



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2136 of 2022
Date of filing:	30.08.2022
Date of first hearing:	19.10.2022
Date of decision:	05.03.2024

Sh. Rohit Markanday S/o Sh. Baldev Raj,

R/o C-1-1102, The Meadows,

Adani Shantigram Township,

Nr. Vaishnodevi Circle, S.G. Highway,

Khodiyar, Ahmedabad, Gujarat- 382421

.....COMPLAINANT

Versus

Goldsouk Infrastructure Pvt. Ltd. through its Director,

Reg. Office at: 103/104, 1st floor, Orbit Plaza,

New Prabhadevi Marg, Mumbai,

Maharashtra- 400025

.....RESPONDENT

CORAM: Dr. Geeta Rathee Singh
Chander Shekhar

Member
Member

Present: - Sh. Mayank Gupta, counsel for complainant through VC

Sh. Shubhnit Hans, counsel for respondent through VC

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 30.08.2022 by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

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

S. No.	Particulars	Details
1.	Name of project	Gold Souk Golf Links, at Village Khanpur and Kawarsika, Sector-17, Sohna, District Mewat, Nuh
2.	Nature of the Project	Residential
3.	RERA registered	RERA-PKL-373-2017 dated 28.11.2017; Now lapsed project
4.	Date of booking and amount	9,20,000/- paid from 10.01.2013 to 09.03.2013
5.	Apartment no.	1208, 12 th floor, Tower-D
6.	Apartment area	1350 sq.ft.



7.	Date of builder buyer agreement	24.08.2015
8.	Deemed Date of Possession	24.02.2020 (As per clause 10.1; within 48 months from the date of execution of this agreement with further grace period of 6 months.)
9.	Basic sale price	₹ 65,53,150/-
10.	Amount paid by complainant	₹ 9,20,000/-

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

- Complainant had booked a residential apartment in the real estate project namely "Gold Souk Golf Links" being developed by the promoter in the year 2013. Apartment Buyer Agreement was executed between the allottee and respondent-promoter on 24.08.2015, annexed at Page no. 16-40 of complaint book.
- According to clause 10.1 of the Apartment Buyer Agreement, respondent committed to complete the construction of the allotted apartment within 48 months from the date of execution of this agreement with further grace period of 6 months. Accordingly due date of possession comes to 24.02.2020. Total sale price was



Rs. 65,53,150/- out of which the complainant had paid Rs. 9,20,000/- from 10.01.2013 to 09.03.2013.

5. Complainant further stated that Director General Town and Country Planning, Haryana had granted license to respondent to construct the project on 13.06.2014, but respondent had started selling the apartments in the year 2012, which is much before getting the approvals from concerned department. Complainant alleged that even after depositing 15 % of the payment of total sale consideration, respondent had failed to even start the construction at site and seven years have already been lapsed from the date of receiving initial payment from the complainant.
6. Complainant further alleged that representative of him had visited the site several times to check the progress of the project but he was shocked to see that there was no sign of construction at the site. Despite continuous follow up by the complainant since 2013, respondent had never updated the complainant about the construction of the project nor have replied to any of the refund request made by complainant. Respondent company promised that possession will be handed over to him within stipulated period as per the agreement i.e. 24.02.2020. However, as per status of construction and upon queries, the



representative of respondent had stated that another 3-4 years will take place in completion of the project.

7. Further, complainant stated that a Suo Moto complaint bearing no. 675 of 2020 was already registered against respondent for non-registration of the project. However, said case was closed suggesting to initiate appropriate legal action in case any complaint is filed against respondent. Respondent had completely mislead the Authority as various home buyers alike complainant have been a victim of the respondent and have invested their hard earned savings in said project. As respondent was under an obligation to handover possession by 20.02.2020 but possession has not been offered till date. Therefore, complainant has prayed for relief of refund of the amount paid along with the prescribed rate of interest.

C. RELIEF SOUGHT:

8. The complainant in his complaint has sought following reliefs:
- i. Respondent be directed to refund entire amount received of ₹ 9,20,000/- from complainant along with interest at the prescribed rate or at such other rate as this Authority may deem fit and from the date of making the payment by the complainant;



- ii. Respondent be directed to pay compensation of Rs. 5,00,000/- to complainant as compensation to the complainant for the harassment and mental agony.
- iii. Respondent be directed to pay compensation of Rs. 1,00,000/- towards legal costs and expenses incurred by the complainant in pursuing legal recourse against the respondent.
- iv. Any other relief which is deemed fit by this Hon'ble Authority.

D. REPLY:

- 9. Respondent stated that due to reputation and prestige of the respondent company, the complainant had voluntarily invested in the project of respondent company, namely, "Gold Souk Golf Links" at village Khanpur and Kawarsika, Sector-17, Sohna, District Mewat Nuh, Haryana. The agreement between respondent and complainant was executed on 24.08.2015, in pursuant to booking made in year 2013, which is much prior to the commencement of the RERA Act. Therefore, present complaint is not maintainable as it falls outside the purview of the provisions of the RERA Act.
- 10. Respondent stated that complainant had mislead the Authority and has mischievously concealed material facts from Authority. It is stated that



tripartite agreement for subvention scheme was executed between the complainant, respondent company and Diwan Housing Finance Housing Ltd. (DHFL) on 07.04.2015, whereby the complainant agreed to make due payments of respondent company after availing the said loan. Subsequent to execution of said tripartite agreement, respondent company issued provisional allotment to the complainant on 10.04.2015 along with demand of due amount. Thereafter another demand letter dated 10.08.2015 was issued by respondent in lieu of apartment bearing no. TD/1208 admeasuring 1350 sq.ft requesting complainant to remit the total due of ₹ 16,54,632/- on start of excavation. However, complainant failed to pay the said amount. On 17.08.2015 DHFL also sent letter of offer-cum- acceptance to complainant approving their housing loan. Respondent had also issued NOC dated 19.08.2015 to mortgage the flat allotted to the complainant so that complainant can easily avail loan and make necessary payments. Despite all formalities being completed on part of respondent and DHFL, complainant failed to make payments towards the due amount and failed to fulfill his part of the obligations.

11. Since complainant was not paying any further amount even after receiving demand letters, respondent had cancelled his unit in year 2016. Respondent stated that complaint is also barred by limitation and hit by principle of delay and laches. Complainant has been sleeping



over his rights from past more than 8 years. There has been no communication from the complainant to respondent in all these years.

12. Respondent further stated that captioned complaint is also bad for non-joinder of parties as the complainant has failed to make DHFL (Financial Institute), a party to the complaint being a necessary party.
13. Respondent in para 17 of the reply has pointed out that receipt of ₹9,20,000/- on which complainant is relying has been paid to Aerens Gold Souk International Ltd and not to respondent company as these both companies are two separate legal entities. Hence, said receipt will have no relevance on the present complaint as it does not have any stamp or signature.
14. RERA Act came into effect in 2016 and RERA provisions cannot be held to be retrospective in nature. In the present case, the project has been completed and completion certificate has already been applied. Therefore, RERA Act is not applicable in the present case.
15. Respondent stated that as per clause 9 of the agreement, upon failure to make payment within time the agreement will be terminated and developer can forfeit the earnest money.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

16. During oral arguments learned counsel for the complainant reiterated arguments mentioned in para 3 to 8 of this order. He submitted that the project stands abandoned by the respondent, therefore, cannot be completed in near future. He further requested to dispose of the matter in same terms of order dated 29.11.2022 passed in **Complaint no. 539 of 2022 titled as Rashmi Kukreja and Ajay Kukreja Vs Gold Souk Infrastructure Pvt Ltd.** On the other hand, counsel for respondent-promoter reiterated facts mentioned in para 9-15 of this order. Respondent counsel admitted that project is stuck and cannot be completed. Nonetheless he stated that complainant had also defaulted in making payments as per demands raised by respondent, therefore, period of interest to be granted to the complainant may be adjusted towards payment where complainant had defaulted in making timely payments to the respondent. He also challenged the payment made by complainant as receipt shows the name of Aerens Gold Souk International Ltd. In rebuttal to this, complainant counsel referred to page no. 18 of reply i.e. provisional allotment letter issued by respondent in name of complainant and had adjusted paid amount of ₹9,20,000/- towards total sale price. Hence, it is an admission on part of respondent of receiving payment from complainant under head of Gold Souk Infrastructure Pvt. Ltd.



F. ISSUES FOR ADJUDICATION:

17. Whether the complainant is entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

G. OBJECTION RAISED BY RESPONDENT

G. I That the present complaint is barred by limitation

(i) Respondent had raised objection regarding maintainability of the complaint on ground of that complaint is barred by limitation. In this regard the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 ***titled as M.P Steel Corporation v/s Commissioner of Central Excise*** has held that the Limitation Act applies only to courts and not to the tribunals. Relevant para is reproduced herein:

19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

(ii) Authority observes that the Real Estate Regulation and Development Act, 2016 is a special enactment with particular a aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963, thus, would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority established under the Act is a quasi-judicial body and not Court. Therefore, in view of above



objection of respondent with respect to the fact that complaint is barred by limitation is rejected.

G.II That the builder buyer agreement has been executed prior to coming into force of RERA Act 2016.

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. In this regard, Authority observes that after coming into force of the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 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(c) 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 Apartment Buyer Agreement is admitted by the respondent. Said Apartment Buyer Agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement 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.III That RERA Act 2016 cannot be applied retrospectively.

Another objection taken by the respondent is that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the case titled **M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra)**, wherein the Hon Apex Court has held as under:-

“41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it



negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case."

"45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest."

"53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection."

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/ agreement might have taken place

Rathee

before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

Therefore, in view of the afore mentioned reasons, the objections raised by the respondent with regard to the maintainability of present complaint are dismissed. The case is proceeded on the basis of merits.

OBSERVATIONS OF THE AUTHORITY:

18. As per the facts and circumstances of the captioned complaint, complainant had booked an apartment in the project of the respondent namely "Gold Souk Golf Links", situated at Village Khanpur and Kawarsika, Sector-17" Sohna, District Mewat (Nuh) @ ₹ 4041.00 per sq. ft. under the subvention plan. Subsequent, thereupon, an Apartment Buyer Agreement was executed between the complainant and respondent on 24.08.2015. As per the clause 10.1 of the agreement dated 24.08.2015, respondent-promoter had committed to handover the possession of the apartment within 48 months from the date of execution of this agreement with further grace period of 6 months. Accordingly, deemed date of possession comes to 24.02.2020. Total sale consideration of the unit was fixed at ₹ 65,53,150/- against which the complainant had paid an amount of ₹ 9,20,000/- till the year 2013.



19. It is alleged by the complainant that the respondent had failed to construct the project as per stipulated timeline due to which the complainant stopped making further payments. Despite repeated oral reminders and visit to the site of the project respondent had never provided a concrete update with regard to construction of the project nor did it replied to any of the refund request made by the complainant. Respondent had ultimately abandoned the project altogether and had also retained the amount of ₹ 9,20,000/- paid by the complainant for the apartment in question.
20. During proceedings, it has been admitted by the respondent that the project in question has been abandoned due to reasons beyond the control of the respondent-builder. It has also been averred that the complainant in this case had severely defaulted in making payments as per payment schedule due to which the unit of the complainant had been cancelled by the respondent in the year 2016. It is pertinent to mention that respondent has not placed on record a copy of said cancellation letter.
21. The facts set out in the preceding paragraph demonstrate that the respondent has failed to construct the project as per the terms of the apartment buyer agreement. Rather the respondent has foregone its obligations and completely abandoned construction of the project without providing any update/information to the complainant. It is an

admitted fact that respondent has neither developed the project in question nor returned the amount paid by the complainant till date. Complainant had booked the apartment in the year 2013 and as per clause 10.1 possession of the unit should have been delivered within 48 months from the date of execution of agreement for sale along with grace period of 6 months i.e by 24.02.2020. However, there is no development at the site of the project. At the time of booking, complainant had opted for construction linked payment plan. Accordingly, complainant had made payment to the respondent to the tune of ₹ 9,20,000/-. Complainant stopped making further payments as there was no construction at the site of the project. Respondent had issued demand letter dated 10.04.2015 and 10.08.2015 to the complainant for an amount of ₹ 16,54,632/- on start of excavation. It is alleged by the respondent that the complainant has failed to make payment of those demands. However, it is noteworthy that in Apartment Buyer Agreement dated 24.08.2015 executed subsequent to these demand letters, respondent has admitted to having received an amount of ₹ 9,20,000/-. No further payment has been shown to be due on the part of the complainant. Further since there was no excavation at the site, complainant could not have paid those demands as it was a construction linked plan.

A handwritten signature in blue ink, appearing to read 'Ratna', with a horizontal line underneath it.

22. It is averred by the respondent that the apartment of the complainant stands cancelled on account of non-payment of dues in the year 2016 itself, however, there is no document/ cancellation letter placed on record to prove the factum of cancellation. Fact of the matter remains that the respondent has retained the amount paid by the complainant till date. In case the complainant was at fault and respondent builder had a genuine approach to fulfill its obligations then the respondent should have terminated the unit of the complainant after forfeiture of earnest money and returned the remaining amount to the complainant. Respondent has been illegally enriching itself on the amount of ₹ 9,20,000/- paid by the complainant for past several years whereas the complainant is both devoid of his hard earned money and left without any unit to call its own. Since there was no progress in construction at the site of the project, complainant could not have been forced to part with further amount. There has been a significant delay in construction of the project and even today there is no scope since the project has long been abandoned. Therefore, the complainant is entitled to seek refund of the paid amount along with interest.
23. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others " in CIVIL APPEAL NO(S). 6745 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, allottee has



an unqualified right to seek refund of amount paid to the promoter along with interest. Para 25 of this judgement is reproduced below:

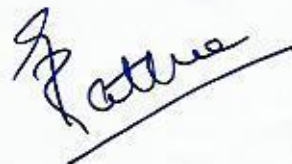
“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right 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.”

24. So, the Authority finds it to be a fit case for allowing refund in favour of complainant. The complainant will be entitled to refund of the paid amount from the dates of various payments till realisation. As per Section 18 of Act, 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".."

25.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.

12.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will

be MCLR + 2% i.e. 10.75%.

26.Hence, Authority directs respondent to pay refund to the complainant

on account of failure in timely 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 10.75%

(8.75% + 2.00%) from from the date of various payments till actual

realisation of the amount.



27. Accordingly, respondent will be liable to pay the complainant interest from the date on which amounts were paid by them till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹ 9,20,000/- 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 10.85% (8.85% + 2.00%) from the date on which amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest at the rate of 10.85% till the date of this order and said interest works out to ₹ 8,52,435/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 05.03.2024
1.	₹ 9,20,000/-	24.08.2015	8,52,435/-
Total	₹ 9,20,000/-		8,52,435/-

28. It is pertinent to mention that the complainant in this case is seeking refund on total paid amount of ₹ 9,20,000/-. In the undated receipt annexed by the complainant as Annexure A-2, the amount of ₹ 9,20,000/- has been admitted to have been received by Aerens Goldsok International Ltd. It is the principle objection of the respondent that this undated receipt for an amount of ₹9,20,000/-



which is being relied upon by the complainant as proof of paid amount reveals that the amount has been paid to Aerens Gold Souk International Ltd and not to respondent company. Since these both companies are two separate legal entities, therefore the amount has not been received by the respondent company and therefore said receipt will have no relevance in present complaint as a proof of paid amount. It is noteworthy that the complainant in this case has failed to make Aerens Goldsouk International Ltd as a necessary party to establish the fact that the amount of ₹9,20,000/- has been paid to the respondent company. Further, the receipt annexed as Annexure A-2 though computer generated, does not bear any signatures of the present complainant and as such Aerens Goldsouk International Ltd. and respondent company are indeed different entities. However, respondent company in its Clause 4.1.1. of the apartment buyer agreement dated 24.08.2015 has admitted the fact that they have received an amount of ₹ 9,20,000/- from the complainant as booking amount. This admission alone is sufficient enough to establish the fact with regard to the amount being paid from one sister concern to another. Further, it is a common practice on the part of the respondent builder to transfer bookings of the complainant from one project to another, however, the complainant cannot be made to suffer for the same. Therefore, the date on 24.08.2015 is being taken as admission/receipt of having received

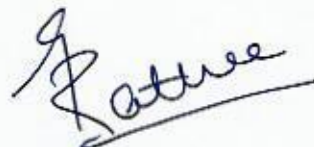


an amount of ₹ 9,20,000/- on the part of respondent builder qua the unit in question and is accordingly been taken as the date of payment for the purpose of calculation of interest.

29. In its relief sought, the complainant is seeking compensation on account of harassment and mental agony under Section 12 of RERA Act, 2016. 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 compensation.


H. DIRECTIONS OF THE AUTHORITY

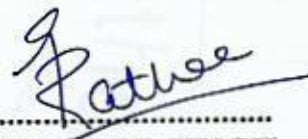
30. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:



- (i) Respondent is directed to refund the entire amount of ₹ 17,72,435/- to the complainant. Interest shall be paid uptill the time as provided under Explanation(ii) of Section 2(za).
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

31. Captioned complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading orders on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]