



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no.:	2206 of 2023
Date of filing:	26.10.2023
First date of hearing:	30.11.2023
Date of decision:	22.07.2025

**Phool Kanwar,**

R/o V.P.O Bohar

Distt. Rohtak- 124021

.....COMPLAINANT

Versus

**Housing Board Haryana**

C-15, Awas Bhawan,

Sector-6, Panchkula, Harayana

.....RESPONDENT

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

**Member**  
**Member**

**Present:** - Adv. Sudeep Gahlawat, Counsel for the complainant through VC.  
Adv. Shubham, Proxy Counsel for Adv. Arvind Seth, Counsel for  
the respondnet through VC.

*Geeta Rathee*

**ORDER**

1. Present complaint is filed by the complainant under Section 31 of the 'Real Estate (Regulation & Development) Act, 2016' (hereinafter referred as RERA, 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 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 project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Flat for serving/Ex- Defense and Para Military Personnel of Haryana.
2.	Name of the promoter	Housing Board Haryana
3.	RERA registered/not registered	Unregistered
4.	Unit no.	61-A
5.	Date of builder buyer agreement	Not provided
6.	Possession clause in BBA	Not available



7.	Total sale consideration	₹15,70,000/-
8.	Amount paid by complainant	₹3,93,000/-
10.	Offer of possession	Not given

### **B. FACTS OF THE PRESENT COMPLAINT**

3. That the respondent offered multi storied flats for serving/ ex-defence and para-military personnel of haryana up to the rank of jcos and equivalent, their widows and orphans on hire purchase basis at Faridabad, Gurugaon, Mahendergarh, Jhajjar, Panchkula, Pinjore, Palwal, Rewari, Sampla, Rohtak and Bawani Khera. The registration for the aforesaid flats was to be made from 17.02.2014 to 16.03.2014 extended up to 30.06.2014. Copy of brochure is annexed as annexure P-1.
4. That complainant applied under the above scheme of Housing Board Haryana through application form no.3104 and deposited an amount of Rs.79,000/- through demand draft as 10% for advance deposit for booking the flat. Complainant had applied for Type-B flats for Serving/ ex- defence and para military personnel of Haryana up to Rank JCOS and Equivalent at Sector-5, Rohtak and also made the payment for the registration of the flat. Respondent vide letter dated 19.01.2012 issued registration no.50 and further asked for depositing additional amount of Rs.1,20,000/-,. Complainant got another letter dated 24.09.2012 from



respondent in which complainant was given an opportunity to make payment of ₹1,20,000/- alongwith interest to keep his booking. Complainant deposited the said amount for confirming his booking on 13.10.2012. It is pertinent to mention here that the petitioner had taken a loan of Rs. 1,57,000/- from Central Bank of India, Branch Nicholson Road, Ambala Cantt. It is further pertinent to mention here that on 18.02.2015 complainant received no dues certificate from the bank. Copy of payment paid to bank as well as NOC which was issued by the bank in favour of complainant is annexed as Annexure P-2.

5. That the respondent made the draw of lots on 29.12.2014 and the petitioner was allotted a flat of type B at Sector-5 Rohtak vide provisional registration number 270/RTK05/T-B/CBI and final registration number 75.
6. That respondent issued a letter to the complainant on 09.12.2015 bearing Memo No.HBH/CRO/ (PM) / DEFENCE/2015/SPL-4750, in this letter it was clearly mentioned that " it gives us pleasure to inform you that you have been declared successful in the draw of lots held on 29-Dec-2014 for the allotment of flat (subject to eligibility) at Rohtak Sector-5 and your final Registration No. is mentioned on the subject cities above. As per terms and conditions of registration, you are requested to deposit a sum of Rs. 2,36,000/- (15% of advertised cost) on account of amount



payable after draw of lots within 30 days from the date of issuance of this letter failing which your registration shall be cancelled without notice by forfeiting 10% of the registration amount. Copy of letter is annexed as annexure P-3.

7. That the complainant made payment of instalment of Rs. 2,36,000/- to the respondent vide DD No. 192545 dated 10.03.2015 issued by Central Bank of India. Even after passing of a period of Seven years, the respondent has failed to start the construct said flats.
8. That in this way, the respondent has unlawfully grabbed huge money of Rs. 3,93,000/- the respondent illegally and without any fault on the part of the petitioner. Complainant visited numerous times the office of the respondent and respondent at all times assured the complainant that the construction of the flats will be started as early as possible but till date the respondent has not started the construction of the flats.
9. That since the Respondent could not develop the project in time and handover physical possession of the flat, thus the petitioner is entitled for the refund of the deposited amount along with interest and the respondent be directed to pay the entire amount deposited by the petitioner with the respondent along with interest in terms of rule 15 of HRERA Rules, 2017 i.e. SBI MCLR + 2%.



**C. RELIEF SOUGHT**

10. Complainant sought following relief:

- (i) In exercise of powers under section 35, direct the respondent to place on record all statutory approvals and sanctions of the project.
- (ii) To refund the deposited amount to the petitioner along with interest in terms of Rule 15 of HRERA Rules, 2017 i.e, SBI MCLR+2%.
- (iii) Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

11. Reply has been filed by the respondent on 08.04.2025 wherein respondent has submitted as follows:

- (i) That the present complaint filed by the complainant this Hon'ble Authority is not maintainable as the jurisdiction of Real Estate Regulatory Authority, Panchkula is barred, where the project is not an on-going project.
- (ii) That in a similar case, the Hon'ble Punjab and Haryana High Court, Chandigarh vide its order dated 30.05.2022 passed in **CWP No. 19124 of 2021 - titled as "Raj Pal Singh Gahlaut Versus Housing Board Haryana and another"** and other connected



cases, recorded that where the scheme for allotment of multi-storeyed flats has been scrapped, following directions have been passed:-

*"...That being so, and with there being no challenge to the regulation itself in these petitions, they are disposed of with a direction to the respondents to refund, in the case of each petitioner, the entire amount of money deposited by her/him in the year 2013/2014 (as the case may be, along with the mean savings bank interest of the State Bank of India, running from the date of the closing of the registration in respect of each scheme, by 30.06.2022 in the case of the Defence Scheme Type-A Sampla, and till 31.10.2022 in the case of the Employees Scheme, Jind Road, Rohtak.*

(iii) That the complainant has portrayed the answering respondent as a developer of real estate whereas housing board haryana (hereinafter 'the Board') is an establishment of Government of Haryana under the Haryana Housing Act, 1971 (Haryana Act No. 20 of 1971). Hence the answering respondent is a statutory body and not a mere real estate developer.

(iv) That the jurisdiction of Real Estate Regulatory Authority is barred as the Haryana Housing Board Act, 1972 has received the assent of the President of India. Therefore, the allotment and cancellation of scheme is to be dealt under the Haryana Housing Board Act, 1972.



Article 254 of the Constitution of India provides that the Legislations passed by the State Legislature which has received the assent of the President of India has to prevail until and unless the State Legislation is repeat by the Parliament. Therefore, the jurisdiction is barred as it hit by the Article 254 of the Constitution of India.

(v) That the allotment of tenements (houses) is provided in Regulation 8 of the State of Haryana framed Housing Board Haryana (allotment, management and sale of tenements), Regulation, 1972. The Regulation 8 provides allotment of tenements as per the terms of allotment and as per the provisions of these Regulations. The condition of allotments is provided under Regulation 10. From the perusal of Regulation 10, it is clear that the possession has to be given after the allotment is finalized by the Estate Manager. Therefore, it is clear that until and unless the allotment is not issued, an applicant cannot be termed as an allottee. Therefore, as per the definition of allottee under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the complainant is not the allottee.

(vi) That it is clear from the application submitted by the complainant and the scheme that the flats were to be allotted on hire purchase



basis. The hire purchase is defined in Section 2(g) of the Housing Board Haryana (allotment, management and sale of tenements), Regulation, 1972. Relevant extract of 2(g) is reproduced hereunder:

*"Hire-Purchase" or "Hire-Purchase System" means a system in which a participant takes steps to secure rights in a property under a scheme by payment of deposit and also a specified number of monthly installments spread over a specified number of years during which he remains a tenant on the terms and conditions set for the purpose and on the expiry of the number of said years ceases to be a tenant and becomes owner after payment of all dues."*

- (vii) That from the perusal of definition of hire purchase, it is clear that the participants under the scheme can become the owner only after payment of all dues and till all the installments are paid he remains the tenant. The letter dated 09.02.2015 in the present case is only a communication to the complainant to the effect that he is the successful applicant in the draw of lots for the allotment of flats which are to be constructed, however, there was no allotment letter issued in favour of the complainant regarding any flat because at this stage flats were not constructed and it is only a primitive stage regarding the process initiated for short listing the applicants who will be allotted flats.



(viii) That the scheme of Type-A and Type-B for Sector-05, Rohtak was launched during the year 2014-15 for which registration period was from 17.02.2014 to 15.05.2014 but due to insufficient applicant, the Board decided to scrap such scheme which is not viable and such scheme cannot be taken up for execution. It is worth-mentioning here that the Board reserves the right to withdraw/amend/cancel the scheme at its discretion without assigning the reasons. The scheme was scrapped vide letter dated 13.02.2023 and the details along with the reasons for scrapping of various defence and others schemes launched by the Housing Board Haryana is attached as annexure r-2. The important condition of the advertisement was specifically made clear to the complainant to the effect that the Housing Board preserves the right to withdraw, amend, cancel the scheme at its discretion without assigning any reason. It is pertinent to mention here that due to technical reasons, the construction of the same is not started due to non-approval of project. Hence, the respondent authority has been at no fault anywhere and has acted genuinely, fairly, unarbitrarily, based on uniform approach and natural justice. Therefore the respondent authority has started the refund to the applicants as per rules and regulations.



(ix) That it is further pertinent to mention here that as per Clause-5 of the Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulations, 1972, vide which it is mentioned that "where the Board fails to allot houses within a period of two years from the closing date of registration, interest on amount paid with the application at the time of registration shall be payable for the period after the expiry of two years from the closing date of registration to the date of allotment or date of refund, whichever, is earlier, at the rate applicable in the case of saving bank accounts of the nationalized banks.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

12. During the course of hearing Id. Counsel for the complainant pressed for relief of refund along with interest. Id. Counsel for the complainant reiterated the facts of the complaint and requested the Authority to grant the relief of refund along with interest.

**F. ISSUE FOR ADJUDICATION**

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

**G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY**

14. Findings on the objections raised by the respondent.



**I Objection raised by the respondent with respect to jurisdiction of Authority being hit by the Article 254 of the Constitution of India.**

Respondent has submitted that Haryana Housing Board Act, 1972 has received the assent of the President of India and therefore the jurisdiction of Real Estate Regulatory Authority is barred as it is hit by the Article 254 of the Constitution of India. In this regard Authority observes that The Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e. allottee) and seller (i.e. promoter) of real estate i.e. plot, apartment or building, as the case may be and matters incidental thereto. The scope of this Act is limited to contracts between buyers and promoters and transfer to property. Both these items fall within the concurrent list III: entry-6 and entry-7 ready with entry-46. This Act regulates the transactions relating to the sale of above-mentioned real estate products, for an orderly growth of real estate market, by protecting the interests of different stake holders in a balanced manner and facilitating the consumer/buyer to make informed choice. In support of the same, Hon'ble Bombay High Court in the case **Neelkamal Realtors Suburban Pvt. Ltd. and Ors. v. Union of India and Ors.** 06.12.2017 - BOMHC, observed: *"In my opinion RERA does not fall under Entry 42 in List III- Concurrent List of the Seventh Schedule, namely, Acquisition and requisitioning of property. RERA fall under Entry 6, namely, Transfer of property other than*



*agricultural land; registration of deeds and documents, Entry 7-contracts, including partnership, agency, contracts of carriage and other special forms of contracts, but not including contracts relating to agricultural land and Entry 46, namely, jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in List III-Concurrent list of the Seventh Schedule"*

Therefore, the Authority has jurisdiction to decide the present matter.

**II Objections raised by the respondent that completed projects are outside the purview of RERA Act, 2016.**

Respondent has taken an objection that since the project in question is not an ongoing project therefore provisions of RERA Act, 2016 are not applicable to the project. In this regard reference is made to the first proviso to section 3(1) of the RERA Act, 2016 which provides that the projects which were 'ongoing' on the date of commencement of the Act and for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act. The position further becomes clear from Section 3(2)(b) of the Act that the registration of the real estate project shall not be required where the promoter had received the 'completion certificate' for the said project prior to the commencement



of the Act. Thus, if we read Section 3 of the Act, it is evident that only that project shall be excluded from the purview of the 'ongoing project' which had received the completion certificate prior to the commencement of the Act and such project will not require registration. All 'ongoing projects' i.e. those that commenced prior to the Act coming into force, and in respect of which no completion certificate is yet issued, are covered under the Act. It is apparent that the legislative intent was to make the Act applicable to not only to the projects which were to commence after the Act became operational but also to ongoing projects. Only those projects which had got the completion certificate before the commencement of the Act will not require registration and will certainly fall beyond the purview of the 'ongoing project'.

Further, this issue has also been dealt with and settled by the Hon'ble Supreme court in **Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** herein reproduced: .

*“ 37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all “ongoing projects” that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became*



*operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority."*

Wherein Hon'ble Apex held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Now coming to the present case Authority observes that there is no document placed on record by respondent that could prove that the project in question has received completion certificate prior to commencement of RERA Act, 2016. In fact respondent in its reply dated 08.04.2025 at page 10 has admitted that the scheme of type-A and type-B for sector-5, Rohtak was scrapped on 13.02.2023 due to poor response from public towards the scheme. Hence the project in question was an "ongoing project" on the day RERA Act, 2016 came into force.

Furthermore, complainant in the present complaint is seeking refund of his paid amount along with interest i.e, a statutory relief under Section 18 of



RERA Act, 2016. Authority observes that Section 18 of the Act relates to obligation of promoter regarding return of amount and compensation.

Section 18 is reproduced herein below:

*If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

*(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*

*(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.*



This provision nowhere states that the remedies provided hereunder will be available only to the allottees of a registered project or registrable project. Therefore, even if the project is not registered with the Authority, same does not extinct the remedy available to an allottee of a real estate project

**III Findings on the objection raised by the respondent with respect to respondent not being a promoter and complainant not being an allottee.**

Respondent has taken another objection that it is a statutory body and not a mere real estate developer/promoter and the complainant is not an allottee of the project of the respondent as the allotment was not finalized by the Estate Manager and flat was allotted on 'hire purchase basis' whereby the applicant participants can become owner only after payment of all installments. Here, Authority observes that the first issue which needs adjudication is whether the respondent Housing Board, Haryana is a 'promoter' of the real estate project as per provisions of RERA Act, 2016. For this purpose, reference has been made to the definition of "promoter" under Section 2(zk) of RERA Act, 2016. Definition is reproduced herein below:

*(zk) "promoter" means,—*

*(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*



(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any **development authority** or any other public body in respect of allottees of—

(a) **buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or**

(b) plots owned by such authority or body or placed at their disposal by the Government,

**for the purpose of selling all or some of the apartments or plots;**  
or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

The Act covers all bodies private and public which develop real estate projects for sale to the general public. Section 2(zk) defines the term



'promoter' which includes both private and public real estate promoters. Thus, both Development Authorities and the Housing Boards, when involved in sale are covered under the Act.

(a) Development authority or any other public body is a promoter in following cases:

- (i) Such buildings or apartments constructed by such authority or body.
- (ii) Such buildings or apartments constructed either on lands owned by them or placed at their disposal by the Government.
- (iii) Such buildings or apartments constructed by such Authority or body for the purpose of selling all or some of the apartments.

Or

- (b) in respect of allottees of plots
  - (i) (a) the plots owned by such Authority or body; or (b) the plots placed at their disposal by the Govt; and
  - (ii) For the purpose of selling all or some of the plots.

Accordingly, development authorities and public bodies engaged in construction of buildings or apartments or development of plots are promoters under this Act. It is irrespective of the fact whether the



buildings or apartments are constructed or plots are developed on the land owned by them or placed at their disposal by the government. Here, Housing Board Haryana is a Development Authority, that is engaged in the construction of building/apartments for the purpose of sale issued an allotment letter to complainant on 09.02.2015 allotting a unit at Sector 5, Rohtak, hence, Housing Board is covered under the definition of promoter under Section 2(zk).

Next it is to be seen whether the complainant Phool Kanwar is an allottee or not as per Section 2(d) of the RERA Act, 2016. In this regard reference is made to the definition of allottee. As per Section 2(d) of the RERA Act, "allottee" is defined as follows:

*(d) "allottee" in relation to a real estate project, means the person to whom a plot apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given. on rent:*

The definition of allottee' covers any person to whom a plot, apartment, building has been allotted, sold (whether as freehold or leasehold), or otherwise transferred by the promoter. It also includes the person who subsequently acquires the said allotment through "sale", "transfer", or



“otherwise”. In the present case, complainant was issued an allotment letter dated 08.02.2015 by Chief Administrator, Housing Board, Haryana with subject “allotment of flat for serving/ ex-defense and para military personnel of Haryana up to the rank of JCOs on hire purchase basis at Rohtak- Sector 5 with final registration no. 75”, Vide said letter respondent has also requested the complainant to deposit sum of Rs. 2,36,000/-. Subsequent thereupon complainant made the payment of said amount via demand draft on 10.03.2015.

Respondent has also submitted that the participants in the present scheme can become owner only after payment of all installments as flats are issued under hire purchase systems. In this regard Authority observes that as per the provisions of RERA Act, 2016 allottee is a person to whom a plot, building or apartment has been allotted through sale, transfer or otherwise. The word ‘otherwise’ transferred by the promoter occurring in Section 2(d) should bear an appropriate meaning in the context of the main provision of the Section. This expression has to be construed in the nearer context that it appears and has to be from a meaning which is in line with the main purpose of the Act. The term “otherwise” is to be construed *ejusdem generis*. The word otherwise means “in other way or manner” by other causes or in other respect or in other condition. Said allotment may be made by way of issuance of an allotment letter or an



agreement for sale. Nowhere in the Act it has been specified that the allottee must be the owner of the plot, building or apartment allotted to him/her. Legislature was very much conscious of the fact that an allottee will become owner of a plot, building or apartment only after receiving possession and execution of conveyance deed therefore the term 'owner' has not been used in the RERA Act, 2016. Allotment of the flat to the complainant Phool Kanwar on hire purchase basis does not disentitle him from being an allottee of the project.

Respondent has admittedly issued an 'allotment letter' to the complainant dated 08.02.2015 which clearly shows that complainant is an allottee and therefore complainant falls within the ambit of definition of allottee.

Further reference is made to Section. 2(zj) & (zn) of the RERA Act wherein "project" & "real estate project" are defined respectively as follows:

*(zj) "project" means the real estate project as defined in clause (zn):*

*(zn) "real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;*



A conjoint reading of the Section 2(d) 2(zk) and Ss. 2(zj) & (zn) leaves no room for any ambiguity and makes it clear that Housing Board Haryana is a promoter in respect of complainant allottee of the plot allotted by it in its real estate project at Rohtak and there exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainant and respondent is established and the issues deals with real estate project developed by respondent, hence, provisions of RERA Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter.

15. Now proceeding on the merits of the case, Authority observes that it is not disputed by the parties that complainant had applied for allotment of flat under a scheme floated by respondent in year 2014; said scheme aimed at providing houses to serving/x-defense and para-military personnel of Haryana; the price of the unit in the advertisement given by the respondent was Rs. 15.70 lacs. Respondent issued allotment letter dated 09.02.2015 to the complainant wherein respondent demanded an amount of Rs. 2,36,000/- from the complainant and same was duly paid by the complainant. Since there was no specific timeline mentioned in the allotment letter respondent should have delivered the possession of the flat within reasonable period of



allotment. What should be construed as reasonable time has been decided by the Hon'ble Apex Court in its judgement STPL 4215 SC titled as **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure)** and anr wherein it has been decided by Hon'ble Apex Court that deemed date of possession be reckoned as 3 years from the date of booking. However, respondent in the present case itself has admitted that the project has been scrapped on 13.02.2023 meaning thereby respondent not only failed to handover the possession within a reasonable time, as on the date also it is not in a position to offer possession of the flat to the complainant. Respondent has also not denied the fact that amount of Rs. 3,93,000/- still lies with it. The respondent has been utilizing an amount of Rs.3,93,000/-, already paid by the complainant, for all these years without paying any interest. Such conduct of the respondent being unreasonable and unconscionable cannot sustain legally.

16. Further, the issue regarding rights of an allottee to seek refund in the event of delay in handing over of possession has already been settled by Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others* " in Civil Appeal no. 6745-6749 of 2021 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 judgement is reproduced below:

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

The decision of the Hon'ble 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. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund along with interest in favour of complainant.



17. Now the question that arises is that the complainant is entitled to refund along with interest at what rate. With regard to this the respondent in its reply has placed reliance on the judgement of Hon'ble Punjab and Haryana High Court in **CWP no.19124 of 2021 tilted as "Rajpal Singh Gehlot versus Housing Board Haryana and others"** wherein the Hon'ble High Court has passed order dated 30.05.2022 in respect of the two scrapped schemes of the respondent namely the defence scheme Type-A Sampla and the Employees Scheme Jind Road, Rohtak. The Hon'ble Punjab and Haryana High Court had directed the respondent to refund the deposited amount to "each petitioners", along with the mean saving bank interest of the State Bank of India, running from the date of closing of the registration in respect of each scheme by 30.06.2022 in case of the defence Scheme Type-A, Sampla and till 31.10.2022 in case of the Employees Scheme, Jind Rohtak. On perusal of the order of the Hon'ble Punjab and Haryana High Court, it is observed that vide its order dated 30.05.2022, Hon'ble Punjab and Haryana High Court granted the relief of refund "only to the petitioners to the CWP" and said order was a judgement in personam binding only to the parties to such litigation. Since, the complainant or the real estate project mentioned in the present complaint were never before the Hon'ble Punjab and Haryana High Court in CWP no. 19124 of 2021 and the scheme in which complainant was an allottee got scrapped on 13.02.2023 i.e, after passing of the



aforementioned judgement, complainant is well within his rights to seek remedy available to him under RERA Act, 2016. It is observed that since the complaint has been filed under Section 31 of RERA Act, 2016 and adjudicated by the Authority under the provisions of RERA Act, 2016, relief on account of delay in possession i.e, refund has also been granted under Section 18 of RERA Act, 2016. Hence, it is concluded that complainant is entitled to refund of amount along with interest at prescribed rate.

18. The definition of term 'interest' is defined under Section 2(z) 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;*



19. 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".*

20. 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., 22.07.2025 is 10.90%. Accordingly, the prescribed rate of interest will be MCLR + 2% ,i.e.,10.90%

21. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainant is entitled for refund along with interest. Thus, respondent will be liable to pay the complainant, interest from date of payments till the date of refund, i.e., 22.07.2025. Authority has got calculated the total amount along with interest as per detail given in the table below:




Sr.no	Principal amount	Date of Payment	Interest from date of payment till date of order
1.	1,57,000/-	19.01.2015	1,79,944/-
2.	2,36,000/-	10.03.2015	2,66,966/-
	Total- 3,93,000/-		4,46,910/-

### **DIRECTIONS OF THE AUTHORITY**

22. Hence, the Authority hereby passes this order in the present complaint 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 amount of ₹8,39,910/- along with interest from date of refund till the actual realization of the amount.
- 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.

23. **Disposed of.** File be consigned to the record room after uploading of the order on the website of the Authority.

  
CHANDER SHEKHAR  
[MEMBER]

  
DR. GEETA RATHEE SINGH  
[MEMBER]