C-3). The complainant demands 18% interest for the delay, the same rate imposed by

Rattee

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

6. Upon receiving the possession letter dated 19.07.2018 along with illegal demand of ₹ 18,29,748.30/-, the complainant objected the same via email (18.08.2018, Annexure C-4), stating that the unit was not in a habitable condition. Instead of addressing these concerns, respondents repeatedly demanded Rs. 18,17,719.52/- via letters on 21.08.2018, which was objected via email dated 10.10.2018 by complainant. Respondent rather than replying to the said email again sent letter dated 16.11.2018 (Annexures C-7) as reminder to make outstanding payment. The complainant objected again on 05.12.2018 (Annexure C-8), but the respondents unilaterally cancelled the allotment on 17.08.2019 (Annexure C-9). Respondent subsequently sent another email on 21.08.2020 (Annexure C-10) and sent account statement dated 10.09.2018 (Annexure C-11), showing that amount paid by complainant from time to time to respondents, which revealed that the complainant had already paid Rs. 56,57,414/- and complainant is further

required to pay an amount of ₹ 18,17,719.52/-. Complainant sent email dated 10.09.2019 to respondent stating these charges to be illegal.

7. On 10.12.2019, the respondents issued another cancellation letter (Annexure C-13), stating that the complainant failed to make additional payment despite reminders. Later, on 14.09.2020 (Annexure C-14), the respondents offered to reinstate the allotment if Rs. 10,00,000 was paid without protest.

8. Moreover, respondents wrongly charged VAT of Rs. 57,209 and later demanded Rs. 2,27,878 as GST, despite GST not applying to purchases made before its enactment. The complainant asserts that the respondents acted in bad faith, imposed arbitrary financial burdens, and failed to deliver possession on time. Therefore, the complainant seeks a full refund of Rs. 56,57,414 with 18% annual interest, as per Sections 18(1)(a) & 19(4) of RERA Act, 2016, and Haryana Real Estate Rules, 2017. Furthermore, the complainant refers to a consumer complaint no. 2035/2018 filed by parklands pride buyers association before Hon'ble National consumer Dispute Rederessal Cpommission, New Delhi vide judgment dated 14.02.2022, vide which respondent was directed to refund deposited amount with interest to allottees who are unwilling to take possession.

C. RELIEF SOUGHT:

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

i. To direct the respondents to refund the entire deposited amount of Rs. 56,57,414.00/- (Rupees Fifty-Six Lacs, Fifty-Seven Thousand, Four Hundred Fourteen only) which has been deposited against the property in question so booked by the complainant, along with 18% interest on the amounts compounded annually from the respective dates of deposit till its actual realization according to Section 18(1) Real Estate (Regulation and Development) Act 2016 read with Rule 15 & 16 of Haryana Real Estate (Regulation & Development) Rules.

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

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

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

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

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents submitted a detailed reply filed on 18.03.2024 in the registry pleading therein:

10. Captioned complaint is not maintainable on following grounds:

i. Non-Applicability of RERA Section 18:

The complainant never executed the buyer's agreement, making Section 18 of RERA, 2016 inapplicable. Copies of the buyer's agreement was sent to the complainant, but it was neither signed nor returned. A reminder was sent on 08.01.2014, which was also ignored (Annexure R/14). Section 18(1) allows for a refund only if there is a breach of conditions in a validly executed agreement. Since no agreement was signed, the complainant has no legal right to seek a refund before this Authority. Consequently, the complaint is legally untenable and should be dismissed at the outset.

ii. Tentative Unit Area:

The provisional nature of the unit's area and layout was clearly conveyed to the complainant at the time of booking. Even in the absence of a buyer's agreement, the terms of the booking form remain binding. As per the final calculation at the time of offer of possession, the super built-up area increased from 1365 sq. ft. to 1382 sq. ft., amounting to a minor 1.2% increase. Under the model RERA agreement, an increase of up to 5% is permissible, and the complainant is obligated to pay for the additional area. Thus, the claim challenging the increase in area is unjustified and baseless.

iii. No delay in possession offer:

As per clause 24 of the broad terms and conditions in the booking form, possession was due 30 months from the execution of the buyer's agreement, with an additional grace period of 6 months for obtaining approvals. Since no buyer's agreement was executed, the due date for possession was never triggered, making the complaint premature. The respondent informed regular construction updates via emails to keep the complainant (Annexure R/15).

iv. Force majeure events:

It is submitted that construction of the unit was completed despite a number of force majure circumstances. As per clause 51 of booking form, benefit of force majure be allowed to respondent. Further, in year 2012, Hon'ble Supreme Court, put restrictions on mining activities. Construction of the project in question has been further marred by the circumstances beyond the control of the respondent such as ban on construction by the Hon'ble Supreme Court of India in the case titled as "**M.C. Mehta v. Union of India**", ban on construction by the Principal Bench of NGT in **Vardhaman Kaushik v. Union of India** and ban by Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR. Despite these challenges, the project was completed, and the occupation certificate was obtained on 20.06.2018. Possession was duly offered on 19.07.2018, and the complainant was asked to clear dues and complete formalities. Instead of taking possession, the complainant delayed payments and formalities, leading to termination of the unit due to default.

v. Demands raised as per agreed terms:

The complainant has wrongly challenged the charges for increased super area, EDC/IDC charges, club membership charges, VAT,

interest on delayed payments. All these charges were levied as per clause 5,7,14, of the broad terms and conditions of the allotment letter. The complainant accepted these terms at the time of booking and is now estopped from challenging them.

vi. Complainant's default in payment:

The complainant was obligated to make payments as per the agreed schedule. Failure to pay on time resulted in interest liabilities, as per, Section 19(6) and 19(7) of RERA, 2016 and Clause 38 of the agreement. Since the complainant defaulted on payments, the claims made in the complaint are untenable.

vii. Refund not possible after obtaining occupation certificate:

As per legal precedents, refund claims become invalid once the occupation certificate is issued and possession is offered. Hon'ble Supreme Court in **Supertech Ltd. vs. Rajni Goyal** (2018 SCC online SC 2114) held that delay claims cease once the occupation certificate is obtained. The Haryana RERA Authority **(Priya Saxena & Ors. Vs Magic Eye Developers Pvt. Ltd., Complaint No. 49 of 2021**) has also ruled that after possession is offered, allottees are mandated to take possession and cannot claim refunds. Since the complainant failed to take possession despite multiple reminders, the unit was

eventually terminated due to non-payment. Therefore, no refund can be allowed, and the complaint is liable for dismissal.

11. The complainant booked an independent flat in the project "Parkland Pride," Sector 80, Faridabad, under a Construction Linked Plan, by paying an initial booking amount of Rs. 4,00,000 on 22.04.2011. The respondent issued a payment receipt for this amount (Annexure R/1). The complainant willingly made this booking without any external influence. Subsequently, a payment request of Rs. 6,57,550/- was due within 90 days of booking, accordingly demand was raised by the respondent, and the complainant paid the same of Rs. 6,31,112/- on 01.08.2011, for which a receipt was issued (Annexure R/2). Following this, the allotment of unit no. PB-212-GF (1365 sq. ft.) was confirmed via an allotment letter dated 25.11.2011 (Annexure R/3). Further payment request due within 150 days of booking was raised, and the complainant paid Rs. 6,50,381/- on 14.12.2011, evidenced by a payment receipt (Annexure R/4). The respondent later issued a reminder dated 12.03.2012, asking the complainant to clear outstanding dues (Annexure R/5).

12. Thereafter, upon commencement of construction, the respondent raised a payment demand of Rs. 6,66,245/- and the complainant made two payments: Rs. 6,50,381/- on 21.03.2012 and Rs. 6,66,245/- on 04.04.2012, for which receipts were issued (Annexure R/6). Additionally, the respondent

demanded Rs. 1,39,661 for enhanced external development charges (EDC), which the complainant paid, as per receipt dated 09.06.2012 (Annexure R/7). A reminder for outstanding dues of Rs. 67,466/- was sent, followed by a payment request for Rs. 6,71,298/- for casting the ground floor slab, excluding Rs. 60,881/- outstanding dues. The complainant paid Rs. 6,38,035/- on 10.10.2012, as per Annexure R/8. Further payment requests for Rs. 6,71,298 for casting the first floor slab and Rs. 6,71,298 for casting the second floor slab were raised. The complainant made multiple payments, including Rs. 6,55,800 on 16.11.2012, Rs. 1,90,000 (three times) on 27.11.2012, and Rs. 1,01,298 after a timely payment discount of Rs. 25,508/- (Annexure R/9).

13. For the completion of brickwork, a payment request of Rs. 5,87,489/- was raised, and the complainant made payments of Rs. 4,00,000/- and Rs. 1,59,734/- on 04.04.2013, receiving a discount of Rs. 25,308/- (Annexure R/10). Additionally, a VAT demand of Rs. 51,481/- under the Haryana VAT Act, 2003, was raised, and the complainant paid this amount on 25.11.2016 (Annexure R/11). Further, upon completion of internal flooring, the respondent demanded Rs. 5,17,149/-, and the complainant made a payment of Rs. 4,91,293/- on 29.07.2017 (Annexure R/12). After receiving the occupation certificate on 20.06.2018, the respondent issued a valid offer of possession on 19.07.2018, asking the complainant to clear outstanding dues.

It was also communicated that the unit size had increased from 1365 sq. ft. to 1382 sq. ft., leading to a total sale price of Rs. 67,34,554/- out of which Rs. 56,57,414/- had been received, leaving an outstanding balance of Rs. 19,28,540 (Annexure R/13).

14. Since the complainant did not comply with the possession offer, reminder notices dated 06.10.2018 and 16.11.2018 which were sent, warning of possible cancellation of the allotment (Annexure R/16).

D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

15. The learned counsel for the complainant reiterated the facts already mentioned in para 3-9 of this order. Further, complainant counsel stated that the respondent was obligated to hand over possession of the unit to the complainant in 2014. However, the respondent instead of fulfilling the obligation had canceled the allotment in year 2019 and failed to refund the already paid amount by complainant till date. As a result, the complainant is seeking a refund of the amounts paid along with interest.

16. On the other hand, the learned counsel for the respondent stated that the occupation certificate for the project was obtained by the respondent on 20.06.2018. Subsequently, the respondent made an offer of possession to the complainant on 19.07.2018. The counsel emphasized that the complainant was at fault for not making timely payments. The respondent sent several

reminders dated 06.10.2018, 16.11.2018 urging the complainant to pay the balance amount, but the complainant failed to respond. As a result, the respondent canceled the unit and issued a termination letter on 17.08.2019. The counsel further referred to Section 19(6) and 19(7) of the RERA Act, 2016, stating that the complainant was obligated to accept the offer of possession made by the respondent. The respondent's counsel prayed that refund should not be allowed in this case, since complainant had defaulted in taking possession within time stipulated.

E. ISSUES FOR ADJUDICATION

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

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

17. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that there is no dispute regarding the fact that the complainant booked a flat in the real estate project; "Parkland Pride, Sector 77, Faridabad, Haryana" being developed by the respondent. Thereafter, respondent issued an allotment letter dated 25.11.2011 vide which complainant was allotted Unit no. PB-212-GF, admeasuring 1365 sq. ft. for an basic sale price of ₹ 50,13,005.48/- against which complainant has paid an amount of ₹ 56,57,414/- between years 2011-2017. As per clause 24

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

In this regard, Authority observes that it is an admitted fact that no builder buyer agreement has been executed between parties, though a booking form dated 20.04.2011 was executed between parties wherein terms and conditions are mentioned with regard to the unit in question, nevertheless the booking form dated 20.04.2011 is a comprehensive document that provide an exhaustive list of terms agreed between parties including the period within which respondent shall hand over the possession of the unit to complainant. Thus, the period provided in the broad terms and conditions shall be considered for the purpose of the due date for possession. A period of 30 months from the date of booking form i.e. from 20.04.2011 shall come to 20.10.2013. Meaning thereby that this period is considered wherein respondent was under an obligation to handover possession by 20.10.2013. Therefore, Authority deems appropriate to take 30 months from

date of booking form i.e. 20.04.2011, which comes to **20.10.2013** for delivering possession of the unit in question.

18. Further, respondent in its reply has also taken a plea that grace period be allowed to respondent since, occupation certificate for the unit in question was obtained on 20.06.2018 from concerned Authority.

With regard to grace period of 180 days, Authority observes that respondents were obligated to complete the construction within 30 months from execution of agreement/ booking form, respondents were to apply for occupation certificate within 180 days. It is a matter of fact that the respondents did not apply for grant of occupation certificate right after expiry of 30 months period from execution of agreement/ booking form i.e. 20.10.2013. Infact, it is admitted by respondents that occupation certificate was received on 20.06.2018 i.e. after delay of 4 years from due date for completion of construction of unit. Time period of 4 years taken by respondent to complete the construction work and to receive occupation certificate is not a reasonable duration. Respondent herein is claiming benefit out of its own wrong. Such a proposition is not acceptable being devoid of merit. Hence, plea of respondent to grant grace period is rejected.

19. Further, respondent in its reply has taken a plea that possession of unit was subject to occurrence of force majure conditions therefore, respondent has

claimed relaxation for interest charges to be allowed to complainant for period which stands covered by force majeure conditions. In present case, due date of possession has worked out to be 20.10.2013 (as explained in preceding paragraphs of this order). Admittedly, there is a delay on the part of the respondent and respondent had attributed the same to the various reasons such as the NGT order dated 19.07.2016 and orders dated 07.11.2017 passed by environment Authority etc. It is pertinent to mention that both the above stated events pertains to the date subsequent to the passing of deemed date of possession. Therefore, respondent cannot be given benefit of such statutory orders that were issued after lapse of due date of possession.

20. In view of above, it is concluded that respondent should have delivered possession of the unit latest by 20.10.2013, however same was not delivered within the time stipulated in agreement/booking form dated 20.04.2011. Further, respondent in its reply has admitted the fact that occupation certificate for unit in question was obtained by respondent on 20.06.2018 and the offer of possession was made to the complainant on 19.07.2018, along with demand of ₹18,17,719.52/-. Respondent has averred that since the offer of possession was made after obtaining occupation certificate, the offer was a legally valid offer of possession. However, it is the complainant who defaulted in accepting the same, therefore, complainant infringed the

provision Section 19(6) and 19(10) of RERA Act 2016. Infact, respondent had also sent various demand letters and reminders dated 06.10.2018 and 16.11.2018 to the complainant, however complainant did not come forward to take the possession after paying outstanding amount and due to non-payment of outstanding dues by complainant, the allotment got cancelled on 17.08.2019 and 10.12.2019.

21. With regard to the objection raised by the respondent that complainant had infringed Section 19(6) of the Real Estate Act, 2016 by delaying in making payments. Section 19(6) is reproduced below for ready references:

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

Authority observes that in the present complaint, complainant had opted for a construction linked payment plan and made payments as per the demands raised by the respondent during each construction stage. Demand letters annexed with reply from year 2011 to 2017 reveals that complainant had paid all the demand on time, due to which respondent even had given timely discount of 25,508.07/- dated 27.11.2012 mentioned at page no. 81 of reply to complainant. Hence, the contention of respondent that complainant

did not paid charges on time cannot be said to be justified. Further, respondent admits in its reply that the complainant had paid a total amount of ₹56,57,414/- by year 2017, against flat's basic value of ₹ 50,13,005.48/-, which indicates that the complainant had already paid more than the basic sale consideration. Hence, respondent objection, that the complainant is a defaulter under Sections 19(6) of the RERA Act, 2016 lacks merit.

22. Now, issue with regard to validity of offer of possession i.e. 19.07.2018 is concerned, complainant has stated that offer of possession made on 19.07.2018 was not valid and therefore not accepted by complainant for two fold reasons. Firstly, said offer was made after an inordinate delay of almost 5 years from deemed date of possession i.e. 20.10.2013, secondly said offer was accompanied with illegal demand of ₹ 18,17,719.52/-. Complainant stated that an amount of ₹ 56,57,414/- out of basic sale price of ₹ 50,13,005.48/- stands paid by him from year 2011-2017. Since, more than the basic sale price stands paid to respondent till year 2017, then demands raised in year 2018 cannot said to be valid. Accordingly, cancellation letter issued by respondent on account of non-payment holds no sanity in eyes of law.

23. In this regard Authority observes that respondent obtained occupation certificate from competent authority on 20.06.2018. After receiving occupation certificate, an offer of possession was made to the complainant

on 19.07.2018 with the request to pay the outstanding dues. Hence prima facie, it appears that offer made by the respondent was a legally valid offer of possession as per the provisions of RERA Act of 2016. However, allegedly complainant did not accept the same for reason that same was accompanied with illegal demand of ₹ 18,17,719.52/-.

To adjudicate whether the complainant had rightly not accepted the offer or not, it is important to refer to the communications made by complainant after issuance of offer of possession and reminder letter issued by respondent. At page 36 of complaint book, complainant had annexed an email dated 18.08.2018, challenging the offer of possession on the grounds that flat is not in a habitable condition; no information on occupation certificate was provided, no necessary approvals from department were annexed etc. Subsequently, demand letter dated 21.08.2018 issued by respondent was again replied by complainant stating the same reasons mentioned above along with further list of twelve points seeking further information on approvals, facilities in the flat including justification on GST, VAT charges. On 16.11.2018, again respondent issued demand letter which was replied by complainant via email dated 5.12.2018, stating therein that matter with regard to the same project is subjudice before NCDRC, New Delhi and tell the outcome of matter before NCDRC, the respondent should not bother complainant with further demand.

Authority is of the view that in none of the above mentioned emails replied by complainant shows that request for refund of the paid amount on account of delay in delivery of the unit was made by complainant. Further, in its email dated 18.08.2018 complainant per se did not challenge the demands for further payments, but was rather agitated by the fact that he did not find the flat in habitable condition so as to accept it for possession. Also, complainant has failed to place on record even a single document which shows that as per Section 19(10) of RERA Act, 2016, complainant within two months of offer of possession dated 19.07.2018 instead of taking possession has conveyed his intention to respondent to withdraw from the project on account of inordinate delay. Rather emails referred above shows that complainant was interested in taking possession, since complainant is repeatedly seeking information for occupation certificate, facilities and necessary approval with regard to the unit in question. Further, complainant has not placed on record any written communication made by him seeking refund after lapse of deemed date of possession i.e. 20.10.2013 till filing of captioned complaint on 04.10.2022.

24. Authority further observes that complainant has failed to place on record any documentary proof proving that the unit was not complete at the time of offer of possession made by the respondent. The fact that occupation certificate which is a public document issued by the DTCP on 20.06.2018 is

a conclusive proof unless proved contrary that the unit in question was fit for occupancy. In above situation, it is important to refer sub section 19 (10) of RERA Act of 2016, which state that complainant is also under an obligation to accept the offer of possession within two months. In case allottee does not want to continue with the project he may exercise his unqualified right to seek refund. However, the unqualified right also has to be exercised within a time limits. Section 18(1) clearly provides that the promoter shall be liable "on demand" to the allottee, in case the allottees wishes to withdraw from the project, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest. Meaning, thereby the complainant had to demand refund on lapse of deemed date of possession. Raising demand of refund within reasonable time of passing of deemed date of possession establishes the intention of an allottee to withdraw from the project. However, in the present case, complainant did not conveyed his intention to withdraw from the project and not exercised his right of refund of its amount within the period as provided under Section 19(10) of RERA Act, 2016, it shows that complainant choose to continue with the project.

25. Further, complainant remained silent on the second termination letters issued by respondent on 10.12.2019 and had again failed to exercise his right to seek refund rather choose to file present complaint for refund in the year

2022 (i.e after 3 years of delay) before Authority. In these circumstances, Authority deems appropriate to allow refund after deduction of 10% of the paid amount. Further, it is important to refer to judgment dated 24.03.2023 passed in **Appeal no. 292/2019 titled as Experion Developers Pvt Ltd vs Sanjay Jain & Smt. Kokila Jain** wherein Hon'ble Real Estate Appellate Tribunal has observed that forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the Real Estate i.e. apartment/plot/building. Relevant part of the order is reproduced below for reference:-

> *"17. The legal position with regard to the earnest money has been dealt in detail by Hon'ble Supreme Court in citations Maula Bux v. Union of India (1969)(2) SCC 554, and Satish Batra's case (supra) and the same can be condensed as follows:- "Earnest money is part of the purchase price when the transaction goes forward; it is forfeited when the transaction falls through, by reason of the fault of failure of the vendee. Law is, therefore, clear that to justify the forfeiture of advance money being part of earnest money the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the 13 Appeal No.292/2019 & 35/2021 depositor to be forfeited in case of non-performance, by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get the double the amount, if it is so stipulated. In other words, earnest money is given to bind the*

contract, which is a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of the default or failure of the purchaser."

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

19. Now, the question to be determined is that whether the earnest money to the tune of 15% of the basic sale price, as stipulated in the Agreement of 11.11.2014 can be termed as reasonable or not? In citation Pioneer Urban Land and 14 Appeal No.292/2019 & 35/2021 Infrastructure Ltd.'s case (supra), the Hon'ble Supreme Court has laid down that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between the parties, who are not equal in bargaining power. A term of a contract will not be final and binding if it is shows that flat purchaser had no option but to sign on the dotted line, on a contract framed by a builder. Further, incorporation of one-sided clauses in an agreement constitutes an unfair trade practice since it adopts unfair methods or practices for the purpose of selling the flat by the builder.

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

21. In his last desperate attempt, learned counsel for the promoter has submitted that since the allottees had specifically agreed to pay 15% of the sale price as earnest money, the forfeiture to the extent of 15% of the sale price cannot be said to be unreasonable as the same is in consonance with the terms agreed between the parties. He has also submitted that so long as the promoter was acting as per the terms and conditions agreed between the parties, it cannot be said to be deficient in rendering services to the allottees. This aforesaid submission as put forward by the learned counsel for the promoter, was also submitted before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in DLF's case (supra) and while

dealing with the same, it was observed that forfeiture of the amount which cannot be shown to be a reasonable amount, would be contrary to the very concept of forfeiture of the 16 Appeal No.292/2019 & 35/2021 earnest money and if the said contention is accepted, then, an unreasonable person in a given case may insert a clause in Buyer's Agreement whereby say 50% or even 75% of the sale price is to be treated as earnest money and in the event of the default on the part of the buyer, he may seek to forfeit 50% sale price as earnest money. It was further observed and held that an agreement for forfeiting more than 10% of the sale price would be invalid since it would be contrary to the established legal principle that only a reasonable amount can be forfeited in the event of default on the part of the buyer. Here, it is also pertinent to mention that the deduction of 10% of the total sale consideration of the unit, out of the amount deposited by the allottees, is also inconformity with the Regulations 2018, as notified by the Authority, wherein, it has been stipulated that forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the Real Estate i.e.apartment/plot /building."

Accordingly, respondent can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainant. In this case agreement has not been executed, though respondent has annexed statement of account along with offer of possession dated 19.07.2018, wherein basic sale price of the unit is provided as Rs 50,13,005.48/-. Accordingly, earnest money of 10 % of the basic sales price is liable to be

deducted from the amount paid by the complainant which works out to be Rs. 5,01,300.548/-.

26. On the rest of the remaining amount, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

> *(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
>
> *Explanation.-For the purpose of this clause-*
>
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
>
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

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

> ***"Rule 15:"****"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost of lending rate +2%:*

Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".."

27. Consequently, as per website of the state Bank of India i.e.https://sbi.co.in, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 11.02.2025 is 9.1 %. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e.11.1%.

28. Hence, Authority directs respondent to pay refund to the complainant at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e., at the rate of SBI highest marginal cost of lending rate (MCLR) + 2% which as on date works out to 11.1% (9.1% + 2.00%) from the date of various payments till actual realization of the amount.

29. Authority has got calculated the interest on the total paid amount from the date of respective payments till the date of this order i.e., 11.02.2025 at the rate of 11.1% and said amount works out to ₹**74,11,244**/-. Complainant shall be entitled to further interest on the paid amount till realization beginning from 12.02.2025 at the rate of 11.1%.

It is pertinent to mention that complainant has claimed to have paid an amount of ₹ 56,57,414/- to the respondent in lieu of booked unit. On perusal of record reveals that said amount has been calculated inclusive of timey

payment discount provide by the respondent. Complainant itself has mentioned the actual amount paid by complainant in tabular manner under "form DD" annexed with complaint book. Said amount comes to ₹ 54,78,705.64/-, which is exclusive of timely payment discount. Further, respondent also in statement of account annexed at page no. 97 of reply shows total amount received from complainant is ₹ 56,57,414/- which is inclusive of timely payment discount given by respondent. Fact is that timely payment discount is a discount given by the respondent to the allottees who make requisite payments on time and receive benefit of the same towards the sale consideration. This amount is made a part of the payment made towards sale consideration of the booked unit. This amount is never actually paid by the allottee nor received by the respondent. It is just an added benefit towards the booked unit. Captioned complaint pertains to refund of the paid amount as the complainant is not continuing with the project, therefore, this amount cannot be entertained as payment made towards sale consideration. Only the actual amount paid by the complainant is taken for consideration in order to award refund to the complainant. In this case, complainant itself claims to pay ₹ 54,78,705.64/- only in form DD. Therefore, the total paid amount for the purpose of refund and calculation of interest is being taken as ₹ 54,78,705.64/- .

Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till 11.02.2025 (in ₹)
1	4,00,000/-	22.04.2011	6,13,693/-
2.	6,31,112/-	01.08.2011	9,48,888/-
3.	6,50,381/-	21.03.2012	9,31,775/-
4.	6,40,980/-	04.04.2012	9,15,578/-
5.	1,39,661/-	09.06.2012	1,96,689/-
6.	6,38,035/-	10.10.2012	8,74,699/-
7.	6,55,800/-	16.11.2012	8,91,674/-
8.	5,70,000/-	27.11.2012	7,73,107/-
9.	75,790/-	27.11.2012	1,02,796/-
10.	5,34,226/-	04.04.2013	7,03,791/-
11.	51,481/-	25.11.2016	46,983/-
12.	4,91,239.64/-	29.07.2017	4,11,571/-
Total:	**Total=54,78,705 .64**		**Total=74,11,244/-**

13.	Total amount of refund + interest=1,28,89,949.64/-
14.	Total amount (1,28,89,949.64)– earnest money(5,01,300.548)= **1,23,88,649.092/-**
15.	Total amount to be refunded by respondent to complainant= **₹ 1,23,88,649.092/-**

G. DIRECTIONS OF THE AUTHORITY

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

i. Respondent is directed to refund the amount of ₹ **1,23,88,649.092/-** (till date of order i.e., 11.02.2025) to the complainant. Interest shall be paid as per Section 2(za) of RERA Act,2016.

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

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

CHANDER SHEKHAR
[MEMBER]

DR. GEETA RATHEE SINGH
[MEMBER]