

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no.: 321 of 2024  
Order pronounced on: 02.07.2025

Sudhir Kumar  
R/o: - Ismailpur, Munda Khera (78),  
Badli, Bahadurgarh, Jhajjar, Haryana-124105.

**Complainant**

**Versus**

M/s DSS Buildtech Private Ltd.  
**Regd. office:** 506, Floor-5<sup>th</sup>,  
Time Square Building, Sushant Lok,  
Phase-I, Gurugram-122009.

**Respondent**

**CORAM:**  
Shri Ashok Sangwan

**Member**

**APPEARANCE:**  
Vijay Pal Chauhan (Advocate)  
Harshit Batra (Advocate)

Complainant  
Respondent

**ORDER**

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section

11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project details**

2. The particulars of unit, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"The Melia", Sector-35, Sohna, Gurugram, Haryana.
2.	Area of the project	17.41 acres
3.	Nature of project	Group housing
4.	DTCP license no.	77 of 2013
5.	RERA registered	Registered Registration no. 288 of 2017 Dated-10.10.2017
6.	Allotment letter	27.09.2019 (As on page no. 29 of complaint)
7.	Unit No.	606, Tower-G, Floor-6 <sup>th</sup> (As on page no. 33 of complaint)
8.	Unit Area	873 sq.ft [carpet Area]



		(As on page no. 33 of complaint)
9.	Date of execution of agreement for sale	03.10.2019 (As on page no. 31 of complaint)
10.	Possession clause	<p><b>Clause-7 POSSESSION OF APARTMENT FOR RESIDENTIAL USAGE</b></p> <p><b>7.1 Schedule for possession of the said Apartment-</b> The Promoter agrees and understands that timely delivery of possession of the Apartment to the Allottee(s) and the Common Area to the Association or the Competent Authority, as the case may be, as provided under Rule 2(1) (f) of Rules, is the essence of the Agreement. The Promoter assures to hand over possession of the Apartment <b>on or before 25.10.2021</b> unless there is delay due to "force majeure", court orders, government policy/guidelines, decisions affecting the regular development of the real estate project. [Emphasis supplied]</p>
11.	Due date of possession	25.04.2022 [25.10.2021 + 6 months on account of Covid-19]
12.	Tri-partite agreement [With SBI]	18.10.2019
13.	Total sale consideration	Rs.90,60,791/- (As on page no. 35 of complaint)
14.	Total amount paid by the	Rs.80,19,563/-

	complainant	Rs.61,74,563/-[Disbursed by bank] Rs.18,45,000/- [Paid by complainant from his own funds] <b>[Note: Vide proceedings dated 14.05.2025, the same was inadvertently recorded as Rs.61,74,563/-]</b>
15.	Cancellation letter	16.03.2024 (As on page no. 42 of reply)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

### B. Fact of the complaint

3. The complainant has made the following submissions: -

- I. That the respondent/promoter launched a residential project namely "The Melia" situated at Sector-35, Sohna, District Gurugram" hereinafter referred to as the project. After inquiring from the officials of the respondent and believing in the assurances of the respondent the complainant applied for booking of a residential apartment bearing no. G - 606, on the Sixth Floor, having a carpet area of 873 sq. ft. The respondent had allotted the above said apartment in favour of the complainant, having super area 873 sq. ft. vide Allotment Letter dated 27.09.2019. The total sale consideration of the said unit was Rs.90,60,791/-.
- II. That the complainant and respondent executed the Builder Buyer



Agreement on 03.10.2019. As per the agreement, the respondent was to deliver the possession of the said residential unit to the complainant on or before 25.10.2021.

- III. That the complainant had paid as and when the demand was raised by the respondent without any delay. Till now, the complainant has paid Rs.80,19,563/- to the respondent against the allotment of the said unit. That since the day of sanctioning of the loan, the complainant is regularly paying the EMIs to the bank.
- IV. That delay on account of handing over possession of the said allotted unit to the complainant did not raise further demand. Since, there is a delay, the complainant has a legal right to cancel the said and seek refund of the entire deposited amount of Rs.80,19,563/- along with interest charged by the bank on loan amount from the respondent as per the provision of the Act, 2016.
- V. That the complainant visited the respondent's office and requested for refund of the entire amount along with interest but the officials of the respondent tried to linger on the matter on one pretext or another other and failed to do the same till date.
- VI. That the complainant continuously requested the respondent to refund the paid amount. The respondent's staff gave oral assurances to consider the complainant's request, after consultation with senior management.
- VII. That the respondent is enjoying the hard-earned money of the complainant illegally. The respondent had no right to unilaterally hold the hard-earned money of the complainant and the respondents could not even complete the structure even after



more than one year of delay in handing over the possession unit.

- VIII. That pursuant to the issuance of the Allotment Letter dated 17.07.2019, the official Managed Serviced Apartment Buyers Agreement (Buyers Agreement) was executed between the complainant and the respondent on 05.08.2019.
- IX. That though the payment was to be made by the complainant based on the construction unfortunately the demands raised were not corresponding to the factual construction situation on the ground. As per the demands raised by the respondent, based on the payment plan, the complainant already paid a total sum Rs.80,19,563/- towards the said unit against total consideration Rs.90,60,791/-.
- X. That during the period the complainant went to the office of the respondent several times and requested them to allow visit the site but it was never allowed saying that they do not permit any buyer to visit the site during the construction period, once complainant visited the site but was not allowed enter the site.
- XI. That the complainant contacted the respondent on several occasions and was regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and was never definite about the delivery of the possession.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
- Direct the respondent to refund the amount of Rs.80,19,563/- in terms of Section 18 (1)(a) of the Act 2016 read with Rule 15 of the



Haryana Real Estate (Regulation and Development) Rules 2017.

- ii. Direct the respondent to pay litigation charges of Rs.1,00,000/- to the complainant.

**D. Reply filed by the respondent**

5. The respondent has submitted the following by way of written reply:

- I. That the respondent is developing a residential group housing complex approximately spread over 17.418754 acres of land situated in village Mohamadpur Gujjar, Sector 35, Sohna, Gurugram Haryana, privately named as "The Melia". The respondent has obtained license from Director General, Town and Country Planning Department, Government of Haryana for development of the project vide license no. 77 of 2013.
- II. That the complainant after conducting his own due diligence and after being fully satisfied with the details of the project, approached the respondent and submitted an application dated 09.09.2019 for booking of a 2 BHK apartment admeasuring 1350 sq. ft. for the total sale consideration of Rs.90,60,791/-. The complainant has agreed and signed the payment plan for payment of installments dues as per Special Payment Plan.
- III. That pursuant to the submission of the Application Form, the respondent allotted to the complainant flat bearing no. G-606 on the Sixth Floor of Tower-G in the project vide Allotment Letter dated 27.09.2019.
- IV. That the complainant was well aware and acutely understood his obligation to make timely payment of demands as per the Payment Plan and hence, the complainant applied for a home loan facility

from SBI Bank for the purchase of the unit in question, upon mortgaging the same with the bank.

- V. Thereafter, on 03.10.2019, the complainant entered into Agreement for Sale with the respondent. The due date for the offer of possession as per Agreement to Sale was subject to force majeure circumstances beyond the control of the respondent including but not limited court orders, government policy/guidelines, decisions affecting regular development of the real estate project some of which are described herein below:

S. no.	Date of Order	Directions	Period of Restriction	Days affected	Comments
1.	24 <sup>th</sup> July, 2019	NGT In O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of		30 days	Th directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against





		action by way of prosecution and recovery of compensation relatable to the cost of restoration.			the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
2	11.10.2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 <sup>th</sup> of Oct 2019 whereby the construction activity has been prohibited from 11 <sup>th</sup> Oct/ 2019 to 31 <sup>st</sup> Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this	11 <sup>th</sup> Oct 2019 to 31 <sup>st</sup> Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.



		period.			
3.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 - 14.02.2020	102 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
4.	3 <sup>rd</sup> week of Feb 2020	Covid-19 pandemic	From Feb. 2020	To date (3 month s Nation wide lockdo wn)	Since the 3 <sup>rd</sup> week of February 2020, the Respondent has also suffered devastatingly because of the outbreak, spread, and resurgence of COVID-19 in the



					<p>year 2020. The concerned statutory authorities had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, during the interregnum, large-scale migration of labor occurred and the availability of raw materials started becoming a major cause of concern.</p>
			<b>Total days</b>	<b>303 days</b>	

VI. That from the facts indicated above, it is comprehensively established that a period of 303 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities and the



Covid-19 pandemic. That the Authority have granted 6 months extension for all ongoing projects vide Order/Direction dated 26th of May, 2020 on account of 1st wave of COVID-19 Pandemic. It is pertinent to mention herein that the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula had decided to grant extension of 3 months in addition to waiver granted during first wave of COVID Pandemic from 1<sup>st</sup> of April 2021 to 30<sup>th</sup> of June 2021 considering the 2nd wave of COVID-19 as a Force Majeure event.

- VII. All the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above. It is relevant to mention here that post Covid period there was labour shortage which delayed the construction on the project site, until the respondent was completely operational and could proceed at full speed.
- VIII. That the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the timeline for handover of possession. It is humbly submitted that vide application dated 17.08.2023 before DTCP the respondent has already applied for Occupation Certificate for towers A, D, E & F of the said project and will possibly apply for the remaining towers of the said project.
- IX. That the complainant requested the respondent to issue NOC towards the grant of loan to the complainant by SBI Bank and permission to mortgage of the unit. The respondent abided by the request of the complainant and granted NOC to SBI Bank vide letter



dated 18.10.2019 granting permission to mortgage the unit in favour of the bank by way of security for repayment of the said loan. That Tripartite Agreement was executed between the complainant, SBI Bank and the respondent on 18.10.2019.

- X. That the respondent sent a letter dated 18.10.2021, to the respondent requesting the complainant to come forward to register the Agreement for Sale but the complainant did not come forward to the same to the reasons best known to him.
- XI. That as on date, a payment of Rs.61,74,563/- has been received by the respondent towards the Total Sale Consideration of the unit which is duly disbursed by the bank against the loan availed by the complainant against the said unit.

Payment details		
i)	Total Sale Consideration (As per BBA)	Rs.90,60,791/-
ii)	Total Amount Paid by the Allottee	Rs.61,74,563/-
	<b>Total</b>	Rs.61,74,563/-

- XII. That the complainant was liable to pay the required EMIs to the Bank but the complainant deliberately failed to pay the required EMIs pursuant to which SBI Bank vide letter dated 15.01.2024 sought the revocation of Tri-Partite Agreement. The relevant extract from letter dated 15.01.2024 is reproduced herein under for the kind perusal of this Authority:

*"Therefore, you are called upon to cancel the booking of captioned flat as per terms Para 7.1 of agreement for sale dated 03.10.2019 of Shri Sudhir Kumar and repay all amounts received with interest by you on behalf of*





*Borrowers to our Bank within 10 days of receipt of this letter as per Tri-Partite Agreement Clause No. 4.*

*The closure amount of Housing Loan A/C No- 38854386332 of Shri Sudhir Kumar is Rs.63,48,943/- ( Rs Sixty Three lakh Forty Eight thousands Nine hundred forty three only) as on 25.01.2024. Since Interest is applied daily to the captioned housing loan account, therefore, you are requested to take into consideration of interest on the basis wef 24.01.2024 till date of remittance of funds to SBI."*

- XIII. That since the complainant failed to clear/pay the required EMIs against the loan despite various reminders sent by bank via telephonic calls, legal notices, emails etc., therefore the respondent was called upon to cancel the allotment of the unit as per the terms of Clause 7.1 of the Agreement for Sale. That accordingly, vide letter dated 16.03.2024, the respondent informed the complainant that the unit allotted in favour of the complainant stands cancelled. It is submitted that the Respondent has duly complied with all applicable provisions of the Real Estate (Regulation and Development) Act, 2016 and Rules made thereunder and the Agreement for Sale.
- XIV. That the respondent cannot be saddled with responsibility to grant refund to such unscrupulous allottee with dishonest intentions, which are clearly outside the scope of the stipulated terms and conditions of the Agreement to Sale. It is relevant to mention herein that the payment received against the unit has duly been disbursed by the bank against the loan availed by the complainant. The respondent is bound by the terms of the Tri-Partite Agreement and thus has cancelled the allotment of the unit on account of violation of terms and conditions of Tri-partite Agreement by the complainant.



6. Copies of all the relevant documents have been filed and placed on the record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents as well as written submissions made by the complainants.

**E. Jurisdiction of the authority**

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

....

**(4) The promoter shall-**

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and*

*regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.*

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent.**

**F.I Objection regarding delay in project due to Force majeure circumstances:**

11. The respondent/promoter raised an objection in its reply that the construction of the project was delayed due to force majeure conditions such as outbreak of Covid-19 pandemic, various orders of the court, government policies/guidelines. Further, the Authority has gone through the possession clause of the agreement and observed that the respondent/developer proposes to handover the possession of the allotted unit on or before 25.10.2021.
12. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the 'Builder Buyer Agreement was executed between the parties on 03.10.2019. As per clause 7 of the Agreement dated 03.10.2019, the respondent proposed to handover possession of the unit to the complainant on or before 25.10.2021.



13. The respondent has submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, shortage of labour etc but these were for a short period of time and are the events happening every year. The respondent was very much aware of these event and thus, the promoter/ respondent cannot be given any leniency based on the aforesaid reasons. The respondent has further stated that due to the outbreak of Covid-19 the project was stalled. The Authority is of the view that the Authority through notification no. **9/3-2020 dated 26.05.2020**, had already provided a six months extension for projects with completion dates on or after 25.05.2020, the due date of possession in the present complaint, falls within those timelines. Thus, the grace period of six months in lieu of Covid-19 is granted to the respondent. Therefore, the due date of handing over possession comes out to be 25.04.2022.

**G. Findings on the relief sought by the complainant:**

- G.I. Direct the respondent to refund the amount of Rs.80,19,563/- in terms of Section 18 (1)(a) of the Act 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017.**
14. In the year 2013, the complainant approached the respondent and booked an apartment in the project "The Melia" situated at Sector-35, Sohna, Gurugram. Vide Allotment letter dated 27.09.2019, the respondent allotted an apartment bearing no. G-606, on 6<sup>th</sup> floor, Tower-G, admeasuring 873 sq.ft. (carpet-area) for a sale consideration of Rs.90,60,791/-. The Builder Buyer Agreement was executed between the complainant and the respondent on 03.10.2019. As per clause 7 of the



- agreement dated 03.10.2019, the respondent undertook to deliver possession of the unit to the complainant on or before 25.04.2022.
15. That the complainant has deposited an amount of Rs.18,45,000/- as part payment and the receipts of the same are issued by the respondent in favour of the complainant and the same is annexed with the complaint. A Housing loan was sanctioned by the SBI Bank of Rs.61,74,563/- in favour of the complainant, which was transferred by the SBI Bank to the respondent-promoter. That a Tri-partite Agreement was executed between the complainant, the respondent and the bank on 18.10.2019 and the complainant was liable to pay the required EMIs to the Bank.
16. The respondent has submitted that as per the Tri-Partite Agreement, the complainant was liable to pay the required EMIs to the Bank but the complainant deliberately failed to pay the required EMIs pursuant to which SBI Bank vide letter dated 15.01.2024 sought revocation of the Tri-partite Agreement dated 18.10.2019 and called upon to the respondent to cancel the allotment of the unit in terms of Clause-7.1 of the Agreement for Sale.
17. That on 16.03.2024, the respondent issued a cancellation letter in respect of "Unit no. G-606" in the project "The Melia" situated at Sector-35, Sohna, Gurugram to the complainant stating that due to continuous failure of the complainant to pay the monthly EMIs against the loan sanctioned by the Bank and consequently, the account of the complainant is classified as a "Non-Performing Asset (NPA)" by the Bank effective from 08.01.2024. Since, the complainant has not responded to the legal notices, emails and telephonic reminders served by the Bank,



and have failed to repay the irregular dues/EMIs, the Bank, vide its letter dated 15.01.2024, had directed the respondent to cancel the booking/allotment of the complainant's unit in accordance with the terms of para 7.1 of the Agreement For Sale. By obeying the direction of the Bank, the booking/allotment of the complainant's unit stands cancelled.

18. The respondent has denied the receipt of an amount of Rs. 18,45,000/- from the complainant and has contended that no such payment was ever received. Vide order dated 14.05.2025, the respondent was directed to file an affidavit of its Director, duly supported by a Board Resolution, addressing the present proceedings before the Debt Recovery Tribunal (DRT), the status of settlement of dues with the Bank, and the specific issue of the alleged deposit of Rs. 18,45,000/-, which is the subject matter of the complainant's claim and is referred to in the payment request letter dated 18.10.2019.

19. In compliance with the said direction, the respondent submitted an affidavit along with the requisite Board Resolution in the Registry of the Authority on 04.06.2025. Through the said affidavit, the respondent has stated that the respondent is not unaware of any proceedings before the DRT in relation to the present dispute having been initiated. It has further reiterated its denial of having received the alleged sum of Rs. 18,45,000/- from the complainant, as mentioned at page 70 of the complaint. The respondent asserted that no such amount has been

deposited into, transferred to, or credited in its bank account. Moreover, the complainant has neither furnished any proof of payment nor intimated the respondent about the purported transaction.

20. With respect to the settlement process concerning the dues payable to the Bank, the respondent submitted that such settlement discussions are ongoing and have not reached a conclusive stage. It has also stated that the total amount received by it till date stands at Rs. 61,74,563/-, which was directly disbursed by the State Bank of India under the loan arrangement availed by the complainant.

- **Issue with respect to the amount paid by the complainant.**

21. The Authority observes that the respondent has received a total sum of Rs. 80,19,563/-, comprising two components:

- (i) an amount of Rs. 18,45,000/- paid directly by the complainant from his personal funds, and
- (ii) an amount of Rs. 61,74,563/- disbursed through a loan sanctioned by the State Bank of India, availed by the complainant. The respondent-promoter has issued corresponding advance payment receipts acknowledging the said payments. These receipts have been annexed with the complaint and are available on record from page nos. 64 to 69.

<i>Receipt date</i>	<i>Amount</i>	<i>Page no.</i>
18.10.2019	Rs.3,00,000/-	65 of complaint



18.10.2019	Rs.2,00,000/-	66 of complaint
18.10.2019	Rs.2,00,000/-	67 of complaint
18.10.2019	Rs.5,45,000/-	68 of complaint
18.10.2019	Rs.4,00,000/-	69 of complaint

22. As per the "Payment Request Letter" dated 18.10.2019, issued by the respondent-promoter and placed on record at page no. 70 of the complaint, a demand for an amount of Rs. 62,47,386/- was raised by the respondent. The said letter explicitly acknowledges the receipt of Rs. 18,45,000/- as advance payment from the complainant. This documentary evidence clearly substantiates that the complainant had, in fact, paid the sum of Rs. 18,45,000/-, and that the remaining balance of Rs. 62,47,386/- was treated as outstanding against the complainant.

- **Issue with respect to cancellation of the unit**

23. The respondent has received a sum of Rs.61,74,563/-, which was disbursed by the State Bank of India pursuant to a loan sanctioned in favour of the complainant. A Tripartite Agreement dated 18.10.2019 was executed among the complainant, the respondent, and the State Bank of India, under which a loan amount of Rs. 74,57,511/- was availed by the complainant. The pertinent terms and conditions of the said agreement are reproduced hereinbelow:

*" 2. That the Builder/Developer agrees that it has no objection to the Borrower(s) mortgaging the said flat with proportionate share in land to the SBI as security for the said loan agreed to be advanced by the SBI for the purpose of purchase/construction of the said flat. In the event of default in the*



*repayment of loan and or the Borrower committing any other default which makes the Borrower(s) liable for the repayment of the entire amount outstanding in the said loan as per the terms of the Loan Agreement executed between the Borrower(s) and the SBI, the Builder shall, at the request of SBI be under obligation to not deliver possession to the Borrower and/or cancel the booking and pay all the amounts received by the Builder on behalf of the Borrower(s) to SBI including also any amount paid by the Borrower to the Builder. However, the Builder/Developer shall be entitled to recover cancellation and/or any other charges, if any payable by the Borrower under the terms of application form for purchase of the said flat and/or agreement to sale/construction out of the Borrower's contribution. Upon payment of the amounts by the Builder/Developer to SBI as aforesaid, the SBI and the Borrower will not have any claim, charge, lien, mortgage, right, title and interest etc. whatsoever, over the said flat. SBI shall issue a certificate to release any mortgage/charge/lien created on the said flat. The Borrower hereby expressly agrees that in the event of default in either repayment of loan or any other default by the Borrower, SBI shall be entitled to request the Builder to cancel the booking and return the amounts received by the Builder and the Borrower agrees and acknowledges that any such request by SBI and payment made by the Builder under this clause to SBI shall be binding upon the Borrower.*  
*[Emphasis supplied]*

24. The complainant had availed a housing loan in respect of the subject unit and was accordingly obligated to make timely payment of the equated monthly instalments (EMIs) to the lending bank. However, due to the complainant's failure to honour the said repayment obligations, the State Bank of India, vide its letter dated 15.01.2024, sought revocation of the Tripartite Agreement dated 18.10.2019. In consequence thereof, and acting upon the said communication, the respondent proceeded to cancel the allotment of the complainant's unit on 16.03.2024.
25. The Authority is of the view that the cancellation of the subject unit by the respondent was effected pursuant to the request made by the State Bank of India, vide letter dated 15.01.2024, which was issued due to the complainant's default in making timely EMI payments to the Bank. It is



evident that the said cancellation did not arise from any default on the part of the complainant in relation to payments due to the respondent. The relevant contents of the aforesaid letter are reproduced below:

" Dear Sir,

**REVOCATION OF TRI-PARTITE AGREEMENT DATED 18.10.2019**  
**HOME LOAN A/C NO. 3885438332 OF SRI SUDHIR KUMAR**  
**FLAT NO G-606, 6<sup>TH</sup> FLOOR, TOWER-G, "THE MELIA, SILVERGLADES"**  
**SEC-35, SOHNA ROAD, GURUGRAM (HARYANA)**

We advise that Shri Sudhir Kumar S/o Shri Sukhbir, Village-Ismailpur, PO-Badli, Distt-Jhajjar (Haryana)-124105 was sanctioned a Home Loan of Rs.74,57,511/- on 18.10.2019 on the basis of Tri-Partite Agreement dated 18.10.2019 signed and undertaking by the Borrower, The Builder M/S DSS Buildtech Pvt Ltd, and Bank (SBI). Borrowers were to pay EMI of Rs.51,063/- per month but borrowers has not adhered to Bank's financial discipline and his borrowal account has been clarified as "Non Performing Assets (NPA)" with effect from 08.01.2024. We have requested the borrowers through legal notices in past and various notices, E-mails & telephonic reminders, but has not yield any result and Borrowers has not repaid the irregular amount or EMI till date stating that builder have not given the possession timely as per agreement for sale.

Moreover, your project is not yet completed as on today. As per the agreement of sale dated 03.10.2019, para 7.1, "The Promoter assure to handover possession of the apartment on or before 25.10.2021 unless there is delay due to "force majeure", court order, government policy, thereby violating Terms and Conditions of the agreement of sale.

Therefore, you are called upon to cancel the booking of captioned flat as per terms Para 7.1 of agreement for sale dated 03.10.2019 of Shri Sudhir Kumar and repay all amounts received with interest by you on behalf of Borrowers to our Bank within 10 days of receipt of this letter as per tri-Partite Agreement Clause no. 4.

The closure amount of housing Loan A/C No.-38854386332 of Shri Sudhir Kumar is Rs.63,48,943/- (Rs. Sixty three lakh Forty Eight thousands Nine hundred forty three only) as on 25.01.2024. Since Interest is applied daily to the captioned housing loan account, therefore, you are requested to take into consideration of interest on the daily basis w.e.f 24.01.2024 till date of remittance of funds to SBI.

[Emphasis supplied]

26. After consideration of the documents placed on record, the Authority is of the view that the complainant has made a total payment of



Rs.80,19,563/- to the respondent. Out of this amount, Rs.18,45,000/- was paid directly by the complainant, while the remaining Rs.61,74,563/- was disbursed directly to the respondent by the State Bank of India pursuant to a housing loan sanctioned in favour of the complainant.

27. As per Clause 2 of the Tripartite Agreement dated 18.10.2019, in the event of a default in payment by the complainant, the respondent was entitled to withhold possession and/or cancel the booking, with an obligation to return the amounts received. The said clause also entitles the Bank to request cancellation of the booking and refund of the disbursed amount in case of default in repayment of the loan or any other breach by the complainant.
28. In the present case, the Bank issued a letter dated 15.01.2024 to the respondent, seeking cancellation of the complainant's unit on account of the complainant's failure to pay EMIs in a timely manner. It is noted, however, that the complainant has alleged that the respondent failed to deliver possession in accordance with the terms of the Agreement for Sale, and that the project remains incomplete as on date. Acting upon the Bank's letter, the respondent proceeded to cancel the complainant's unit on 16.03.2024.
29. The Authority observes that the said cancellation was a consequence of the complainant's default in EMI payments to the Bank. However, the complainant is not in default with respect to any payment obligations



owed to the respondent. The records indicate that the complainant paid all amounts as per the demands raised by the respondent. The respondent has acted solely on the instructions of the Bank in cancelling the unit.

30. The Authority observes that the payment plan for the unit of the allottee was "Construction Linked Payment Plan" but the financing bank i.e., SBI released the entire loan amount of Rs. 61,74,563/- in a single tranche on 24.10.2019, after the execution of the Tri-partite agreement on 18.10.2019 which is not understandable and could be a subject-matter of investigation for which this Authority does not have the competent jurisdiction. Further, the Bank's letter dated 15.01.2024, requesting cancellation of the unit, also records the complainant's position that non-payment of EMIs was due to the respondent's failure to complete the project.
31. It is also noted that the respondent has failed to obtain the Occupation Certificate for the complainant's unit till date. The Authority is of the view that the financial institution, i.e., the State Bank of India, does not fall within the purview of the Real Estate (Regulation and Development) Act, 2016, and hence no directions may be issued against it under the provisions of the said Act.
32. Since the complainant has made timely payments to the respondent and has not defaulted in that regard, and given that the respondent has failed to complete the project and deliver possession, the complainant should

not be made to suffer the consequences, including loss of the allotted unit and the burden of a substantial outstanding loan. In the interest of justice, the complainant is entitled to a refund of the entire amount paid to the respondent. The financial institution is at liberty to seek appropriate legal recourse against the complainant for non-payment of EMIs before a competent forum.

33. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

34. 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., 02.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

35. The definition of term 'interest' as defined under section 2(za) of the Act provides that 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. The relevant section is reproduced below:

*"(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;"*

36. In view of the foregoing factual circumstances and applicable legal provisions, the respondent is directed to refund the entire amount paid by the complainant i.e., Rs.80,19,563/- along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of each payment till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

**G.II Direct the respondent to pay litigation charges of Rs.1,00,000/- to the complainant.**

37. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. Hon'ble Supreme Court of India in civil appeal nos, 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors., 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 adjudicating officer as per Section 71 and the quantum of compensation & litigation expense shall be adjudged by the 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, for claiming compensation under Sections 12, 14, 18 and Section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under Section 31 read with Section 71 of the Act and Rule 29 of the Rules

#### **H. Directions of the authority**

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

- i. The respondent is directed to refund the full paid-up amount of Rs.80,19,563/- /- alongwith interest at the prescribed rate i.e., 11.10% on the amount paid by the complainant, from the date of each payment till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid.* out of the total amount so assessed, the amount paid by the Bank/financial institution will be refunded in the bank and the balance amount alongwith interest, if any will be refunded to the complainant.
- ii. The respondent/promoter is further directed to obtain the NOC from the concerned bank/financial institution of the allotted unit of the complainant and a copy of the same be provided to the complainant.





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- iii. A period of 90 days is given to the respondent to comply with the directions given in the order and failing which legal consequences would follow.

39. Complaint stands disposed of.

40. File be consigned to registry

Dated: 02.07.2025

(Ashok Sangwan)  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram



**HARERA**  
**GURUGRAM**