



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	474 of 2022
Date of filing:	04.04.2022
First date of hearing:	19.07.2022
Date of decision:	03.03.2025

Harish Chand Khanna
S/o Harish Chand Khanna
R/o House no. 731, Sector-7C,
Faridabad, Haryana-121006

....COMPLAINANT ..

VERSUS

M/s BPTP Limited
Through its Managing Director,
Registered office- M-11, Middle Circle,
Connaught Place,
New Delhi-110001

....RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present: - Sh. Nitin Kant Setia, Counsel for the complainant through VC.

Sh. Hemant Saini, Counsel for both the respondent.

had

ORDER:(NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 04.04.2022 by the 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.	Discovery Park, Parklands, Sector-80, Faridabad, Haryana
2.	Nature of the project.	Group Housing Complex
3.	RERA Registered/not registered	Lapsed project



4.	Details of allotted unit.	Unit No.- M-402, admeasuring 2440 sq. ft.
5.	Date of agreement with original allottee-	17.08.2012
6.	Deemed date of possession	17.08.2015 (36 months from the date of execution of agreement)
7.	Basic sale price	₹67,10,000/-
8.	Date of endorsement via nomination letter	27.12.2012
9.	Amount paid by the complainant	₹44,14,924/-
10.	Occupation certificate received on	30.01.2024
11.	Offer of possession	Not given
12.	Payment plan	Construction linked plan

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

3. Facts of the complaint is that in late 2010, BPTP Ltd. launched a project named "Discovery Park" in Sector 80, Faridabad, Haryana, consisting of high-rise buildings with residential flats. Attracted by the respondent's advertisement and marketing, the complainant's predecessor booked a unit and paid a booking amount of ₹4,46,990/- on 27.01.2011.

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4. Subsequently, through a nomination dated 21.12.2012 (Annexure C-2), the complainant became the rightful allottee and stepped into the shoes of the original allottee. By that date, the respondent had already collected ₹34,07,979/-. The nomination made all previous payments valid in the complainant's name, entitling them to claim damages and delay penalties from the deemed date of possession.
5. Despite receiving significant payment by 2013, BPTP Ltd. failed to initiate or complete construction. Even after the deemed possession date in 2014, no development occurred. Ten years later, possession has still not been offered, with no visible progress on-site.
6. Due to the delay, the complainant was no longer obligated to make payments. Any further demands without completing the development were deemed illegal. Under Section 51 of the Indian Contract Act, 1872 and the provisions of RERA, 2016, a buyer is not required to pay unless the builder fulfills its reciprocal obligation of timely possession.
7. Despite the lapse in development, the respondent continued issuing payment demands. The complainant, relying on assurances, made an additional payment of ₹10,00,000/- on 29.11.2018. Yet, as of the statement dated



14.10.2021 (Annexure C-3), a total of ₹44,14,924/- had been paid, and the unit was still not ready.

8. That BPTP Ltd. used unfair trade practices and falsely promised possession within 36 months (plus a 6-month grace period). Under the Haryana Apartment Ownership Act, 1983, they were required to complete the construction within two years of the license grant, which they failed to do—amounting to gross violations.
9. In spite of the delay, the respondent continued to demand money aggressively and ultimately terminated the allotment illegally on 10.12.2019 (Annexure C-4). The complainant asserts that termination due to non-payment—caused by the respondent's default in timely delivery—is unjustified.
10. The complainant highlights that no formal Builder-Buyer Agreement (BBA) was signed earlier and BPTP attempted to impose a one-sided agreement in 2020—ten years after the booking. This was an attempt to nullify the complainant's rights and escape liability for delays.
11. The proposed BBA contained multiple arbitrary clauses, including:
 - 10% interest on delayed payments by the buyer but no penalty for delayed possession by the builder.
 - Timely performance expected only from buyers, not from the builder.



- Refund on termination heavily favors the builder, with no clause existing for buyers.
12. Such terms are unjust and heavily biased. In ordinary commercial practice, interest accrues from the date money is lent. As homebuyers are considered financial creditors under the Insolvency and Bankruptcy Code, 2016, delay penalty should begin from the date of the first payment.
 13. The agreement further permits BPTP Ltd. to terminate the allotment and deduct earnest money and interest without notice, violating Section 4 of the Competition Act, 2002, which prohibits abuse of dominant position.
 14. Despite repeated requests, the respondent has not handed over the unit. Instead, they have issued threats and failed to secure the occupation certificate, confirming that development remains incomplete.
 15. Under Section 18 of RERA, the complainant is entitled to withdraw from the project or claim delay penalty. In total, the complainant paid ₹44,07,979 by 2018. Section 18 of RERA grants homebuyers the right to seek refund or penalty in case of delayed possession. Several court precedents support the complainant's position against arbitrary, one-sided agreements and prolonged delays in possession.



C. RELIEFS SOUGHT

16. That the complainant seek following relief and directions to the respondent:-
- i. Set aside the impugned termination dated 10.12.2019 (Annexure C-4) being illegal and in violation of the Act?
 - ii. Direct the respondent to hand over possession of the unit M-402 measuring 2440 Sq. Ft., Discovery Park, Sector 80 Faridabad;
 - iii. Declare that the terms of the FBA are one sided, prejudicial to the interest of the purchasers, arbitrary and biased and against the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation & Development) Rules, 2017
 - iv. Direct the respondent to pay delay penalty in terms of Section 18 of the Act from the date of completion of 36 months from the date of first receipt of money, i.e., 27.01.2011 against the booking of the unit M-402, admeasuring 2440 Sq. Ft., Discovery Park, Sector 80, Faridabad
 - v. Direct the respondent to pay compensation to the tune of ₹5,00,000/- on account of mental agony and harassment;
 - vi. Direct the respondent to pay litigation expenses of ₹1,00,000/- to the complainant;



- vii. Any other relief which the Applicant is entitled for under the Real Estate (Regulation and Development) Act, 2016 and the Haryana State Real Estate (Regulation & Development) Rules, 2017..

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

17. The respondent presented a detailed reply on 06.07.2023, contesting the complainants' claims on several grounds, which are as under:

18. That the present complaint is not maintainable on the ground that:

a. Suppression and Misrepresentation of Material Facts: The Complainant has approached this Hon'ble Authority with unclean hands by concealing critical facts such as:

- The agreed due date of possession being 17.02.2016 (inclusive of grace period);
- Receipt of multiple reminder notices for pending payments;
- Substantial discounts and timely payment benefits granted by the Respondent; and
- Execution of an undertaking dated 29.11.2018, whereby the Complainant voluntarily waived rights to claim delay compensation.



- b. Binding Nature of Pre-RERA Agreement:** The Flat Buyer Agreement (FBA) dated 17.12.2012 was executed prior to the RERA Act and remains binding. As per the Haryana RERA Rules, such pre-existing agreements retain full validity and cannot be reopened.
- c. Relief Sought is Beyond the Scope of Agreement:** The Complainant is seeking reliefs that go beyond the express terms of the FBA. Clause 3.3 of the FBA clearly provides for specific compensation in case of delay. The Complainant, having accepted the terms, cannot now approbate and reprobate.
- d. Delay Attributable to Force Majeure:** The alleged delay was caused by uncontrollable and unforeseen force majeure events, including:
- Multiple bans by the Hon'ble NGT and Hon'ble Supreme Court on construction activities;
 - Prolonged lockdowns due to COVID-19 pandemic;
 - Governmental restrictions, labour shortages, environmental bans, and delays in approvals.
19. Mr. Piyush Khurana and his mother Ms. Sheel Khurana (hereinafter "Original Allottees") approached the Respondent for the allotment of a residential unit in its project 'Discovery Park', Sector-80, Faridabad, Haryana ("Project").



Accordingly, the Original Allottees booked Flat No. M-402 under the Bank Loan Payment Plan. Booking was confirmed via receipts dated 27.01.2011 (Annexure-R/1). An Allotment-cum-Demand Letter was issued by the Respondent on 28.03.2011 confirming allotment of Flat No. M-402 with a tentative super area of 2,440 sq. ft. (Annexure-R/2). Further payment was made by the Allottees on 11.04.2011 (Annexure-R/3).

20. Upon achievement of construction milestone "Start of Construction", the Respondent raised demand vide Payment Request Letter dated 16.08.2012 (Annexure-R/4). Subsequently, the Flat Buyer's Agreement was executed between the Original Allottees and the Respondent on 17.08.2012 (Annexure-R/5). The Original Allottees continued making payments as evidenced by receipts dated 25.09.2012, 29.09.2012, 04.10.2012, 16.11.2012, and 17.12.2012 (Annexures R/6 to R/9).
21. On 01.12.2012, the Original Allottees executed an Agreement to Sell in favour of the Complainant, transferring all rights in the said unit. The Complainant paid the Original Allottees the entire consideration already paid to the Respondent (Annexure-R/10).
22. The Respondent, being a customer-centric organization, regularly sent construction updates via email to the Complainant, including on 08.06.2016,



01.08.2016, 30.08.2016, and 19.10.2016 (Annexure-R/12). A VAT Demand Letter was issued on 17.11.2016 (Annexure-R/13), followed by further construction updates on 23.12.2016, 16.03.2017, 11.04.2017, and 12.04.2017 (Annexure-R/14). The Respondent raised another Payment Request Letter dated 28.06.2017 upon casting of the 4th floor slab (Annexure-R/15). Construction updates continued thereafter (Annexure-R/16).

23. The Respondent sent multiple reminders to the Complainant for payment of outstanding dues including on 04.10.2017, 11.12.2017, 20.02.2018, and 09.04.2018 (Annexures R/17 to R/22). On achieving the 8th floor slab, a Payment Request Letter dated 09.02.2018 was issued (Annexure-R/19). Despite this, payments were not made, necessitating repeated follow-ups.
24. On 04.07.2018, the Respondent issued a Final Demand Notice (Annexure-R/25). Thereafter, the Complainant executed an Undertaking dated 29.11.2018, explicitly waiving any claims towards Delayed Possession Charges (Annexure-R/26). Payments were made thereafter on 29.11.2018 and 15.12.2018 (Annexures R/27 and R/28). Construction updates continued throughout late 2018 and 2019 (Annexure-R/29).
25. A Payment Request Letter dated 15.07.2019 was raised on achieving the 12th floor slab (Annexure-R/30). However, due to continued default in making due



payments, the Respondent was constrained to terminate the allotment vide Termination Letter dated 10.12.2019 (Annexure-R/31). The Complainant, despite his own default and waiver of delay claims, has filed the present complaint suppressing material facts, including his failure to make timely payments and the execution of a waiver undertaking.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENT

26. Ld. counsel for the complainant reiterated the basic facts of the case and submitted that the Complainant is seeking relief of possession from the Authority. The Flat-Buyer Agreement dated 17.08.2012 executed between the Original Allottee and the Respondent has been annexed by the Respondent at page no. 82 of the reply. As per Clause 3.1 of the said agreement, the Respondent was obligated to deliver possession of the unit within 36 months from either the date of sanction of the building plan or execution of the agreement, whichever is later. However, rather than handing over possession within the stipulated timeframe, the Respondent failed to deliver the same and, instead, terminated the allotment of the unit vide letter dated 10.12.2019. This can be inferred from page no. 52 of the Complaint. Clause (f) of the said termination letter refers to a "Final Demand Notice-cum-Intimation of Cancellation" dated 04.07.2018. Further, as per page no. 162 of the



Respondent's reply, three receipts evidencing payments made by the Complainant are annexed—two dated 29.11.2018 for ₹5,00,000/- each, and one dated 15.12.2018 for ₹7,84,000/-, totaling ₹17,84,000/-. Therefore, the Complainant contends that the demanded amount was paid and there was no outstanding amount due from their end at the time of cancellation. The Respondent's failure to hand over possession as per the agreed terms amounts to a breach of contract. The Respondent has also annexed, at page no. 115, that the Complainant opted for a Construction-Linked Payment Plan. The demand for construction up to the 9th and 12th floor slabs was raised in 2019. Despite receiving significant payments, the Respondent failed to complete construction within the prescribed timeframe.

27. Upon being asked by the Authority, Learned Counsel for the Complainant clarified that the total amount paid towards the unit was ₹44,14,924/-, as mentioned at page no. 2 of the Complaint. There is a minor discrepancy noted at page no. 18, where the amount is stated as ₹44,07,976/-, but the Counsel confirmed the correct total is ₹44,14,924/-.
28. On the other hand, the Id. counsel for Respondent submitted that the Complainant is a subsequent allottee. The original agreement was executed between the Respondent and the original allottees on 17.08.2012. The rights



in the unit were later endorsed in favour of the Complainant through an endorsement letter dated 27.12.2012, annexed at page no. 127 of the reply. Further, at pages 159–161 of the reply, the Respondent annexed a signed undertaking dated 29.11.2018, wherein the Complainant expressly waived his right to claim delay compensation for late possession. This document has not been disclosed by the Complainant before the Authority. The Respondent relied on the Supreme Court judgment in *Bharathi Knitting Company vs DHL Worldwide Express Courier Division of Airfreight Ltd.*, (1996), wherein it was held that what is agreed between the parties must be honoured, and contractual terms govern liability. Additionally, the Respondent referred to multiple reminders issued to the Complainant dated 04.10.2017, 11.12.2017, 09.02.2018, 20.02.2018, 09.04.2018, etc., requesting payments that the Complainant failed to comply with. Consequently, the unit was cancelled via Termination Letter dated 10.12.2019, pursuant to the final demand notice dated 04.07.2018. As per the FBA, the Complainant was liable to pay a total of ₹81,43,750/-, but has only paid ₹44,14,924/-. The Respondent also highlighted Clause 11 of the agreement (page no. 101 of the reply), which states that timely payment is the essence of the agreement, and the Complainant has clearly defaulted.



29. The Authority observed that construction of the unit was not completed within the contractual timeframe and possession was not handed over to the Complainant accordingly.
30. In response, Learned Counsel for the Complainant argued that the deemed date of possession was long overdue and it is wholly unjustified for the builder to issue a termination letter after a delay of over five years. The Complainant had paid a substantial sum with the legitimate expectation of timely possession. The undertaking dated 29.11.2018, wherein the Complainant waived the right to claim delay compensation, is against public policy and thus void ab initio. Such clauses would grant undue liberty to the builder to delay construction indefinitely, to the detriment of the allottee.
31. Conversely, Learned Counsel for the Respondent argued that the Complainant, in their pleadings, has neither challenged nor sought to set aside the undertaking dated 29.11.2018. The said document is duly signed, notarized, and executed on stamp paper, hence binding on both parties. Furthermore, the Respondent contended that substantial benefits were extended to the Complainant—namely, a special discount of ₹6,10,000/-, an inaugural discount of ₹2,89,750/-, and timely payment discounts totaling ₹22,349.49/- on various occasions. Therefore, the waiver of compensation



was not arbitrary but formed part of a mutually agreed and beneficial arrangement.

F. ISSUES FOR ADJUDICATION

32. Whether the complainant is entitled to get possession of booked flat along with delay interest in terms of Section 18 of RERA, Act of 2016?

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

33. The Authority has carefully examined the rival contentions and perused the documents placed on record. It is an admitted fact that a Flat Buyer Agreement was executed between the Respondent and the original allottee on 17.08.2012, for allotment of Flat No. M-402, situated on the 4th Floor of Tower-M in the Respondent's project namely *Discovery Park, Parklands*, located in Sector-80, Faridabad. The unit admeasures 2,440 sq. ft. Subsequently, vide nomination letter dated 27.12.2012, the rights in the said unit were endorsed in favour of the Complainant. Accordingly, the Complainant has stepped into the shoes of the original allottee and all terms and conditions stipulated in the original agreement, including those relating to payment schedule, possession timeline, and default clauses, are equally binding on the Complainant. It is further observed that the Complainant has paid an amount of ₹44,14,924/- towards the total sale consideration of



₹81,43,750/-, as confirmed by both parties during the proceedings. Lastly, respondent has obtained occupancy certificate for the unit in question from the competent Authority on 30.01.2024.

34. Findings on the objections raised by the respondent.

G.I. Objection with regard to the maintainability of the complaint on the ground that the Real Estate (Regulation and Development) Act, 2016, does not apply to the FBA, as it was executed prior to the Act's implementation. The agreement is valid and binding under the Haryana RERA Rules, which protect pre-existing agreements.

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act, 2016. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. However, Authority is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act, 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be



fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner; then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.”

Further, as per recent judgement of Hon'ble Supreme court in Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021, it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of



obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of flat buyer agreement dated 17.08.2012 is admitted by the respondent. Said flat buyer agreement was binding upon both the parties. As such, the respondent was under an obligation to hand over possession on the deemed date of possession and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

G.II Objection regarding deemed date of possession.

Admittedly flat buyer agreement was executed between the parties on 17.08.2012 and as per clause 3.1 of it, possession was supposed to be delivered within 36 months from from the date of sanctioning of building plan or execution of flat buyer agreement, whichever is later alongwith grace period of 180 days for applying and obtaining the occupation certificate from the competent authority. Both the parties have failed to provide the exact date and documents proving as to when building plans were sanctioned. So without having any exact date of sanctioning of building plans, the Authority deems it appropriate to rely on the execution date of the Flat Buyer



Agreement to calculate the deemed date of possession. The Flat Buyer Agreement was executed on 17.08.2012, and as per the stipulated timeline in Clause 3.1, possession was to be handed over within 36 months. This calculation leads to a deemed date of possession of 17.08.2015. Further, Respondent in its written statement has taken a plea that grace period of 180 days be allowed as respondent had received occupation certificate on 30.01.2024. In this regard, Authority is of view that if the respondent had completed the construction within 36 months of execution of agreement, i.e., by 17.08.2015, then time period of 180 days was provided for applying for occupation certificate. Here in this case, respondent did not abide by the terms of agreement and failed to complete construction within stipulated time. Accordingly, grace period of 180 days which could have been started from 17.08.2015 got extended by another 9 years, as occupation certificate was received by respondent on 30.01.2024. Time period of 9 years taken by respondent to complete the construction work and receipt of occupation certificate is not a reasonable duration. There is no justification on record that how this time period is actually incurred for completing the unit in question. 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 180 days grace period is rejected.

G.III. Objections raised by the respondent regarding force majeure conditions.

The respondent was obligated to deliver possession of the unit to the complainant within the period stipulated in the clause 3.1 of the Flat Buyer Agreement, i.e., 36 months from the date of sanctioning of building plan or execution of flat buyer agreement, whichever is later. Authority observes that respondent has failed to provide the exact date of sanctioning of building plan. In absence of date of sanctioning of building plan, Authority deems it appropriate to take deemed date of possession, 3 years from the date of execution of flat buyer agreement, which comes out to be 17.08.2015. It is matter of fact that respondent has not fulfilled this obligation till date. There is delay on the part of the respondent and the various reasons given by the respondent such as judgment of Vardhman Kaushik vs. Union of India, which imposed ban on construction activity, Covid-19 pandemic, Hon'ble NGT order are not convincing enough as the due date of possession was in the year 2015 as per the agreement and incidents which have been mentioned by the respondent is after this period; therefore the respondent cannot be allowed to take advantage of the delay on their part by claiming the delay in statutory



approvals/directions. So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

G.IV. Counsel for respondent has also stated that respondent has duly offered the discount of ₹6,10,000/-, inaugural discount of ₹2,89,750/- and timely payment discount of ₹22,349/- to the complainant at the time of booking as a discount on basic sale price as a good will gesture. However, the said fact has been concealed by the complainant. In this regard, Authority deems appropriate to not allow refund of the above said amount to the respondent for two fold reasons. Firstly, complainant is not interested in withdrawing from the project and is willing to continue and wait till project gets completed, meaning thereby, complainant is sticking to their decision and showing his willingness to have the booked unit for which he had already paid as per the construction linked plan. Secondly, since, complainant has performed his part and is taking his unit for which he had paid in advance to respondent for which certain benefits were credited by respondent to complainant. Now, respondent cannot be allowed to take those amounts back since complainant had completed his part of the agreement, however respondent has miserably failed to abide by terms of agreement.



G.V. Respondent in his reply has stated that complainant has executed an undertaking dated 29.11.2018, and thereby waived of his right to claim delayed possession charges.

The Authority is of the view that any such undertaking which seeks to waive the statutory rights of the allottee under the Real Estate (Regulation and Development) Act, 2016 is not legally enforceable. Sections 18(1) and 19(4) of the Act confer statutory rights upon the homebuyer, including the right to possession within the agreed timeline and compensation in the event of delay. These are mandatory provisions and cannot be overridden by a unilateral undertaking.

The Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan*, (2019) 5 SCC 725, has held that:

"A clause in a contract which is one-sided, unfair and unreasonable and gives the builder an undue advantage, is against the public interest and cannot be enforced merely because it was signed by the buyer."

In the present case, the complainant had already paid a substantial sum of ₹44,14,924/- towards the total sale consideration. The said undertaking, taken after significant payment and without corresponding progress in construction, appears to be a one-sided document, likely signed under pressure and without any real choice.



Accordingly, the Authority holds that the said undertaking dated 29.11.2018 is **void ab initio**, being contrary to public policy and against the letter and spirit of RERA. The complainant's right to seek compensation for delay remains intact, and the respondent cannot take shelter behind such an undertaking to avoid its contractual and statutory obligations.

35. Authority further observes that possession of the unit should have been delivered by 17.08.2015 but it is an admitted fact that respondent had miserably failed to fulfill his obligation to deliver the possession of the unit within stipulated time. Now, respondent is in receipt of occupation certificate on 30.01.2024 but valid offer of possession as per terms of the agreement has not been made thereafter to the complainant till date.
36. Now, issue which remains to be adjudicated is delay interest. Respondent had not offered valid possession of unit till date even after receipt of occupation certificate on 30.01.2024. Complainant herein is interested in having possession of his unit. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made valid offer of



possession to the complainant till date. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date of possession i.e., 17.08.2015 up to the date on which a valid offer is sent to them as per above directions of the Authority. For purposes of calculation, delay interest is calculated upto date of this order. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

37. In the present complaint, the complainant intend to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under:-

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”.

38. 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-

1. *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;

39. 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 (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”.

40. 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., 03.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.
41. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession 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 due date of possession i.e. 17.08.2015 to date of valid offer of possession, which is yet to be issued by respondent to complainant. For purpose of calculation delay interest is calculated upto date of this order and for further delay, if any caused by respondent, monthly interest is awarded.

42. Authority has got calculated the interest on total paid amount from due date of possession i.e., 17.08.2015 till the date of order, which works out to ₹43,09,422/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 03.03.2025 (in ₹)
1.	₹34,07,979/-	17.08.2015 (Deemed date of possession)	₹36,13,924/-
2.	₹5,00,000	29.11.2018	₹3,47,749
3.	₹5,00,000	29.11.2018	₹3,47,749
<p>Note: The complainant, both in the complaint and during arguments, has confirmed having paid a total amount of ₹44,14,924/-. However, the complainant has only submitted receipts totaling ₹44,07,979/-, with the dates of the respective payments clearly mentioned. Accordingly, the Authority finds it appropriate to consider ₹44,07,979/- as the amount actually paid, and the delay interest shall be calculated based on this amount.</p>			
Monthly interest commencing w.e.f.	₹41,556/-		

03.03.2025.			
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43. Further, complainant has prayed to set aside the termination of Unit of the complainant vide letter dated 10.12.2019, issued by the respondent. Upon careful examination of the records and rival submissions, the Authority observes that it is an admitted fact that a flat buyer agreement was initially executed between the original allottee and the respondent on 17.08.2012, and the same unit was later transferred in favour of the complainant through a nomination letter dated 27.12.2012. Consequently, the complainant stepped into the shoes of the original allottee and became bound by the terms and conditions of the agreement. Respondent failed to deliver possession of the unit within the agreed period. The complainant has placed on record proof of having paid a total sum of ₹44,14,924/-, as confirmed during the proceedings. The respondent in its reply has also attached receipts of substantial payments made by the complainant even after the deemed date of possession, these payments, totaling ₹17,84,000/-, demonstrate that the complainant was making payments as per the Construction Linked Plan (CLP). This delay is not attributable to the complainant, who continued to make payments against



construction milestones. The termination letter dated 10.12.2019 refers to an alleged non-payment against a Final Demand Notice dated 04.07.2018. However, the complainant continued to make substantial payments even after that notice, which were duly acknowledged by the respondent through official receipts. Therefore, the respondent's claim of non-payment is not only incorrect but also contradicted by its own documents. In this case, the respondent, being in default, cannot penalize the complainant for its own failure by terminating the allotment. Accordingly, the Authority hereby sets aside the termination letter dated 10.12.2019 issued by the respondent.

44. The complainant is also seeking compensation of ₹5,00,000/- on account of mental agony and harassment, ₹1,00,000/- for litigation expenses. 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 advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

45. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA Act,2016 to ensure the compliance of obligations 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 offer possession of the unit within next 45 days alongwith Statement of Account issued in compliance of directions passed in this order incorporating therein delay interest of ₹43,09,422/- to the complainant towards delay already caused in handing over the possession and monthly interest of ₹41,556/-
- ii. Further respondent is directed to execute the Conveyance Deed within 90 days after handing over of the valid legal possession to the complainant.
- iii. Complainant will remain liable to pay balance consideration, if any, amount to the respondent at the time of actual possession offered to them in terms of this order of the Authority.



- iv. The rate of interest is chargeable from the complainant by the respondent, in case of default shall be charged at the prescribed rate i.e.; 11.10% which is the same rate of interest which the respondent shall be liable to pay to the complainant.
- v. The respondent shall not charge anything more from the complainant except what is decided by the Authority in this order.

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


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CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]