



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1329 of 2023
Date of filing.:	22.06.2023
First date of hearing.:	27.07.2025
Date of decision.:	29.07.2025

1. Balraj Kumar Marjara
2. Saroj Bala Marjara
Both R/o H.no 179,
Near Modern School, Sector-17, Kheri Kalan
Faridabad, Haryana 121002

...COMPLAINANTS

VERSUS

1. M/s BPTP Limited
Through its Managing Director
Having its registered office at:
28 ECE HOUSE, 1st floor, KG Marg, New Delhi, 110001.
Also at- OT-14, 3rd Floor, Next Door Parklands, Sector-76, Faridabad 121004,
Haryana

2. M/s Countrywide Promoters Private Limited
Through its Managing Director
Having its registered office at: M-11, Middle
Circle Connaught Circus New Delhi 110001

.....RESPONDENTS

CORAM:

Dr. Geeta Rathee Singh

Member

Chander Shekhar

Member

Present: -

Mr. Arjun Kundra, Learned Counsel for the complainants
through VC

Mr. Tejeshwar Singh, Learned Counsel for the respondents
through VC

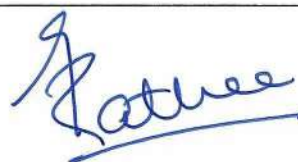
ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed 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 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, details of sale consideration, 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.	Park Floors, Parklands, Sector 75 to 89, Faridabad.
2.	Nature of the project.	Group Housing Project
4.	RERA Registered/not registered	Not Registered
5.	Details of the unit.	Earlier allotted shop U-26, 558 sq. ft. Later shifted to E40-62-FF



6.	Date of floor buyer agreement(in respect of unit E40-62-FF)	30.03.2016
7.	Due date of possession	30.03.2019
8.	Possession clause in buyer's agreement (Clause 6.1)	<p>The seller/confirming party proposes to make offer possession of the unit to the purchaser(s) within the commitment period along with grace period</p> <p>"Commitment Period" shall mean, subject to Force Majeure circumstances, intervention of statutory authorities, and Purchasers) having timely complied with all its obligations, formalities, and/or documentation, as prescribed/ requested by Seller/ Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of installments of the Basic Sale Price and Other charges as per the payment plan, the Seller/ Confirming Party shall offer the possession of the Unit to the Purchasers) within a period 36 (Thirty-Six) months from the date of execution of this Agreement."</p>
8.	Total sale consideration	₹50,00,205/-
10.	Amount paid by complainant	₹40,07,756.31/-
11.	Offer of possession.	02.05.2023



B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of the complaint are that the complainants were earlier allottees of a shop bearing No. U-26, admeasuring 558 sq. ft., in the respondents' project namely "Park Central," situated at Sector 85, Faridabad. The shop was allotted on 15.03.2012, for a total sale consideration of ₹ 39,74,430/- under a construction-linked payment plan. A copy of the Allotment Letter dated 15.03.2012 is annexed as Annexure C-1.
4. Pursuant to this, a space buyer's agreement was executed between the parties on 27.11.2012. A copy of the space buyer's agreement dated 27.11.2012 is annexed as Annexure C-2. As per Clause 1.4 of the said agreement, possession was to be handed over within 36 months from the execution of the agreement or after payment of 30% of the basic sale price, whichever is later. However, the respondents did not adhere to this commitment period.
5. It has been submitted that despite receiving ₹. 34,57,756.31/- out of the total consideration, respondents failed to deliver possession of the shop within the committed period of 36 months from the execution of the agreement, i.e., by 27.11.2015.
6. Due to non delivery of possession of the unit, a dispute arose between the complainants and the respondents. When the complainants repeatedly approached the respondents enquiring about possession, respondents very cunningly convinced the complainants to transfer their unit from the erstwhile



project to the project in question i.e 'Park Elite Floors' situated at sector 75 to 89 Faridabad. The respondents at the time of transfer had assured the complainants that the possession of the unit would be delivered by March 2019.

7. Believing the promises of the respondents, the complainants shifted their booking to the present unit in "Park Elite Floors,". A letter dated 20.01.2016 confirming the unit transfer was issued by the respondents, copy of which is annexed as Annexure C-3. A new Allotment Letter dated 04.03.2016 for unit bearing no. E40-62-FF, measuring 1625 sq. ft., for a net cost of ₹50,00,205/-, was issued to the complainants and is annexed as Annexure C-4.
8. A fresh floor buyer's agreement was executed between the parties on 30.03.2016. A copy of the same is annexed as Annexure C-6. As per clause 6.1 read along with clause 1.3, possession of the unit was to be delivered within a period of 36 months from the date of execution of agreement i.e by 30.03.2019.
9. It is submitted that as per the new payment plan which was 30:70 basis, the complainants were only supposed to make 30% of the sale consideration initially and balance at the time of possession, yet the respondents failed to refund the excess amount paid for the earlier shop and instead collected additional amounts from the complainants. The complainants have paid a total of ₹ 40,07,756.31/- till date. Copies of payment receipts are annexed as Annexure C-5 (colly).



10. The respondents imposed arbitrary and one-sided clauses in the Floor Buyer's Agreement, including Clause 6.2 (delay compensation at Rs. 5 per sq. ft. per month) and Clause 7.2 (penalty interest of 18% for any delay in buyer's payments). These discriminatory clauses were imposed upon the complainants on a "take-it-or-leave-it" basis without negotiation.
11. The complainants made several representations to the respondents between 2020 and 2023, seeking possession of the booked unit or refund, in case the respondent was not in a position to deliver possession. Email correspondences dated 14.12.2020, 21.12.2020, 28.12.2020, 07.01.2021, and 09.05.2023 indicate repeated grievances regarding non-possession and excess payment. Copies of the emails exchanged between the parties are annexed as Annexure C-7 (colly).
12. On 02.05.2023, the respondents issued an alleged offer of possession letter in respect of the unit to the complainants, without obtaining occupancy or completion certificates. The offer of possession letter dated 02.05.2023 is annexed as Annexure C-8.
13. The possession offer was further accompanied by unilateral drafts of indemnity bonds and undertakings, aiming to waive off any compensation claims by the complainants, which is arbitrary and illegal. Further a personal site visit revealed that the project is still incomplete, confirming that possession was not legally or factually possible.



14. The Complainants have now lost all faith in the respondents and are no longer interested in the unit. They seek to withdraw from the project, and request refund of the paid amount with prescribed interest as per Section 18(1) of the RERA Act, 2016. The respondents failed not once but twice—firstly by not delivering the shop in *Park Central*, and again by not delivering the residential floor in *Park Elite Floors*. This prolonged delay amounts to deficiency of service, unfair trade practice, and retention of excess funds without legal justification.

C. RELIEF SOUGHT

15. The complainants in present complaint seek following relief:

- i. Pass an order holding that the respondents have failed to complete the construction and development of the project & unit in question (E40-62-FF) in Park Elite Floors, Parklands, Faridabad within the promised time frame and that the offer of possession dated 02.05.2023 is illegal, arbitrary and unsustainable under law, and thus quash/ set aside the same;
- ii. Pass an order directing the respondents to refund the consideration/ amount paid by the complainants till date i.e., ₹ 40,07,756.31/- along with prescribed rate of interest as per the Act, from the date of respective payment of installments and until realization;



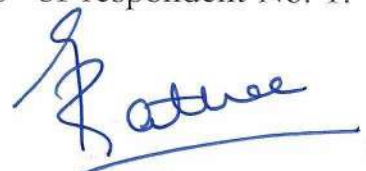
- iii. May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter.

16. During hearing, learned counsel for the complainants submitted that

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 29.01.2024 pleading therein:

17. That at the very outset, the respondent no. 1 respectfully submits that respondent No. 2, i.e., Countrywide Promoters Pvt. Ltd., is neither a necessary nor a proper party to the present complaint and the complaint is not maintainable against Respondent No. 2.
18. It is submitted that respondent No. 2 is merely a confirming party to the Floor Buyer's Agreement ("FBA") executed between the complainants and Respondent No. 1. Respondent No. 2 has no independent contractual obligations, nor has any relief been sought against it by the complainants. Accordingly, the presence of respondent No. 2 serves no purpose in the adjudication of the dispute.
19. It is submitted that the complainants had applied for allotment of a commercial unit in the project "Park Central" and were initially allotted Unit Shop-U-26. Subsequently, at the express request and with the unequivocal and irrevocable consent of the complainants, the said unit was changed to Unit No. E40-62-FF in the project "Park Elite Floors" of respondent No. 1.



The said change was confirmed by respondent No. 1 vide letter dated 20.01.2016 (Annexure R1), and the complainants signed a new booking/application form (Annexure R2).

20. An allotment letter dated 04.03.2016 was thereafter issued for a residential independent floor bearing No. E40-62 (First Floor) tentatively admeasuring 1625 sq. ft.. Subsequently, a floor buyer's agreement dated 30.03.2016 was executed between the parties .

21. As per clause 6.2 read with clauses 1.3 and 1.11 of the agreement, the possession of the unit was to be delivered within 36 months from the date of execution of the Agreement, along with a grace period of 180 days. Therefore, the stipulated date of possession comes to 30.09.2019. However, it is submitted that the said due date was subject to Force Majeure events as defined under Clause 1.10 and Clause 10 of the FBA.

22. With regard to the delay in offering possession of the unit in question, it is submitted that the project "Park Elite Floor" has been marred with serious defaults and delays in the timely payment of instalments by the majority of customers. On the one hand, the respondent had to encourage additional incentives like 'Timely Payment Discounts' while on the other hand, delays in payment caused major setbacks to the development works. Hence, the proposed timelines for possession stood diluted. Construction of the project in question has been further marred by the circumstances beyond the control of the Respondent such as ban on construction by the Hon'ble Supreme Court



of India in the case titled as "M.C. Mehta v. Union of India", ban on construction by the Principal Bench of NGT in Vardhaman Kaushik v. Union of India and ban by Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR. Further, the construction of the project has been marred by the present endemic, i.e., Covid-19, whereby, the Government of India imposed an initial country-wide lockdown on 24/04/2020 which was then partially lifted by the Government on 31/05/2020. Thereafter, series of lockdowns have been faced by the citizens of India including the Complainant and Respondent herein. Otherwise, construction of the project was going on in full swing, however, the same got affected initially on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. Due to these unforeseeable circumstances and reasons beyond the control of the respondent, the construction got delayed and it took longer than expected to complete the construction of the project.

23. It is further submitted that the complainants themselves defaulted in making timely payments, which contributed to the delay. Despite issuing multiple reminders, the complainants failed to make payment of the outstanding dues.
24. An Offer of Possession was issued to the complainants on 02.05.2023 (Annexure R7), requesting them to pay the outstanding balance of ₹. 18,23,827.69 which was inclusive of principal dues plus stamp duty and



other charges. Meanwhile, the respondent No. 1 had applied for the occupation certificate with the concerned department vide application dated 15.03.2023 and received the same on 18.08.2023 (Annexure R6).

25. The complainants in the captioned complaint are themselves defaulters as under per Section 19(10) of the RERA Act, 2016, an allottee is mandatorily obligated to take possession once a valid offer has been made and OC has been obtained. However, the complainants in the captioned complaint deliberately failed to take possession of the unit and make payment of balance sale consideration.

26. During the hearing, learned counsel for the respondent reiterated the submissions made above and further made three fold arguments, firstly, that the deemed date of possession should be taken as 30.09.2019 since there is a grace period clause incorporated in the agreement which respondents are claiming while calculating the deemed date. Secondly, under Section 19(10) complainants were also bound to take possession within two months after obtaining occupation certificate. In present case complainants have failed to do so. Lastly, relief of refund prayed by complainants be allowed on payments made after execution of fresh floor buyer agreement i.e. 30.03.2016.



E. ISSUES FOR ADJUDICATION

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

F. FINDINGS ON OBJECTIONS OF THE RESPONDENTS

F.1 Objection raised by the respondents with regard to maintainability of complaint against Respondent no. 2

It is the submission on behalf of the respondents that respondent no. 2, i.e., Countrywide Promoters Pvt. Ltd., is neither a necessary nor a proper party to the present complaint and the complaint is not maintainable against respondent No. 2. That the respondent No. 2 is merely a confirming party to the floor buyer's agreement executed between the complainants and Respondent No. 1 and has no independent contractual obligations, nor has any relief been sought against it by the complainants. In this regard it is observed that the submission of the respondents regarding respondent No. 2 being an unnecessary party is wholly misconceived. The floor buyer agreement has been jointly executed between the complainants, BPTP Ltd., and M/s Countrywide Promoters Pvt. Ltd. As per para 'B' of the said agreement, the seller, being respondent no. 1, 'M/s BPTP Ltd' and the confirming party, being respondent no. 2, 'Countrywide Promoters Pvt. Ltd'



as per their mutual agreement has authorised the seller to develop/construct, sell, market, dal, negotiate and execute agreement, sale deed etc, with prospective purchasers (including present allottees/complainants) rates and terms and conditions to be determined in its sole discretion and to receive payments, issue receipts thereof in its own name. Respondent no. 2 has empowered the respondent no. 1 to act on its behalf, however, that does not mean that the respondent no. 1 has no liability towards the present complainant. The contract clearly bears the names of both respondents, thereby establishing their joint responsibility. Meaning thereby that both parties are jointly and severally liable towards the present complainants. The entire contractual relationship from the booking to receipt of payment and subsequent delivery of possession exists between both the respondents and the complainants. Hence, it can rightly be observed that respondent No. 2 is a proper and necessary party to the present proceedings, and the objection to its inclusion is liable to be rejected.

G. OBSERVATIONS OF THE AUTHORITY

28. As per facts and circumstances, complainants in this case had initially applied for a shop in the project of the respondent namely "Park Central" situated at Sector 85, Faridabad. Shop bearing No. bearing no, U-26 measuring 558 sq. ft., was allotted to the complainants vide allotment letter dated 15.03.2012 for a total sale consideration of ₹ 39,74,430/-.The



complainants had paid a total amount of ₹ 34,57,756.31/- against booking of shop bearing no. U-26 to the respondents. A space buyer's agreement was executed between the parties on 27.11.2012. As per Clause 1.4 of the said agreement, possession was to be handed over within 36 months from the execution of the agreement or after payment of 30% of the basic sale price, whichever is later. A period of 36 months from the date of agreement works out to 27.11.2015. However, by the end of said period respondents failed to issue an offer of possession in respect of the shop to the complainants.

29. The complainants have alleged that instead of offering possession, the respondents convinced the complainants to transfer their booking to a different project being developed by the respondent namely 'Park Elite Floors', which is the project in question. Contrarily, the respondents have submitted that the unit was transferred on express request of the complainants. Regardless, a floor buyer agreement was executed between the parties on 30.03.2016 in respect of unit bearing no. E40-62 FF, in the project "Park Elite Floors" for a total sale consideration of ₹. 50,00,205/-. The amount paid by the complainants in lieu of erstwhile allotment of shop bearing no. U-26 was adjusted towards the unit bearing no. E40-62 FF. The complainants made further instalments in respect of the unit in question and thus a total payment of ₹. 40,07,756.31/- has been made to the respondents by the complainants. However, the respondents again failed to deliver possession of the unit in question within time period stipulated in the



agreement dated 30.03.2016, due to which the complainants have completely lost faith in the respondents and have hence filed the present complaint seeking refund of the paid amount along with interest on account of deficiency in service.

30. As per clause 6.1 read along with clause 1.3 of the floor buyer agreement dated 30.03.2016, possession of the unit was to be delivered within a period of 36 months from the date of execution of agreement. Said period expired on 30.03.2019. However, respondents failed to deliver possession of the unit bearing no. E40-62 FF within the said period. The agreement further entitles the respondents to a grace period of 180 days after expiry of 36 months for issuing offer of possession. In this regard it is observed that the respondent had sought a grace period from 31.03.2019 till 30.09.2019 for issuing an offer of possession in respect of the unit in question whereas it is a matter of fact that an offer of possession had not been issued to the complainants during the said period. Rather the respondent had issued an offer to the complainants only on 02.05.2023 after a gap of nearly 4 years. The respondent had failed to complete construction of the unit within stipulated time and offer possession within the time limit prescribed in the floor buyer agreement i.e immediately after after expiry of 36 months of date of execution of agreement. Thus, the delay is entirely on the part of the respondent. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 180 days



cannot be allowed to the promoter. Thus the deemed date of possession works out to 30.03.2019.

The respondent has averred that the delay in delivery of possession has been due to various force majeure conditions. Respondent has cited delay in construction of the project due to disruption in construction activity due to regulation of mining activities of minor minerals as per directions of Hon'ble Supreme Court, non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal and stay on mining activities by National Green Tribunal in several cases related to Punjab and Haryana. However, respondent has failed to attach copies of the respective orders banning/ prohibiting the construction activities. Respondent has failed to adequately prove the extent to which the construction of the project in question got affected. Furthermore, respondent has submitted that the construction of the project got severely affected due to COVID-19 outbreak. It is observed that the Covid-19 pandemic hit construction activities post 22.03.2020 i.e after the proposed deemed date of possession, therefore, as far as delay in construction due to outbreak of Covid-19 is concerned, respondent cannot be allowed to claim benefit of COVID19 outbreak as a force majeure condition. Further, reliance is placed on judgement passed by Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. vs**



Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s

3696-3697/2020 dated 29.05.2020 has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since september,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself”

31.As per observations recorded in the preceding paragraph possession of the unit bearing no. E40-62FF, Park Elite Floors should have been delivered to the complainants by 30.03.2019. However, respondent failed to complete construction of the project and deliver possession within stipulated time. Thereafter, the respondent had issued an offer of possession to the complainants on 02.05.2023 along with a detailed statement of accounts. Said offer of possession was unacceptable to the complainants as it was allegedly not a valid offer of possession. It is the contention of the complainants that the respondent had issued the said offer of possession



without obtaining occupation certificate and without completing the construction works at the site of the project. Further along with said offer, respondents had failed to adjust the component of delay interest admissible to the complainants on account of delay caused in delivery of possession firstly, in respect of booking of Shop No. U 26 and later for the present unit in question. On the other hand it has been submitted by the respondent that the offer of possession was issued after completion of development works as per the terms agreed between the parties. Further the respondents had also obtained occupation certificate for the unit of the complainants on 18.08.2023. Complainants deliberately defaulted in making payment of outstanding amount.

In this regard it is observed that the after expiry of the deemed date of possession i.e 30.03.2019, the complainants had actively pursued the respondent seeking possession of the unit in question vide correspondences dated 14.12.2020, 21.12.2020, 28.12.2020 and 07.01.2021 however, the respondents failed to communicate to the complainants the status of construction works and occupation certificate. Thereafter, the respondent issued the alleged offer of possession on 02.05.2023, however the same was without obtaining occupation certificate. Although the respondent had continuously communicated to the complainants that the unit was ready for possession, however, in the absence of receipt of occupation certificate the



complainant could not have positively ascertained that the unit was in a habitable condition. Though the respondents received occupation certificate on 18.08.2023, but failed to communicate the same to the complainants. Complainants could not have known that the unit in question has been granted occupation certificate. It was an obligation cast upon the respondent to apprise the complainants as soon as the occupation certificate was granted by the competent authority. A valid offer of possession constitutes intimation regarding status of unit, status of receipt of occupation certificate and balance payables and receivables amount in respect of the unit for which possession has been offered to ensure a smooth hand over of possession of the unit. Since the offer of possession dated 02.05.2023 was issued without obtaining occupation certificate thus the said offer was not a valid offer of possession. Complainants could not have been forced to accept the same. The complainants have also alleged that the unit was not in a habitable condition at the time of offer of possession. However, the complainants have failed to attach relevant documentary/photographic evidence corroborating their claim in the complaint file . Hence, the Authority deems it appropriate to not adjudicate upon this issue due to lack of evidence. Further during the course of hearing learned counsel for the complainants had submitted that certain illegal demands were raised with the offer of possession dated 02.05.2023. On perusal of record it is revealed that the learned counsel for the complainants has failed to specifically address as to which of the demands



out of the alleged offer of possession were illegal and on what grounds.

Therefore, again, the Authority finds it unfit to adjudicate upon this issue.

32. Fact of the matter is that the offer of possession dated 02.05.2023 was not a valid offer of possession as the same was received without obtaining an occupation certificate. The captioned complaint was filed before the Authority on 26.06.2023 and thereafter the respondent received occupation certificate in respect of the unit in question on 18.08.2023 but the said fact was never communicated to the complainants by the respondents. The complainant could not have offhandedly known that the respondents were in receipt of offer of possession. It was an obligation cast upon the respondent to apprise the complainant as soon as the occupation certificate was granted by the competent authority. Thus a valid offer of possession has not been issued to the complainants till date. In light of the observations recorded in preceding paragraphs, it is observed that the complainants in the captioned complaint have been grossly wronged by the respondents for more than 13 years. Firstly, the respondent failed to deliver possession of the erstwhile booking of Shop No. U 26 without providing any justification for the same. The respondents had already taken a huge payment of ₹. 34,57,756.31/- out of the total consideration from the complainants in lieu of the booked shop. In light of these facts it can be presumed that in the event of failure on the part of the respondents to deliver possession of the booked shop, the complainants



who had already made payment of such a huge amount chose to invest their hard earned money in a different project just to safeguard their interests. However, the respondents again failed to deliver on their promises. As is evident from the record, the respondents again failed to deliver possession of the unit bearing no. E40-62 FF within stipulated time despite taking further amount from the complainants. The complainants have deposited a huge amount ₹. 40,07,756.31/- with the respondents since 02.03.2016 but have failed to receive their share of interests. The complainants have been left bereft of their money as well as devoid of possession of a unit two times in a row by the present respondents. Even with regard to the unit bearing no. E40-62 FF, a valid offer of possession has not been issued to the complainants till date. The complainants have now lost faith in the present respondents and do not wish to continue with the project in question.

33.Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" in CIVIL APPEAL NO(S). 6745 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, the allottee has an unqualified right to seek refund of amounts paid to the promoter along with interest. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any



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

34. The complainants in the present complaint wish to withdraw from the project of the respondent, therefore, the Authority finds it to be a case fit for allowing refund in favour of the complainants. It is the contention of the respondents that the compensation should be awarded to the complainants in accordance with the terms of floor buyer agreement dated 30.03.2016. In this regard it is observed that the respondents have failed to deliver possession to the complainants twice, firstly in accordance with the earlier agreement and thereafter, in accordance with the second floor buyer agreement dated 30.03.2016. The complainants were forced to execute another agreement with much higher sale price since they had already invested such a huge amount with the respondents. At the time of signing of the second buyer's agreement



the amount paid by the complainants was adjusted towards the fresh allotment but no compensation was given to the complainants on account of delayed delivery of possession. The respondents have retained the amount paid by the complainants since the very beginning and have been enjoying the interest over said amount throughout this period of time. For this reason, the pleadings of the respondent that compensation should be paid as per the second agreement cannot be accepted. The delay caused and the circumstances thereof are extraordinary. So, the Authority hereby concludes that complainants are entitled to receive a refund of the paid amount along with interest as per Rule 15 of HRERA Rules 2017 on account of failure on part of the respondent from the date of respective payments made to the respondents from the beginning till realization of amount. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;



(ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HIRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: “Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19](1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost of lending rate +2%:

Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”.

35. Hence, Authority directs respondents to refund to the complainants the paid amount 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 10.90% (8.90% + 2.00%) from the date amounts were paid till the actual realization of the amount.

36. Authority has got calculated the interest payable to the complainant from date of payments till date of order(i.e 29.07.2025) and same is depicted in the table below:

Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till date of order i.e 29.07.2025 (in ₹)
1.	3,07,725/-	09.02.2012	4,52,128/-
2.	4,29,524.78/-	09.04.2012	6,23,388/-
3.	27,20,506.53/-	17.05.2012	39,17,514/-
4.	5,50,000/-	02.03.2016	5,64,515/-
Total:	40,07,756.30		55,57,545/-

H. DIRECTIONS OF THE AUTHORITY

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


- (i) Respondent is directed to refund the entire amount along with interest of @ 10.90% ₹ 95,65,301.30/- to the complainant as specified in para 36 of



this order. Interest shall be paid up till the time period under section 2(z) i.e till actual realization of 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.

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


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]