# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

| | |
|---|---|
| **Complaint no.:** | **2706 of 2023** |
| **Date of filing.:** | **26.12.2023** |
| **First date of hearing.:** | **30.01.2024** |
| **Date of decision.:** | **29.07.2025** |

1. K. Ganesh S/o G. Krishnarathnam
2. K. Hemamalini D/o G. Krishnarathnam
   Both R/o 508, Sector 4, RK puram
   New Delhi-110022

...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, Haryana- 121004,

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 Elite Floors, Sector 75-89, Faridabad. |
| 2. | Nature of the project. | Group Housing Project |
| 4. | RERA Registered/ not registered | Not Registered |
| 5. | Details of the unit. | Earlier allotted Unit no. H2-19-SF, measuring 1418 sq. ft.<br>Later shifted to PE-182-SF, measuring 1510 sq. ft. |

| | | |
|---|---|---|
| 6. | Date of floor buyer agreement(in respect of unit PE-182-SF) | 15.02.2013 |
| 7. | Due date of possession | 15.02.2015 |
| 8. | Possession clause in buyer's agreement (Clause 5.1) | Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the seller/ confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being if default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions,formalities,documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan, whichever is later. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an |

| | | |
|---|---|---|
| | | occupation certificate from the concerned authority with respect to the plot on which the floor is situated. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers with regard to the handing over of possession and the event the purchaser(s) fails to accept and take the possession of the said floor within 30 days thereof, the purchaser(s) shall be deemed to be custodian of the said floor from the date indicated in the notice of possession and the said floor shall remain at the risk and cost of the purchaser(s). |
| 9. | Total sale consideration | ₹26,25,741.72/- |
| 10. | Amount paid by complainant | ₹26,86,687.17/- |
| 11. | Offer of possession. | None |

## B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that the complainants had booked a unit in the project of the respondent namely "Park Elite Floors" situated at Sector 75-89, Faridabad, Haryana in the year 2009. That earlier, complainants were allotted unit no. H2-19-SF, measuring 1418 sq. ft. First Floor, Park Elite Floors, Parklands, Faridabad. However, after a gap of three years, respondent unilaterally shifted the unit of the complainants from unit no.

H2-19-SF and allotted a different unit bearing no. PE-182-SF, measuring 1510 sq.ft vide re-allotment letter dated 12.06.2012, a copy of which is annexed as Annexure C-2. It is submitted that the re-allotment of the unit was solely attributable to the respondents as the complainant never intended to change the unit. A floor buyer agreement was executed between both the parties on 15.02.2013 in respect of the re-allotted unit bearing no. PE-182-SF. The basic sale price of the unit was fixed at ₹ 26,25,741.72/- against which the complainants have paid a total amount of ₹ 26,86,687.17/- till date. As per clause 5.1 of the agreement possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan whichever is later. Said period expired on 15.02.2015. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent Authority. However, respondents failed to offer possession within the time period stipulated in the agreement.

4. It is submitted that the complainants have never defaulted in making payment towards any instalment as per the demand raised by the respondents from time to time. The copies of the demand/payment request issued by the respondents have been annexed herewith as Annexure C-4. Complainants have already made payment of the entire sale consideration and therefore had no other option than to place reliance on the words of the

respondent. Further from booking of the unit till date, respondents have never informed the complainant about any force majeure or any other circumstances which were beyond the reasonable control of the respondents and has led to delay in completion and development of the project within the time stipulated.

5. That the arbitrariness of the floor buyers agreement dated 31.10.2012 can be derived from the clauses 7.1, 7.2 and 5.3, according to which in case of delay in construction and development, the respondents had made the provision of only Rs 5 per sq of the super built up area per month as compensation to the purchaser in the agreement whereas in case of delay in payment of instalments by complainant, it had provided for the delay penalty @ 18% interest compounded quarterly. The complainant is aggrieved by such unilateral construction of the agreement as Rs 5 per sq ft is 2-3% and is thus too less compared to the exorbitant 18% rate of interest.

6. The respondents were bound by the provisions and terms and conditions of the agreement and deliver possession of the unit within time prescribed in the floor buyers agreement. However, the respondents have miserably failed to complete the project and offer legal possession of the booked unit complete in all aspects. It is submitted that even after a lapse of more than ten years from the date of delivery of possession, respondents are not in a position to offer possession of the booked unit to the complainants.

7. That since the booking of the floor in the year 2009 till the filing of present complaint there is no sign of an offer of possession from the respondent. Rather, respondent vide letter dated 17.08.2023 gave the complainant an illegal proposal for alternate options of floor instead of the booked floor and further forcing the complainant to choose any option within 15 days failing which the first option i.e ' Option-1- refund of paid amount along with 6% interest' would be presumed chosen by complainant. A copy of said letter is annexed as Annexure C-6. The respondent is forcing the complainant to accept arbitrary and unilateral terms. Therefore, the complainants are left with no other option but to approach this Authority. Hence the present complaint has been filed.

## C. RELIEF SOUGHT

8. The complainants in present complaint seek following relief:

   i. Direct the respondents to refund the amount paid by the complainants along with prescribed rate of interest as per the RERA Act from the date of respective payments until its actual realization;

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

9. During hearing, learned counsel for the complainants reiterated the submissions as made in the complaint file.

## D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 03.05.2024 pleading therein:

10. That the complainant expressed his interest to purchase a unit in the project being developed by the respondent no. 1 under the name and style of "Park Elite Floor", Parklands, Faridabad. Accordingly, an application/ booking form was executed by the complainant and the complainant was given an inaugural discount of ₹ 1,53,360/- has been given to the complainants by the respondent no. 1. A copy of the booking form dated 10.06.2009 is annexed and marked as Annexure R1.

11. That consequently, a residential independent floor bearing no. H2-19-SF, tentatively admeasuring 1418 sq. ft super area was allotted on the basis of the tentative layout plan. That later the unit of the complainants was re-allotted from unit H2-19-SF to PE-182-SF tentatively admeasuring 1510 sq. ft with the consent of the complainants. The copies of allotment letter dated 24.12.2009 and re-allotment letter dated 12.06.2012 are annexed as Annexure R2(Colly).

12. That thereafter, a floor buyer's agreement was executed between the complainant and the respondent on 15.02.2013. A copy of the floor buyer's agreement dated 20.11.2012 is annexed and marked as Annexure R3. It is pertinent to highlight that it was agreed between the parties that the area of

the floor is tentative and subject to change, as per clause 2.2 of the said agreement.

13. Further, as per clause 5.1 of the floor buyer's agreement, possession of the unit was proposed to be handed over within a period of 24 months from the date of execution of the said agreement or sanction of building plan whichever is later, along with a grace period of 180 days. At this stage, it is submitted that the grace period has also been considered by Ld. Tribunal, Chandigarh in the case titled as **Emaar MGF Land Ltd. Vs Laddi Paramajit Singh Appeal No. 122 of 2022.**

14. That the due date of possession has not reached yet as the building plan was approved on 02.01.2024 and thus calculating from this date, the due date of delivery of possession comes to be 02.07.2026. In the light of the same, the due date of offer of possession has not yet passed.

15. That in the year 2012, on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. Reference in this regard may be taken from the judgment of Deepak Kumar v. State of Haryana, (2012) 4 SCC 629, where the competent authorities took substantial time in framing the rules in case where the process of the availability of building materials including sand which was an important raw material for the development of the said project became scarce. The Respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various

orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 02.11.2015, mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact inter-alia continued till the year 2018.

Additionally , the construction of the project was marred by the Covid-19 pandemic, 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, a series of lockdowns have been faced by the citizens of India including the complainant and respondent herein. Further, during the period from 12.04.2021 to 24.07.2021, each and every activity including construction activity was banned in the State.

16. That in addition to the above, the construction was also affected by the act of non-receipt of timely payment of instalment against the booked floor by the complainant. Despite issuing several demand/reminder letters, the complainant failed to adhere to the agreed payment plan. Copies of the

demand letters, payment receipts, reminders and final opportunity letters are annexed as Annexure R5(colly).

17. That the respondent no. 1, vide letter dated 17.08.2023, proposed the complainant alternate options. That due to the unforeseen circumstances, as detailed above, the construction of the project was severely affected and hence the respondent No. 1, acting in its bonafide conduct, gave several options to the complainant for amicable settlement of the grievances of the complainant towards the unit. That the complainant was given options of refund along with 6% simple interest along with two other options to choose from those available options. It is pertinent to mention that the parties had been in the process of settlement talks. Copy of proposal of alternate options letter dated 17.08.2023 is annexed as ANNEXURE R6(Colly).

18. That in the given facts and circumstances, it is categorical to note that since the binding rights and obligations of the parties are derived from the floor buyer agreement dated 15.02.2013, which was executed prior to the implementation of the Real Estate (Regulation and Development) Act, 2016, the latter is not applicable and in such a circumstance, the Act cannot be allowed to re-open or re-write a contract. That agreements that were executed prior to the implementation of RERA Act, 2016 and Rules, 2017 shall be binding on the parties and cannot be reopened.

19. During course of hearing learned counsel for the respondents submitted that an amount of ₹ 1,53,560/- on account of inaugural discount be deducted

from the total paid amount of the complainants, since said amount was given as discount by respondents which in actual was never paid by the complainants to the respondents.

## E. ISSUES FOR ADJUDICATION

20. 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.I Objection regarding execution of floor buyer agreement prior to the coming into force of RERA Act,2016.

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into

force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

*"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."*

Further, as per recent judgement of Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** it has already been 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, furthermore, as per section 34(e) it is the function of the Authority to

ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of floor buyer agreement is admitted by the respondents. Said agreement is binding upon the parties. As such, the respondents are under an obligation to hand over possession as stipulated in the agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

## G. OBSERVATIONS OF THE AUTHORITY

21. As per facts and circumstances, complainants in this case had initially allotted unit bearing no. H2-19-SF, measuring 1418 sq. ft. in the project being developed by the respondent namely 'Park Elite Floors' Parklands situated at Faridabad vide allotment letter dated 24.12.2009. However, after a gap of three years, respondent unilaterally shifted the unit of the complainants from unit no. H2-19-SF and allotted a different unit bearing no. PE-182-SF, measuring 1510 sq.ft vide re-allotment letter dated 12.06.2012. Thereafter, both parties executed a floor buyer agreement in respect of the unit bearing no. PE-182-SF on 15.02.2013 for a basic sale consideration of ₹ 26,25,741.72/- against which the complainants have

paid a total amount of ₹ 26,86,687.17/- . It is the contention of the complainants that the respondents have delayed delivery of possession of the booked unit beyond the time period stipulated in the agreement. Hence, the present complaint seeking refund of paid amount along with interest as per RERA Act.

22. As per clause 5.1 of the floor buyer agreement dated 31.10.2012 possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan whichever is later. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent Authority. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been subjected to sanction of building plan that the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the floor buyer agreement by the promoter is just to evade the liability towards timely delivery of the unit and to deprive the allottee of his right accruing after delay in delivery possession. The respondent in its reply has submitted that the building plans got approved on 02.01.2024 thereby pushing the deemed date of possession to 02.07.2026. However, the respondent has not filed a copy of the same to substantiate as to whether the said date of approval is for original building

plans or revised building. Thus, the contention of the respondent to calculated deemed date of possession from the date of sanction of building plans is rejected. The agreement further provides that the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate with respect to the plot on which the floor is situated. It is a matter of fact, that the promoter did not apply to the concerned Authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the floor buyer agreement i.e immediately after completion of construction works within 24 months. 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. In light of these facts, the deemed date of possession is being calculated from the date of execution of floor buyer agreement, which comes out to 15.02.2015.

23. Admittedly, the delivery of possession of the unit in question has been delayed beyond the stipulated period of time. Respondent has attributed this 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*"

24. As per observations recorded in preceding paragraph, possession of the unit should have been delivered to the complainants on 15.02.2015. However, respondents failed to complete construction of the unit and deliver possession within the time period stipulated in the buyer's agreement. Admittedly no offer of possession has been made to the complainants till date in respect of the unit in question. Rather the respondents vide letter dated 17.08.2023 had proposed alternate options to the complainants. Said options being refund of paid amount along with 6% simple interest; change in time for delivery of possession and option for alternate ready to move in unit at current market value. A perusal of these options and the terms of proposal reveals that they are heavily one sided and completely aiding the respondents to cover up their lacunae and escape their obligations with minimum liability. The alternate options proposed by the respondents were clearly causing wrongful gain to the respondents and wrongful loss to the complainants. Complainants who had deposited a huge amount of ₹26,86,687.17/- with the respondents could not have been forced to accept any of the aforementioned options as it would have caused them a great loss. The respondents were making use of their dominant

possession to coerce the complainants into accepting the unfair terms of the proposal. Constrained, the complainants approached the Authority seeking redressal of their grievances.

25. Fact of the matter is that the delivery of possession of the unit in question has been delayed beyond a reasonable period of time. Even at present the respondent is not in a position to issue a valid offer of possession to the complainants. Complainants who have already waited for more than ten years for possession of the booked unit are not in a position to wait any longer. Complainants have completely lost faith in the present respondents and do not wish to be a part of the project in question anymore. Thus, the complainants have prayed for relief of refund of paid amount alongwith interest. In this regard, 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."*

26. The complainants in the present complaint wish to withdraw from the project of the respondents , therefore, the Authority finds it to be a case fit for allowing refund in favour of the complainants. 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 respondents from the date of respective payments made to the respondents since 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;*

Rule 15 of HRERA 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"."*

27. Hence, Authority directs respondents to refund to the complainants the paid amount along with interest at the rate prescribed under 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.

28. 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. | 1,00,000/- | 11.06.2009 | 175983 |
| 2. | 2,00,000/- | 20.06.2009 | 351428 |
| 3. | 1,00,000/- | 21.08.2009 | 173862 |
| 4. | 1,85,628/- | 21.08.2009 | 322737 |
| 5. | 2,61,051/- | 22.10.2009 | 449036 |
| 6. | 1,16,212/- | 21.12.2012 | 159779 |
| 7. | 2,31,029.99/- | 10.01.2013 | 316262 |
| 8. | 1,00,000/- | 10.01.2013 | 136892 |
| 9. | 2,20,000/- | 02.04.2013 | 295775 |
| 10. | 1,11,029.89/- | 02.04.2013 | 149272 |
| 11. | 1,31,029.19/- | 02.05.2013 | 174986 |
| 12. | 2,00,000/- | 02.05.2013 | 267095 |
| 13. | 2,70,029.89/- | 17.06.2013 | 356908 |
| 14. | 61,000/- | 17.06.2013 | 80626 |
| 15. | 24,404/- | 06.02.2017 | 22563 |
| 16. | 2,10,000/- | 23.05.2017 | 187510 |

| | | | |
|---|---|---|---|
| 17. | 66,344.76/- | 23.05.2017 | 59240 |
| Total=25,87,758.71/- | | | 36,79,954/- |
| Total payable to complainant=2587758.71+36,79,954=62,67,712.71/- | | | |

29. It is pertinent to mention that the complainants have claimed to have paid an amount of ₹26,86,687.17/- to the respondents in lieu of booked unit. However, out of said amount, complainant has actually only paid an amount of ₹ 25,87,758.71/- to the respondents and has received an amount of ₹ 98,928.46/- as timely payment discount. Timely payment discount is a discount given by the respondent to the allottees who make requisite payments on time and receive benefit of the same towards the sale consideration. This amount is made a part of the payment made towards sale consideration of the booked unit. This amount is never actually paid by the allottee nor received by the respondent. It is just an added benefit towards booked unit. Captioned complaint pertains to refund of the paid and the complainants are not continuing with the project, this amount cannot be entertained as payment made towards sale consideration. The actual amount paid by the complainants and received by the respondents is ₹ 25,87,758.71/- only. Therefore, the total paid amount for the purpose of refund and calculation of interest is being taken as ₹ 25,87,758.71/- only.

## H. DIRECTIONS OF THE AUTHORITY

30. 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% ₹ 62,67,712.71/- to the complainant as specified in para 28 of this order. Interest shall be paid up till the time period under section 2(za) 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.

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

.....
**CHANDER SHEKHAR**
**[MEMBER]**

.....
**DR. GEETA RATHEE SINGH**
**[MEMBER]**