HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of decision:	**07.04.2025**

Sr. No.	Complaint No(s).	Complainants	Respondents
1.	1342 of 2023	1. Anil Kumar Singla S/o Kali Charan Singla R/o C-620, near Gurudwara, Chawala Colony, Ballabgarh-121004 2. Anita Singla W/o Anil Kumar Singla R/o C-620, near Gurudwara, Chawala Colony, Ballabgarh-121004	RPS Infrastructure Ltd. through its Managing Director *Registered office*- 1117-1120, 11th floor, DLF Towers, Tower B, Jasola District Centre, New Delhi-110025
2.	2022 of 2023	Sanjiv Kapoor S/o Bansari Lal Kapoor R/o House no. 846P, 1st Floor, Sector-4, Gurgaon, Haryana-122001	RPS Infrastructure Ltd. through its Managing Director *Registered office*- B-14, Chirag Enclave, New Delhi-17, Delhi

CORAM: Nadim Akhtar **Member**

Chander Shekhar **Member**

Present: - Adv. Navmohit Singh, Counsel for the complainants through VC in Complaint no. 1342 of 2023.

Adv. Rajan K Hans, Counsel for the complainant through VC in Complaint no. 2022 of 2023.

Adv. Gaurav Gupta, Counsel for the respondent in both the complaints through VC.

ORDER:(NADIM AKHTAR –MEMBER)

1. This order shall dispose of above captioned two complaints filed by the complainants before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

2. These two complaints are taken up together as facts and grievances of both the complaints more or less are identical and relate to the same project of the respondents, i.e., "RPS Auria", situated in Sector 88, Faridabad, Haryana. The

fulcrum of the issue involved in these cases pertains to failure on the part of respondent/promoter to deliver timely possession of units in question. Complaint No. 1342 of 2023 titled "Anil Kumar Singla and another. Versus RPS Infrastructure Ltd." has been taken as lead case for disposal of these two matters.

A. UNIT AND PROJECT RELATED DETAILS

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

Sr. No.	Particulars	Details
1.	Name and location of project	*RPS Auria"*, Sector-88, Faridabad, Haryana
2.	Nature of the Project	Residential flats
3.	Name of the Promoters	RPS Infrastructure Ltd.
4.	RERA registered/not registered	Registered vide Registration no. 200 OF 2017 dated 15.9.2017

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

Sr. No	COMPLAINT NO.	FLAT NO. AND AREA	BUYER AGREEMENT	DEEMED DATE OF POSSESSION	TOTAL SALES CONSIDERATION (IN RS.)	TOTAL AMOUNT PAID BY THE COMPLAINANTS AS PER RECEIPTS (IN RS.)
1	1342 of 2023	Apartment no. 0501, 5th Floor, Tower T-06 Area-1288 sq. Ft.	Apartment Buyer Agreement-25.10.2013	25.10.2017 (48 months from the date of execution of Apartment Buyer Agreement)	₹73,18,869/-	₹38,32,917/- (receipts attached)
2	2022 of 2023	Apartment no. 0306, 3rd Floor, Tower T-06 Area-1565 sq. Ft.	Apartment Buyer Agreement-24.04.2014	24.04.2018 (48 months from the date of execution of the agreement)	₹73,86,297/-	₹29,33,832/- (receipts attached)

B. FACTS OF THE COMPLAINANTS AS STATED IN THE COMPLAINT

5. That the complainants on 26.10.2013 were allotted a 3 BHK apartment bearing No. 0501, situated on the 5th Floor of Tower No. T-06, having super area of 1288 sq. ft., in the project "RPS AURIA", developed by the respondent, RPS Infrastructure Ltd., at RPS City, Sector-88, Faridabad, Haryana. Allotment Letter dated 26.10.2013 is annexed as Annexure C-1

6. In 2013, complainants, based on boastful and misleading advertisements and assurances of timely delivery by the respondent and its agents regarding their expertise and financial soundness, booked the said unit and deposited booking amount of ₹5,00,000/- vide cheques dated 09.04.2013. Receipt of booking amount of ₹5,00,000/- on 14.05.2013 is reflected in the receipt information annexed as Annexure C-3.

7. Respondent executed an Apartment Buyer's Agreement on 25.10.2013, whereby the obligations of both parties were defined. Said agreement includes Clause 16, which lays out conditions for forfeiture of earnest money limited to the extent of 15% of the total consideration. Apartment Buyer's Agreement dated 25.10.2013 is annexed as Annexure C-2

8. The complainants paid a total amount of ₹38,32,917/- through 17 installments from May 2013 to March 2015, amounting to 68% of the total consideration of ₹56,11,464/-. Receipts and Payment Schedule are annexed as Annexure C-3.

9. Despite receiving substantial payment, the respondent abandoned construction without intimation and failed to hand over possession. The project never progressed as promised.

10. On 25.04.2017, the respondent arbitrarily cancelled the allotment of the complainant's unit, without returning any amount. The entire amount paid by

the complainant (₹38,32,917/-) was forfeited, which is far exceeding the 15% earnest money clause, with no proof of any actual loss suffered. Cancellation Letter is annexed as Annexure C-4.

11. The respondent reallotted the flat to a third party, thereby suffering no financial loss, yet refused to refund the complainant's money, amounting to unjust enrichment for over 8 years and 2 months.

12. The complainants served a demand notice on 04.03.2023 and a legal notice on 17.04.2023, but received no response or refund from the respondent. Email Demand Notice is annexed as Annexure C-6, Legal Notice and Postal Receipt are annexed as Annexure C-5 Clauses such as 16, 27, and 51 relating to forfeiture, holding charges, and deductions are one-sided, coercive, and violate principles of natural justice and the RERA Act. The respondent has blatantly violated multiple provisions under Sections 11, 12, 13, 18, and 19 of the RERA Act, which mandate timely possession, refund obligations, and fair agreement terms.

13. As per the provisions of the RERA Act, the complainants are entitled to a full refund of ₹38,32,917/- along with interest @21% per annum from the respective dates of payment till realization, and compensation for mental agony and harassment.

14. It is a settled position of law, as held by the Hon'ble Supreme Court in Maula Bux's case, that liquidated damages must be reasonable and based on actual loss. Forfeiture of the entire amount without proving loss is unjust, punitive, and unenforceable.

C. RELIEF SOUGHT

15. In view of the facts mentioned in complaint book, the complainants pray for following:

i. In the event that the registration has been granted to the respondent-promoter for its Scheme/ project namely "RPS AURIA" situated at RPS City, Sector-88, Faridabad, Haryana.,in favour of RPS Infrastructure Ltd under RERA, it is prayed that the same may be revoked under Section 7 of RERA for the violations as detailed.

ii. To compensate the complainants for the delay in the project and refund the entire amount of Rs.38,32,917/- alongwith interest @ 21% per annum from the date of respective payments.

iii. To pay compensation of Rs. 10,00,000/- on account of harassment, mental agony and undue hardship caused to the complainants on account of unfair practices, deficiency in service and fraudulent misrepresentations.

iv. To pay a sum of Rs.50,000/- towards the costs of litigation expenses.

v. Any other relief as this Hon'ble court may deem fit and appropriate in the facts and circumstances of the Present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

16. Ld. counsel for respondent filed his reply in the captioned complaint pleading therein that:

17. Respondent challenged the maintainability of the captioned complaint on the grounds that:

i. The present complaint is not maintainable before this Hon'ble Authority in view of the express terms of the Builder-Buyer Agreement (BBA) dated 25.10.2013 executed between the parties, particularly Clause 64 thereof, which provides for arbitration as the exclusive mode of dispute resolution. The Complainants have deliberately bypassed the agreed mechanism and directly approached this Authority, thereby rendering the complaint liable to be dismissed on this ground alone.

ii. The complainants have approached this Hon'ble Authority with unclean hands and have suppressed crucial material facts. It is categorically denied that the respondent has unjustly forfeited the

amount. The complainants' allotment was cancelled on 25.04.2017 strictly in accordance with the terms and conditions of the BBA due to persistent and chronic defaults in payment, despite repeated reminders issued by the respondent (Annexures R-4 to R-27). The complainants have not disclosed this critical fact of default and cancellation in their complaint, which alone is sufficient to warrant dismissal of the complaint.

iii. The cancellation of the allotment took place on 25.04.2017. The present complaint has been filed after an unexplained delay of over 8 years, rendering it hopelessly time-barred. The inordinate and unexplained delay reflects gross negligence and is hit by the doctrine of laches, thereby disentitling the complainants from any relief.

18. Further, the construction of Tower T-06, including Unit No. 0501 allotted to the complainants, was duly completed in March 2022, and the Occupation Certificate was obtained on 25.01.2023 from the competent authority. The complainants are fully aware of this fact, yet they have mischievously suppressed the same in their complaint. Occupation certificate obtained by the competent authority has been annexed by the respondent as R-11 of the reply.

19. The completion of the project was delayed due to events beyond the control of the respondent, including force majeure conditions such as:

a. Covid-19 pandemic and related lockdowns (advisories dated 26.05.2020 and 09.08.2021),

b. NGT/EPCA imposed construction bans (2016–2020), and

c. HRERA-approved extensions (Resolution dated 04.07.2022), thereby extending the completion timeline legally and validly. The revised completion date as per HRERA was extended to 14.06.2023.

20. The complainants were allotted Unit No. 0501 in Tower T-06 under a construction-linked payment plan. Despite 17 reminders and notices (Annexures R-4 to R-27), the complainants defaulted on their payment obligations. As per Clause 4 of the BBA, repeated defaults entitled the respondent to cancel the allotment. The cancellation was effected as per law, and the earnest money amounting to 15% of the total sale consideration, i.e., ₹10,97,803/-, was forfeited in terms of Clause 16 of the agreement. The balance amount was not refunded as per contractual terms, which the complainants had accepted while signing the BBA.

21. Upon valid termination of the allotment on 25.04.2017, the complainants ceased to have any legal or contractual rights in the said unit. Subsequently, the flat was reallotted in accordance with prevailing policies and procedures. The complainants, having no subsisting right or interest in the unit, cannot claim refund or compensation.

22. The respondent is a reputed real estate developer duly registered under the Companies Act, 1956. The RPS Auria project was launched only after obtaining all statutory approvals, including DTCP License No. 124/2008 and HRERA Registration No. 200 of 2017. The respondent has fully complied with all regulatory obligations and completed the project in accordance with the extended timelines.

23. The respondent has not violated any of the provisions of the RERA Act. Rather, the complainants have violated the terms of the BBA and failed to raise timely claims or invoke the agreed dispute resolution mechanism. Hence, no liability can be fastened on the respondent for the complainants' defaults and inaction.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANTS

24. Learned counsel for the complainants, reiterated the basic fact of the case and submitted that in compliance with the orders of the Authority dated 05.08.2024 and 21.10.2024, the complainants have filed an application dated 31.01.2025, annexing therewith complete receipts of the payments made towards the unit in question. He further submitted that the complainants do not possess any record or proof of having approached the respondent after the cancellation of the unit in the year 2017. It was also pointed out that the respondent has subsequently sold the said unit to a third party, and notably,

the respondent has not denied this fact. In view of the above, learned counsel for the complainants earnestly prayed that the Hon'ble Authority direct the respondent to refund the entire amount paid by the complainants.

25. On the other hand, learned counsel for the respondent submitted that the allotment of the unit in question was cancelled on 25.04.2017 due to persistent defaults by the complainants in making payments in accordance with the terms of the Apartment Buyer Agreement. He admitted before the Hon'ble Authority that the amount paid by the complainants have not been refunded to the complainants till date.

F. ISSUES FOR ADJUDICATION

26. Whether the complainants are entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

27. The Authority has gone through the documents placed on record. As stated in the complaint, complainants vide allotment letter dated 26.10.2013 booked a unit bearing no. 0501, 5th floor, Tower T-06, admeasuring 1288 sq. Ft. in the real estate project "RPS Auria" located at Sector-88, Faridabad, Haryana, being developed by promoter, "RPS Infrastructure Ltd.", for total sale consideration of ₹73,18,869/-. Complainants have paid an amount of ₹38,38,917/- out of the total sale consideration. Apartment buyer agreement

was executed between the parties on 25.10.2013. Occupation certificate has been received by the respondent from the Department of Town and Country Planning on 25.01.2023.

28. As per Clause 22 of the Apartment Buyer Agreement, the respondent was contractually obligated to hand over possession of the unit within "*48 months from the date of execution of the agreement or from the date of obtaining requisite sanctions from the competent authorities for commencement of construction of the project, whichever is later.*" However, perusal of the respondent's reply and submissions reveals that the respondent has neither disclosed nor substantiated the exact date on which such requisite sanctions were obtained. In the absence of this crucial information, the Authority finds it appropriate and reasonable to compute the possession timeline from the date of execution of the agreement itself. Accordingly, 48 months from the Apartment Buyer Agreement execution date, i.e., 25.10.2013, results in a deemed possession date of **25.10.2017**.

29. Further, respondent has challenged the maintainability of the complaint on following grounds;

i. ***Firstly, terms of the Builder-Buyer Agreement (BBA) dated 25.10.2013 executed between the parties, particularly Clause 64 thereof, which provides for arbitration as the exclusive mode of dispute resolution. The Complainants have deliberately bypassed the agreed mechanism and***

directly approached this Authority, thereby rendering the complaint liable to be dismissed on this ground alone.

With regard to the above issue, the Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that section-79 of the RERA Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on ***National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to Arbitration even if the agreement between the parties had an arbitration clause.

Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held

that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

> *"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short the Real Estate Act"), Section 79 of the said Act reads as follows-*
> *"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*
> *It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act*
> .....
> *56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated land of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section B of the Arbitration Act."*

While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court in case titled as ***M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629- 30/2018 in civil appeal no. 23512-23513 of 2017*** decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC. As provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is bound by the aforesaid view. The relevant para of the judgment passed by the Supreme Court is reproduced below:

> *"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being u special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

Furthermore, Delhi High Court in 2022 in ***Priyanka Taksh Sood V. Sunworld Residency, 2022 SCC OnLine Del 4717*** examined provisions that are "Pari Materia" to section 89 of RERA Act; e.g. S. 60 of Competition Act, S. 81 of IT Act, IBC, etc, it held *"there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act, there is no bar under the RERA Act from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the Arbitration & Conciliation Act."* Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

Therefore, in view of the above judgments and considering the provisions of the Act, the Authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Real Estate (Regulation and Development) Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and

that the dispute does not required to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the Authority is of the view that the said objection of the respondent stands rejected.

ii. ***Secondly, the present complaint has been filed after an unexplained delay of over 8 years, rendering it hopelessly time-barred. The inordinate and unexplained delay reflects gross negligence and is hit by the doctrine of laches, thereby disentitling the complainants from any relief.***

Reference in this regard is made to the judgement of Hon'ble Apex court Civil Appeal No. 4367 of 2004 titled as "M.P Steel Corporation v/s Commissioner of Central Excise". Relevant part of the said judgment is reproduced here under:-

"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.'" 20. In Kerala State Electricity Board v. T.P"

The promoter failed to fulfill his obligations within the agreed timelines. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

iii. ***Thirdly, the completion of the project was delayed due to events beyond the control of the respondent, including force majeure conditions.***

The respondent was obligated to deliver possession of the unit to the complainants within the period stipulated in the clause 22 of the Apartment Buyer Agreement, i.e., 48 months from the date of execution of apartment buyer agreement, which comes out to be 25.10.2017. It is matter of fact that respondent has not fulfilled this obligation. There is delay on the part of the respondent and the various reasons given by the respondent such as Covid-19 pandemic and related lockdowns (advisories dated 26.05.2020 and 09.08.2021), NGT/EPCA imposed construction bans (2016–2020), and HRERA-approved extensions (Resolution dated 04.07.2022), thereby extending the completion timeline legally and validly. The revised completion date as per HRERA was extended to 14.06.2023 are not convincing enough as the due date of possession was in the year 2017 as per the agreement and incidents which have been mentioned by the respondent are 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.

30. Further, respondent has issued a cancellation letter to the complainants on 25.04.2017. However, the respondent, under the Builder-Buyer Agreement

dated 25.10.2013, was contractually obligated to deliver possession of the unit by 25.10.2017. This date of possession was agreed upon mutually at the time of executing the agreement, and it was the respondent's duty to complete construction and secure the Occupation Certificate (OC) within the stipulated time frame. The failure of the respondent to adhere to this timeline is a clear breach of contract. While the respondent claims that the complainants defaulted in making payments, it must be emphasized that the complainants had opted for the construction-linked payment plan and had already paid a substantial sum of ₹38,32,917/- as per the milestones. These payments were made in good faith, with the expectation that the project would be completed as per schedule. However, even after receiving nearly 60% of the total consideration, the respondent failed to construct and deliver the unit on time. Had the construction been completed as per schedule, the respondent should have received the OC around the agreed possession date in 2017. However, the fact that the respondent received the OC only on 25.01.2023 (a delay of more than 5 years) unequivocally proves that the delay was solely attributable to the respondent, not the complainants. The complainants stopped making payments only when it became evident that there was no tangible progress on the construction of the unit. The respondent cannot expect continuous payments from the buyer in the absence of corresponding construction

activity especially when the buyer had already paid a major portion of the price. On 25.04.2017, the respondent cancelled the allotment citing alleged default in payment. Even assuming that such cancellation was justified, the respondent was legally obligated to forfeit only the earnest money (as per the agreement) and refund the balance amount to the complainants. However, till date, no refund has been made, and the respondent has retained the entire amount unjustly. This amounts to unjust enrichment, as the respondent has not only withheld possession but also refused to return the money. It is further submitted that the respondent has admitted in its reply and oral arguments that the unit has since been sold to a third party, and that no refund has been issued to the complainants. This admission by the respondent reinforces the complainant's claim, as it clearly shows that the respondent has both sold the unit and kept the complainant's money—a double gain at the expense of the complainants, which is wholly illegal and inequitable.

31. However, it is a matter of fact that the respondent has not handed over the possession of the unit to the complainants, within the agreed timelines. The innocent allottees who had invested their hard earned money in the project from the year 2013 with the hope to get an apartment, cannot be forced/ compelled to wait endlessly for the unit, and specifically when there is no bonafide effort shown on part of the promoter to handover possession of the

unit. Thus, in the given circumstances where respondent had failed to complete the project and handover apartment as per agreed time and where complainants wish to withdraw from the project, they cannot be forced to continue with it.

32. Further, Hon'ble Supreme Court in Civil Appeal No. 6745-6749 of 2021 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P &Ors.*" has highlighted that the allottee has an unqualified right to seek refund of the deposited amount, if delivery of possession is not done as per terms agreed between them. Para 25 of this judgment is reproduced below:

> *"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

33. In view of above findings and after considering above mentioned judgment passed by Hon'ble Supreme Court in Civil Appeal No. 6745-6749 of 2021 titled as "***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P &Ors.***", Authority finds it to be fit case for allowing refund along with interest in favour of complainants. As per Section 18 of Act, interest is defined as under:-

> 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 which is reproduced below for ready references:

> *"**Rule 15:** Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7)ofsection19] (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"."*

34. 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., 07.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

35. From above discussions, it is amply proved on record that the respondent have not fulfilled its obligations cast upon them under RERA Act, 2016 and the complainants are entitled for refund of her deposited amount along with interest as per RERA rules, 2017. Accordingly, respondent will be liable to pay the interest to the complainants from the dates when amounts were paid till the actual realization of the amount. Hence, Authority directs the respondent to refund the paid amount to the complainants along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of

lending rate (MCLR) + 2% which as on date works out to 11.10% (9.10% + 2.00%) from the date amounts were paid till the actual realization of the amount.

Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 11.10% from the date of payment till the date of this order which comes to **₹85,86,762/-** (₹3832917/- (principal amount) +₹4753845/- (interest accrued till 07.04.2025) in Complaint no. 1342 of 2023 and **₹65,76,234/-** (₹2933832- (principal amount) + ₹3642402/- (interest accrued till 07.04.2025) in Complaint no. 2022 of 2023. According to the receipts/statement of accounts provided by the complainants details of which are given in the table below –

***i.* In Complaint no. 1342 of 2023**

S.No.	Principal Amount (In ₹)	Date of payment/ transfer	Interest Accrued till 07.04.2025 (In ₹)
1.	54000	2015-02-04	61024
2.	110165	2014-11-25	126873
3.	107000	2014-12-01	123033
4.	212165	2014-08-09	251311
5.	157000	2015-03-23	175177
6.	305666	2015-02-04	345424

7.	518500	2013-08-01	672982
8.	230000	2013-05-14	304052
9.	160000	2014-11-25	184266
10.	165000	2014-08-23	194741
11.	366000	2014-03-26	448667
12.	336475	2014-03-26	412473
13.	183974	2013-08-01	238787
14.	356972	2013-07-05	466259
15.	300000	2013-07-05	391845
16.	70000	2013-05-14	92538
17.	200000	2013-05-14	264393
Total	**3832917**		**4753845**

Total amount which has to be refunded to the complainants in Complaint no. 1342 of 2023 comes out to be **₹85,86,762/-.**

ii. In Complaint no. 2022 of 2023

S.No.	Principal Amount (in ₹)	Date of payment/ transfer	Interest Accrued till 07.04.2025 (in ₹)
1.	500000	2013-04-24	664023

2.	300000	2013-04-24	398414
3.	200000	2013-04-24	265609
4.	158714	2013-04-24	210780
5.	718157	2014-04-22	874467
6.	292728	2014-04-25	356175
7.	764233	2014-12-26	872934
Total	**2933832**		**3642402**

Total amount which has to be refunded to the complainant in Complaint no. 2022 of 2023 comes out to be **₹65,76,234/-.**

36. Complainants are also seeking reliefs mentioned in Para 15 (i). However, with regard to the same, complainants neither argued nor pressed upon the same during hearing. Therefore, Authority cannot adjudicate the said reliefs.

37. Lastly, the complainants are also seeking ₹10,00,000/- on account of harassment, mental agony and undue hardship caused to the complainants on account of unfair practices, deficiency in service and fraudulent misrepresentations and ₹50,000/- towards litigation costs. 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 complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

38. 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 amounts paid by the complainants along with interest of @ 11.10% to the complainants as specified in the table provided above in Para 35 of the order.

ii. A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of

Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

The complaints are, accordingly, **disposed of.** File be consigned to the record room after uploading of the orders in each case on the website of the Authority.

.....
CHANDER SHEKHAR
[MEMBER]

.....
NADIM AKHTAR
[MEMBER]