



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1315 OF 2022
Date of filing:	27.05.2022
Date of first hearing:	02.08.2022
Date of decision:	12.03.2024

1. Naresh Kumar, S/o late Sh. Yad Ram,
 2. Ritu Rawat, W/o Sh. Naresh Kumar,
- Both resident of House no. 1072, Sector-8, Faridabad.

....COMPLAINANTS

VERSUS

M/s RPS Infrastructure Ltd,
through its Director,
Regd. Office: A-193, first floor, Okhla Industrial Area,
Phase-1, New-Delhi-110020.

....RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** **Member**
 Chander Shekhar **Member**

Present: Adv. Neeraj, Ld. Counsel for Complainants, through VC.
 Adv. Manpreet, Ld. Counsel for Respondent, through VC.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 27.05.2022 by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions

Geeta Rathee

of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are enumerated in the following table:

S.No.	Particulars	Details
1.	Name of the project	RPS Oxypark, 12/16, Milestone, Sarai Khwaja, Mathura Road, Faridabad.
2.	Unit no.	T-05-0517, Tower-T, 5 th floor.
3.	Area	684 sq. ft.
4.	RERA registered/ not registered	Un- Registered
5.	Date of Office Space Buyer's Agreement	24.05.2012
6.	Date of allotment	26.05.2012
7.	Deemed date possession	24.05.2015 As per clause 16 of the BBA executed on 24.05.2012, developer endeavoured to offer the possession of the unit to the buyer within a



		period of 36 months from date of execution of the agreement or from the date of getting various sanctions from the concerned authorities, for starting construction of the project, whichever is later. This is further subject to force majeure, or any other circumstances not anticipated and beyond the control of seller and on timely receipt of all payments and other charges upto the date of offer of possession according to payment plan opted by buyer.
8.	Offer of possession	Not offered
9.	Basic sale price	Rs.41,04,000/-
10.	Amount paid by complainant	Rs.8,00,000/-

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

3. That the complainants approached respondent and applied for allotment of an unit. Considering the application dated 15.03.2012 duly signed and submitted by the complainants, the unit no. 517, tower no. T-05, RPS OXYPARK, IT PARK, having approximate super area of 684 Sq. Ft. situated at Faridabad (Haryana) was allotted in favor of the complainants vide allotment letter dated 26.05.2012. The basic sale price was stipulated to be Rs.41,04,000/- besides other charges, stamp duty, registration charges etc.



payable by complainants towards price/consideration in respect of said unit. To that effect, the requisite office space buyer's agreement dated 24.05.2012 containing the terms and condition of allotment was duly executed.

4. That as per clause 16 of office space buyer's agreement executed on 24.05.2012, respondent was obliged to complete construction of the said flat within 36 months from the date of execution of the agreement or from the date for getting various sanctions from the concerned authorities for starting construction of the project whichever is later. If the period of 36 months is taken from execution of the agreement, the time period to offer the unit for possession expired on 24.05.2015. However, till date, neither possession has been handed over nor is project complete.
5. That it is worthwhile to mention that complainants made payment of Rs.8,00,000/- as follows:

Sr. no.	Receipt no.	Receipt date	Amount (Rs.)	Cheque no.	Cheque date
1.	30633	27.03.2012	2,00,000/-	639160	17.03.2012
2.	30634	27.03.2012	2,00,000/-	139668	18.03.2012
3.	31043	24.05.2012	4,00,000/-	139673	18.05.2012
	Total		8,00,000/-		

6. That as per complainants, presently, respondent is not in a position to deliver the flat to allottees and it is not likely to be completed/ delivered in near future due to mismanagement.



C. RELIEF SOUGHT:

7. In view of the facts mentioned above, the complainants pray for the following relief(s):-

- a) Direct the respondent to refund the entire amount paid till date i.e. Rs. 8,00,000/- to the complainants along with interest as prescribed in Rule 15 of HRERA Rules on the amounts from the respective dates of deposit till its actual realization within 90 days as per section 18(1) of the Real Estate (Regulation and Development) Act, 2016;
- b) Direct the respondent to pay a sum of Rs. 5,00,000/- to the complainant as compensation for unfair trade practices.
- c) Direct the respondent to pay a sum of Rs. 5,00,000/- to the complainant as compensation for mental harassment and anxiety.
- d) Direct the respondent to pay a sum of Rs. 1,50,000/- to the complainant as reimbursement of legal expenses.
- e) Direct respondents to pay a sum of Rs. 2,00,000/- to the complainant as interim compensation. This amount shall be adjusted against refundable amount as prayed under para (a) above. for unfair trade practices.
- f) Any other order which the Hon'ble Authority deems fit in the interest of justice.



D. REPLY:

8. Reply on behalf of respondent was filed on 09.02.2023, wherein respondent submitted that the complaint in the present form is not maintainable being outside the jurisdiction of this Hon'ble Authority as all the transactions in respect of unit i.e., IT/Unit Nos.517 in Tower T-05, RPS Infinia, IT Park, Faridabad have taken place at New Delhi at the office of the respondent, therefore, the alleged cause of action, if any, has arisen at Delhi i.e., beyond the territorial jurisdiction of this Hon'ble Authority
9. That respondent submits that complainants have not come before this Hon'ble Authority with clean hands and have concealed material facts. It is submitted that it is a settled law that case of litigant approaching any court of law by concealing the facts while making the averments based on falsehood, is liable to be dismissed at the very threshold even before entering upon the merits. The Allahabad High Court in its judgment titled **Ravi Ahuja vs Rajeev Kumar [2022(1) ARC 490]** has observed that:-

"17. This Court is of the view that doors of justice will be closed for a litigant whose case is based on false or suppression of material facts. Fraud and justice never dwell together. They are opposite to each other. Concealment and suppression of material facts is nothing but a fraud to obtain the order in his favour. It is a settled proposition of law that one who has not come with clean hands is not entitled for any relief. Therefore, on this ground itself the petitioner is not entitled for any relief or interference by this Court."



10. That the present complaint has been filed by misinterpreting the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) rules, 2017. The respondent submits that true and correct facts are as follows:

- (i) That the respondent has developed and delivered several prestigious projects such as 'Green Valley Township', 'Paras Apartments Residential project', 'SAVANA Group Housing Project' and 'RPS PALMS Independent Floors' and in all of these projects large number of families have already shifted after having taken possession and Resident Welfare Associations have been formed which are taking care of welfare of the occupants /allottees of the respective projects.
- (ii) That the complainants approached the respondent and applied for allotment of a residential unit. Considering the application dated 15.03.2012 duly signed and submitted by the complainants, the said unit i.e., Unit No. 517, Tower No. T-05, RPS INFINIA, IT PARK was provisionally allotted in favour of the complainants vide allotment letter dated 26.05.2012 for a Sale Price of Rs.41,04,000/-. Thereafter, requisite Buyer's Agreement dated 24.05.2012 containing the terms and condition of allotment was duly executed by the respondent on the one hand and the complainants on the other.
- (iii) In terms of allotment in respect of the said units, the construction linked payment plan was opted by the complainants and when the



instalments became due to the complainants as per stages of construction, the respondent raised payment demands from the complainants in accordance with the agreed terms and conditions of the agreement and no illegality has been committed by it in doing so.

- (iv) In terms of allotment the details of outstanding on respective dates and accordingly demands served on the complainants are as under:

Sr. no.	Date	Amount Outstanding (in Rs.)
1.	16.05.2012	10,78,777/-
2.	23.05.2013	11,04,396/-
3.	19.07.2013	11,04,396/-
4.	15.10.2013	15,300,14/-
5.	19.05.2014	19,55,525/-
6.	10.07.2014	21,68,334/-
7.	17.09.2014	23,81,143/-
8.	08.11.2014	23,81,143/-
9.	09.12.2014	25,93,952/-
10.	07.01.2015	23,93,952/-
11.	11.04.2015	28,06,761/-
12.	04.05.2015	30,19,570/-



(v) That despite issuance of various demand letters, complainants failed to pay as demanded and after many requests and demands served, finally cancellation letter dated 18.09.2015 was issued to them due to non-receipt of due installments demanded below.

13. Thus, the complaint deserves to be dismissed with exemplary cost being devoid of merit as complainants are 'Persona Non Grata' qua that unit due to the fact that complainants are not covered in the definition of allottee. Vide such cancellation letter dated 18.09.2015, complainants are left with no right, title or interest in the unit in question as complainants have ceased to be allottee on the date of institution of the complaint for the purposes of filing the present complaint under Section 31 of the Haryana Real Estate (Development & Regulation) Act, 2016 and for invoking the jurisdiction of the Hon'ble Authority as he has already relinquished all his rights, title and interest in respect of said unit.
14. That moreover, questions pertaining to compensation/litigation cost in respect of any matter/grievance covered under Sections 12, 14, 18 and 19 under which complaint has been filed or for failure to comply/non-compliance with any of the provisions of Sections 12, 14, 18 and 19 of the said Act is required to be filed only before the Adjudicating Officer. Furthermore, the proviso to Section 71(3) states that it is only the Adjudicating Officer who can conduct an inquiry for the failure to comply/non-compliance of any of the provisions of Sections 12, 14, 18 and



- 19 and direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.
15. That although the allotment in respect of said unit was cancelled w.e.f. 20.05.2015 confirmed vide letter dated 18.09.2015, the respondent incurred funds and completed construction of the said unit and has applied to the Director General, Town and Country Planning, Haryana at Chandigarh for issuance of Occupation Certificate. After issuance of Occupation Certificate, the possession of the Units under Tower T-5 will be delivered.
16. That further, it is submitted that the allotment in respect of said unit was cancelled w.e.f. 20.05.2015. In terms of cancellation, an amount of Rs.1,88,440/- is refundable after deducting/forfeiting a sum of Rs.6,15,600/- being earnest money equivalent to 15% of basic sale price vide letter dated 18.09.2015. It is submitted that after about six and a half years of cancellation of allotment of unit the complainants visited the office of respondent on 05.02.2022 and requested the respondent to revive the allotment of said unit and promised to pay the principal outstanding of Rs.30,19,570/- in 5 instalments. However, they did not pay any of the installments.
17. That it is submitted that despite that, the complainants have not maintained the discipline towards payment of instalments, the respondent arranged funds and incurred on construction and completed the construction of the said unit and applied for issuance of occupation certificate, it is ready to



deliver possession to the complainants on issuance of occupation certificate on payment of outstanding along with interest (as per HRERA Rules).

E. ORAL SUBMISSIONS OF LEARNED COUNSEL FOR COMPLAINANT:

11. That during oral arguments, ld. counsel for the complainants reiterated arguments as mentioned at Para 3-6 of this order. Further it is submitted that respondent is liable under Section 55 of the Indian Contract Act, 1872 as they failed to perform their contract within the stipulated period, in a contract in which time is the essence. Therefore, the respondent must be made liable and directed to issue refund of the deposited amount along-with interest.

F. ORAL SUBMISSIONS OF LEARNED COUNSEL FOR RESPONDENT:

18. That during oral arguments, ld. counsel for the respondent reiterated arguments as mentioned at Para 9-17 of this order. Further during the course of hearing, it was submitted by ld. counsel for respondent that the respondent is ready to give refund to complainants as per the terms of allotment.

G. ISSUES FOR ADJUDICATION:

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



H. OBSERVATIONS OF THE AUTHORITY:

20. The Authority has gone through the rival contentions. In light of the background of the matter as captured in the order and also the arguments submitted by both the parties, Authority observes that admittedly complainants had purchased the an IT unit admeasuring 684 sq. ft. built up area in the year 2012 in the real estate "RPS Oxypark" located at Mathura Road, Faridabad being developed by the respondent promoter; office space buyer's agreement was executed between the parties on 24.05.2012; out of basic sale price Rs. 41,04,000/- complainant had paid a total amount of Rs. 80,000/- by 25.05.2012. In terms of clause 16 of said agreement, possession was to be delivered within 36 months from the date of execution of builder buyer agreement i.e. by 24.05.2015. Meaning thereby that till 24.05.2015 the complainants were obligated to make the payments as per demanded by respondent as per agreed terms of section 19(6) of RERA Act, 2016

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



And respondent was obligated to complete the construction of the unit by the said time. However, it is admitted fact that the last payment was made by complainants was on 24.05.2012 i.e., on the date of execution of buyers agreement itself. Subsequent to payments made on 24.05.2012, complainants had not made any payments. Whereas, the respondent had issued various demands for payment that were never honored by complainants. Further, there is nothing on record to show the construction work for the unit never started due to which complainant did not make a simple payment after 24.05.2012. Stand of the respondent is that due to non-payment of outstanding dues of Rs. 30,19,570/- by complainants, the allotment was confirmed to be cancelled on 18.09.2015. On perusal of said letter dated 18.09.2015, it is revealed that respondent had drawn the attention of the complainants to letter dated 20.05.2015 and communicated that due to the cancellation of unit on 20.05.2015 an amount of Rs.1,88,440/- is refundable after forfeiting earnest money of Rs.6,15,600/- (15% of Basic sale price) from the total amount paid till date i.e. from Rs.8,00,000/-. However, admittedly this amount of Rs. 1,88,440/- was never refunded back to the complainants' account. Here, Authority observes that there is nothing on record to show that the complainant ever objected or challenged the cancellation and amount forfeiture letter dated 18.09.2015. Since, content of letter dated 18.09.2025 not disputed by the parties it means that the complainant were very much aware of the fact that their unit has



been cancelled on 20.05.2015 i.e., before the deemed date of possession due to non-payment of dues. Infact, the complainants vide letter dated 05.02.2022 has requested the respondent to reinitiate its unit in question. Vide this letter one of the complainant i.e. Ms. Ritu Rawat had accepted the fact that they had received the intimation regarding cancellation of the unit allotted to them. In this letter, complainants had admitted that they could not make the payments on time due to personal reasons and stated they are ready to pay the due amount of Rs. 30,19,570/- in installment and the unit be reinstalled vide this same letter dated 05.02.2022. She had also undertaken that in case the due amounts are not received by the company the unit shall remain cancelled. Authority observes that there is no document on file to show that the complainant made any of the such payments, meaning thereby the unit remained cancelled, vide letter dated 20.05.2015, now the complainants have filed this present complaint in the year 2022 and seeking of the total amount of Rs. 80,000/- along with interest at prescribed rate due to the fact that the handing over possession of the unit was delayed by respondent.

21. In view of the above, the Authority observes that respondent was justified in terminating the unit of the complainant as complainant failed to make payments. The only obligation which was left on the part of the respondent was to refund the amount paid by the complainant after deducting earnest money which has not been done till date. Clause 11 of the office space



buyer's agreement dated 24.05.2012 provides for forfeiture of earnest money upon cancellation of unit and the cancellation letter dated 20.05.2015 prescribes that 15% of the earnest money is liable to be forfeited and rest of the money can be refunded. In this regard, it is pertinent to refer to judgement dated 24.03.2023 passed in *Appeal no. 292/2019 titled as Experion Developers Pvt Ltd vs. Sanjay Jain & Smt. Kokila Jain* wherein Hon'ble Real Estate Appellate Tribunal has observed that forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the Real Estate i.e. apartment/plot/building. Relevant part of the order is reproduced below for reference:-

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



transaction falls through by reason of the default or failure of the purchaser."

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

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

20. In citation DLF Ltd.'s case (supra), the Hon'ble National Consumer Disputes Redressal Commission, while discussing the cases of Maula Bux's case (supra), Satish Batra's case (supra) and other cases as mentioned in para No.10 of the said order, has clearly laid down that only a reasonable amount can be forfeited as earnest money in the event of default on the part of the purchaser and it is not permissible in law to forfeit any amount beyond a reasonable amount unless it is shown



that the person forfeiting the said amount had actually suffered loss to the extent of the amount forfeited by him. Further, it was held that 20% of the sale 15 Appeal No.292/2019 & 35/2021 price cannot be said to be a reasonable amount which the petitioner company could have forfeited on account of default on the part of the complainant unless it can show it had suffered loss to the extent the amount was forfeited by it. In absence of evidence of actual loss, forfeiture of any amount exceeding 10% of the sale price, cannot be said to be a reasonable amount.

21. In his last desperate attempt, learned counsel for the promoter has submitted that since the allottees had specifically agreed to pay 15% of the sale price as earnest money, the forfeiture to the extent of 15% of the sale price cannot be said to be unreasonable as the same is in consonance with the terms agreed between the parties. He has also submitted that so long as the promoter was acting as per the terms and conditions agreed between the parties, it cannot be said to be deficient in rendering services to the allottees. This aforesaid submission as put forward by the learned counsel for the promoter, was also submitted before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in DLF's case (supra) and while dealing with the same, it was observed that forfeiture of the amount which cannot be shown to be a reasonable amount, would be contrary to the very concept of forfeiture of the 16 Appeal No.292/2019 & 35/2021 earnest money and if the said contention is accepted, then, an unreasonable person in a given case may insert a clause in Buyer's Agreement whereby say 50% or even 75% of the sale price is to be treated as earnest money and in the event of the default on the part of the buyer, he may seek to forfeit 50% sale price as earnest money. It was further observed and held that an agreement for forfeiting more than 10% of the sale price would be invalid since it would be contrary to the established legal principle that only a reasonable amount can be forfeited in the event of default on the part of the buyer. Here, it is also pertinent to mention that the deduction of 10% of the total sale



consideration of the unit, out of the amount deposited by the allottees, is also in conformity with the Regulations 2018, as notified by the Authority, wherein, it has been stipulated that forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the Real Estate i.e. apartment/plot /building."

Accordingly, respondent can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainant. In this case agreement has been executed and basic sale price provided in said agreement is Rs 41,04,000/-. Earnest money of 10% of the basic sales price is liable to be deducted from the amount paid by the complainant which works out to be Rs. 4,10,400/-. The amount that remains to be paid by respondent after deducting earnest money works out to be Rs. 3,89,600/- (Rs.8,00,000-4,10,400).

22. Therefore, in light of aforesaid observations, Authority finds it to be fit case for allowing refund of Rs.3,89,600/- in favor of complainant after deducting earnest money to the tune of 10% of basic sale price in terms of RERA Act of 2016 and HRERA Rules of 2017.

23. The 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. 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".

24. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 01.03.2024 is 8.85%. Thus, prescribed rate of interest will be MCLR+2% i.e. 10.85%.
25. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 i.e. to refund the balance amount after cancellation and complainants are entitled for refund of amount that remains pending after deduction of earnest money



along-with interest. Hence, respondent will be liable to pay the complainants interest from the date of cancellation till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount after deduction of 10% earnest money 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 of cancellation till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.85% till the date of this order and total amount works out to **Rs. 7,62,517/-** as per detail given in the table below:

Amount (in Rs.)	Date of cancellation	Interest Accrued till 12.03.2024 (in Rs)	TOTAL (in Rs.)
3,89,600/-	20.05.2015	3,72,917/-	7,62,517/-

26. Further, the complainant is seeking sum of Rs.5,00,000/- each as compensation for unfair trade practices, for causing mental harassment and anxiety, Rs.1,50,000/- on account of cost of litigation expenses and Rs.2,00,000/- as interim compensation. 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. Same is reproduced as under:

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...At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

27. Thus, 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.

I. DIRECTIONS OF THE AUTHORITY:

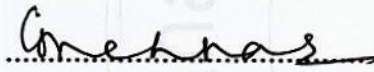
28. Taking into account above facts and circumstances, Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:




(a) Respondent is directed to refund the amount of Rs. 3,89,600/- along with interest of @ 11.10 % amounting to **Rs.7,62,517/-** to the complainants as specified in the table provided in para 27 of this order. Interest shall be paid as per the definition of interest provided under Section 2(za) of the Act.

(b) 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.

29. 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]