



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	210 of 2021
Date of filing:	04.03.2021
Date of first hearing:	27.04.2021
Date of decision:	24.04.2025

Rohit Chandra S/o Sh. Mr. Govind Ballabh Joshi,
R/o P-103, 2nd Floor,
Pandav Nagar, Mayur Vihar
Phase-I, Delhi-110091.

....COMPLAINANT

VERSUS

1. Asian Developers Limited,
Regd Office : W-6, 3RD Floor,
Naveen Shadra Colony,
New Delhi- 110032.

2. Saera Auto Private Limited,
Regd Office: Plot No.1,
Sector-11, Dwarka,
New Delhi- 110075.

3. Dinesh Kumar Sharma S/o Sh. Om Prakash Sharma,
Director of Asian Developers Ltd.
R/o B-304, NRI Residency,
Pari Chowk, Omega-I,
Greater Noida(UP)- 201310
Currently at-Bhondsi Jail, Gurugram,
938W+ 4XG,

Near RTC, Distt. Gurgaon,
Bhondsi, Haryana- 122102.

4. Deepak Gusain S/o Sh. Dinesh Singh Gusain,

Director of Asian Developers Ltd.

R/o 100-D, Pocket- A,

Mayur Vihar, Delhi-110091

& M-97, 1ST Floor, M-Block,

Laxmi Nagar, Delhi-110092

Currently at-Bhondsi Jail, Gurugram,

938W+ 4XG,

Near RTC, Distt. Gurgaon,

Bhondsi, Haryana- 122102.

5. Nitin Kumar S/o Sh. Ved Praksh,

Director of Asian Developers Ltd.

R/o F-2/13, Ganga Triveni,

Sector-9, Apartments

Rohini, Delhi-110085.

Currently at- Tihar Jail,

625 LIG, Vikas Puri, New Delhi,

Tihar Central Jail,

Janakpuri, Delhi- 110058.

.... RESPONDENT(S)

CORAM:

**Parneet S Sachdev
Nadim Akhtar
Chander Shekhar**

**Chairman
Member
Member**

Present: - Mr. Akshat Mittal, counsel for the complainant.

Mr. Aditya Singh, Proxy counsel for Mr. Pranav Proothi, counsel for respondent no.2 through VC.

Mr. Shivam Dahiya, counsel for Mr. Dinesh Sharma, director of Asian Developers Ltd. through VC.

ORDER (PARNEET S SACHDEV -CHAIRMAN)

1. Present complaint has been filed on 04.03.2021 by the complainant 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 fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	"Bawal Residency" Plot No. GH-16, Sector-2, Phase-I, Growth Centre, IMT, Bawal.
2.	Flat no. and area	B-2/402, measuring 1460 Sq. Ft.
3.	Date of allotment letter cum Builder Buyer Agreement	30.04.2016
5.	Due date of offer of possession	30.04.2019 (addressed in next row)
6.	Possession clause	Complainant has pleaded that Clause 10.1 of the allotment



		letter cum Buyer agreement deals with it. However, BBA attached with complaint has this particular page missing. Therefore, authority deems fit to rely upon M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr wherein it has been observed that in absence of builder buyer agreement it cannot rightly ascertain as to when the possession of said plot was due to be given, a period of 3 years has been observed as a reasonable period of time to complete construction and deliver possession of the unit.
7.	Basic sale price	₹ 47,18,700
8.	Amount paid by complainant	₹42,46,830/- (as per receipts attached with application dated 20.11.2023)
9.	Offer of possession	Not given

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Facts of the present case pertain to the respondent no.1 promoter's project under the name and style of, "Bawal Residency" situated at Plot no. GH-16, Sector 2 Phase-I, Growth Centre, IMT, Bawal, Haryana.
4. That the complainant booked a flat in respondent no.1's project and paid ₹2,00,000/- as booking amount against the said unit to respondent no. 1. A



copy of the acknowledgment receipt dated 09.04.2016 is annexed as **ANNEXURE P-1** with the complaint.

5. The complainant was allotted unit bearing no. B-2, 402, situated in Tower-B, admeasuring 1460 sq.ft. in the project being developed by Respondent No. 1, vide an Allotment letter cum buyer agreement dated 30.04.2016. A copy of the said allotment letter cum buyer agreement dated 30.04.2016 is annexed as **ANNEXURE P-2** with the complaint.
6. That subsequently, the complainant entered into a Tripartite Agreement dated 09.05.2016 with Allahabad Bank and respondent no. 1. Pursuant to which a home loan to the tune of ₹37,70,000/- was sanctioned by Allahabad Bank for the purpose of disbursing payment towards the consideration amount payable to respondent No. 1. Copies of the Sanction Letter issued by the bank and the duly executed Tripartite Agreement dated 09.05.2016 are annexed as **Annexure P-3** and **Annexure P-4**, respectively.
7. That the complainant avers that in accordance with Clause 10 of the Buyer's Agreement dated 30.04.2016, possession of the allotted flat was to be delivered within a period of 15 months from the date of booking, i.e., from 09.04.2016, which contractually culminated on 09.07.2017.
8. Further, the complainant submits that respondent no. 1 has failed to honour its contractual obligations by not handing over possession of the allotted flat to the complainant within the stipulated period. Furthermore, respondent no. 1 has neither offered an alternative unit of equivalent specifications nor

refunded the amounts paid by the complainant towards the consideration of the said unit, thereby acting in breach of the terms and conditions set forth in the Buyer's Agreement.

9. That complainant has paid an amount of Rs. ₹42,46,830/- till now against the said unit. Copies of the receipts of the same are annexed as

ANNEXURE C-1 with Application dated 20.11.2023 in the complaint file.

10. That on numerous occasions he had requested respondent no. 1 for a refund, but the respondent continuously delayed the refund on various pretexts.

11. That the complainant left with no other recourse filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016, on 16.09.2019 against Respondent No. 1 before the Hon'ble NCLT, Delhi Bench, bearing CP No. 2419 of 2019.

12. That it was only after becoming aware of the Hon'ble Authority's order dated 29.10.2019 in Complaint No. 513 of 2018, the complainant came to know of the fraudulent conduct of respondent no. 1 and respondent no. 2 and further that the respondent no.1 made the allotment of the flat of the complainant in violation of the conditions of the allotment of the land by the HSIIDC. Consequently, the complainant, having no alternative, chose to seek relief before this Authority. However, application filed under Section 7 of the IBC, 2016 before the Hon'ble NCLT, Delhi Bench, was withdrawn on 08.01.2021 well before approaching this Authority. A copy of the said order



dated 29.10.2019 in complaint no 513 of 2018 is annexed as ANNEXURE P-7 with the complaint.

13. That in view of the above, the complainant craves indulgence of this Hon'ble Authority to direct the respondents to refund the paid amount herein in terms of the order dated 29.10.2019 passed in Complaint No. 513 of 2018, wherein respondent no. 1 and respondent no. 2 were found guilty of defrauding homebuyers like the Complainant, and were held liable for refunding the amounts paid.

C. RELIEFS SOUGHT

14. The complainant in his complaint has sought following reliefs:

- (i) Grant the same relief to the Complainant, as was granted to the Homebuyers in the Complaint No. 513 of 2018 by this Hon' ble Authority;
- (ii) Hold Respondent No. 1 and Respondent No. 2 to be jointly and severally liable towards the Complainant for the refund of the amounts disbursed to Respondent No.,1, i.e., ₹38,48,130/- along with interest at such rate as may be prescribed in this behalf under the provisions of the Real Estate Regulatory Authority Act, 2016 and the rules and regulations framed thereunder; (Subsequently, proof of payment of ₹42,46,830/- filed vide application dated 20.11.2023)
- (iii) Pass any Order(s) as this Hon'ble Authority may deem fit in the interest of justice, equity and good conscience.



D. SUBMISSIONS ON BEHALF OF RESPONDENT NO.1

Notice in captioned complaint was issued on 05.03.2021, which was not delivered to respondent no.1 and was received back. However, Mr. Vishesh Wadhwa appeared for the first time on 27.04.2022 on behalf of respondent no.1. It is pertinent to note that no one has appeared on behalf of respondent no.1, i.e., M/s Asian Developers, in any of the matters before this Authority since 2018. Most of these matters were proceeded *ex parte*. This fact was also noted by this Authority in its order dated 27.04.2022. Furthermore, it was observed that Mr. Wadhwa had neither submitted any *vakalatnama* nor any memo of appearance on behalf of respondent no.1. The Authority, vide the aforementioned order, had also directed respondent no.1 to establish credentials of respondent no.1 and following was observed by authority-

"Authority however observes that numerous notices have been issued to respondent No.1 i.e. Asian Developers. Many a times publication in newspapers has also been done, but never ever any notice could be delivered nor any one ever came present. If the respondent No. 1 wishes to appear before the Authority through their counsel, proof of their existence, company registration number, their registered office, names and address of directors/partners, their e-mail ids and phone nos. as well as their residence proof should be presented before the Authority to know whether Asian Developers is a real entity or a fictitious entity. It is only after evidence in regard to existence of the firm named Asian Developers is presented before Authority that further decision regarding marking their presence will be taken."



Further, on the next date of hearing, i.e. on 28.06.2022, Ms. Swadha Gupta appeared for respondent no.1 and submitted that respondent no.1 had filed an application dated 09.06.2022 through the erstwhile director of M/s Asian Developers, acting through his Power of Attorney holder, Mrs. Anjali Sharma. The Authority, vide its order dated 28.06.2022, observed that the application had been filed by applicant without any locus. Moreover it was not supported by any board resolution and that the company itself had been struck off as per MCA records. Accordingly, the Authority summarily dismissed the application, finding it to have been filed with ulterior motive. Relevant paragraph of the order dated 28.06.2022 is reproduced below-

"6. Authority observes that the application dated 09.06.2022 has been filed by MS Anjali Sharma who is supposedly holder of a power attorney on behalf of erstwhile Director Mr Dinesh Sharma of M/s Asian Developers.

7. Authority observes that even if it is assumed that Mr. Dinesh Sharma is an existing person, still he has no locus to file this application through his attorney since he is an erstwhile Director and not a sitting Director. Litigation against company M/s Asian Developers cannot be pursued by an erstwhile Director. An erstwhile Director has no locus or authority to prosecute a lawsuit in respect of a company in which he is neither a director nor holds any executive position.

8. Secondly, there is no board resolution of M/S Asian Developers authorising anyone to prosecute this matter:

9. Information as downloaded from the website of the Ministry of Corporate Affairs reveals that the status of the company has been shown as "Strike off". Further, the



last Annual General Meeting was held on 30.09.2015 and the last balance sheet was prepared on 31.03.2015. Therefore, for all practical purposes this company has ceased to exist.

Interestingly, erstwhile Director as the caption of application suggests, who himself has no locus, has supposedly executed a power attorney in favour of Ms Anjali Sharma, but a copy of such power of attorney has not been placed before the Authority.

11. Even vakalatnama appears to have been signed by several persons without specifying their names, Ms. Swadha Gupta has simply put her stamp on the supposed vakalatnama on the basis of which she claims to be an authorised representative of the counsel of the company.
respondent

12. Authority is of the view that for the foregoing reasons the application filed by supposed attorney of the erstwhile director of respondent company appears to have been filed with mala-fide intentions. Credentials of M/s Asian Developers as had been demanded by Authority in its orders dated 27.4.2022 have not been presented.

There is no board resolution authorising anyone to prosecute on behalf of the respondent company, Information placed on the site of MCA reveals that company has been struck off. The application presumably has been filed by power of attorney of an erstwhile Director who by no stretch of imagination can be said to be having any locus to prosecute this matter before the Authority.

13. For above reasons, Authority summarily dismisses the application for the reasons of having been filed with some ulterior motive."

That this Hon'ble Authority, vide its order dated 04.08.2022, noted that no one had appeared on behalf of respondent no. 1 despite repeated opportunities. Consequently, the Authority had, vide order dated 24.02.2022, proceeded ex parte against respondent no. 1 due to its continued non-appearance.



Thereafter, respondent no. 1 preferred an appeal before the Hon'ble Appellate Tribunal, which was disposed of vide order dated 01.06.2023 in Appeal No. 848 of 2022, wherein respondent No. 1 was directed to file a reply in the present complaint.

In compliance, Ld. Counsel for the respondent no.1 has filed a detailed reply on 26.07.2023 pleading therein as under:-

15. That the respondent no. 1 is a Private Limited Company, that was duly registered under the provisions of the Companies Act, 1956, engaged in the business of construction, having its registered office at Delhi. That the current status of respondent no. 1, as per the records of the Registrar of Companies, is "struck off."
16. That the respondent no.1 asserts that the property in question bearing Plot no. GH-16, Sector 2, Phase-I, Growth Centre, IMT, Bawal, Haryana was allotted to the respondent no.2 by HSIIDC, Haryana vide allotment letter dated 04.09.2006.
17. That Director No. 1 of M/s Asian Developers Ltd was apprehended by the Economic Offences Wing, Delhi Police, in FIR Nos. 152/2018 and 180/2018, and subsequently by the Haryana Police in FIR Nos. 1184, 1185, and 1186 of 2019, dated 09.08.2022 and 23.05.2022, respectively. He is presently in judicial custody at Bhondsi Jail, Haryana.
18. Additionally, it is stated that respondent no. 1 being the promoter and developer, was engaged for the construction of residential dwelling units on the



subject land by respondent no. 2, who is the original allottee of the said land where the project in question was to be developed.

19. Furthermore, the loans applied by and granted to the complainant from the bank namely Allahabad Bank has been granted after proper due diligence and after checking the approvals/permissions of the project by numerous Government authorities and has thus casted a bona-fide impression of the project, acting upon which, the complainant home buyer and other home buyers have entered into the booking.
20. That respondent no.1 has till date made two towers and due to unforeseeable circumstances was unable to carry out the construction. That the halt in the construction was neither deliberate nor intentional.
21. That the payment plan under the loan granted to the complainant was a 'construction linked payment plan' and accordingly, payments have been remitted by the Allahabad Bank as a loan amount on 04.01.2016 vide loan account. That it is the complainant who has failed to abide by the terms of the Agreement and/or pay the agreed amounts or discharge its liability.
22. That the respondent no. 1 has made bona fide efforts to complete the said project and has even constructed two towers but due to unforeseeable circumstances he was unable to complete the same in time. Therefore, no cause of action has arisen in favour of the complainant to file present complaint against the respondent No. 1.



E. SUBMISSIONS ON BEHALF OF RESPONDENT NO.2

Respondent No. 2, prior to filing its written submissions, moved multiple applications before the Registry dated 02.08.2021, 10.08.2021, and 16.08.2021, raising identical contentions and seeking either deletion of its name from the array of parties, or adjournment of proceedings sine die, pending adjudication of alleged disputed questions of fact by a competent civil court. In support of its applications, respondent no. 2 has also made the following assertions:

23. That it was unaware of the dealings of M/s Asian Developers Ltd., and in fact, was itself defrauded by the said entity through criminal acts involving forgery and fabrication of documents.
24. That it had no knowledge of the sale of apartments by M/s Asian Developers Ltd. and such transactions were allegedly in complete contravention of the contractual arrangements between respondents no. 1 and 2. That the title claimed by M/s Asian Developers Ltd. in the buyer agreements was defective and that the purchasers and their respective financial institutions failed to exercise due diligence.
25. That a Civil Suit bearing CC No. 241 of 2018 titled Sacra Auto India Pvt. Ltd. v. Asian Developers Ltd. & Ors. was filed before the Ld. Civil Judge, Bawal, seeking, inter alia, a declaration that the Undertaking dated 29.07.2012 and the MoU dated 16.11.2012 were null and void, on the



ground that they were allegedly not executed by it. Multiple injunctions were also sought therein against M/s Asian Developers Ltd. and others.

26. That a criminal complaint under Section 156(3) CrPC was also filed in October 2018 before the Ld. Sub-Divisional Judicial Magistrate, invoking Sections 406, 420, 465, 467, 468, 471, 472, 120B, and 34 IPC against the concerned parties.

Copies of the MoU dated 16.11.2012, along with FIRs dated 08.01.2019 and 10.11.2020, were annexed with the applications. However, all such applications were dismissed by this Authority vide order dated 19.08.2021.

Similar assertions were reiterated in the written submissions dated 28.06.2022 filed by respondent no.2 in the registry which is not being repeated here for the sake of brevity. It was further submitted by respondent no. 2 that it had preferred an appeal before the Hon'ble Appellate Tribunal against the Authority's order wherein the Authority had held respondent no.1 and respondent no.2 jointly and severally liable.

Additionally, respondent no. 2 submitted that a bunch of similar complaints, with lead case being Complaint No. 513 of 2018 and the consequential order dated 29.10.2019, is sub judice before the Hon'ble Supreme Court, wherein the issue of whether M/s Saera Auto India Ltd. qualifies as a "promoter" under the Act is under challenge. It was argued that respondent no. 2 is merely a landowner and should not be treated as a promoter.



Further, respondent no. 2 sought repeated adjournments on the ground of amicable settlement with the complainant. However, no settlement was materialized based on the statement made by the learned counsel for the Complainant as recorded in the Authority's order dated 02.11.2023.

F. ISSUES FOR ADJUDICATION

Whether complainant is entitled to the reliefs sought or not? If yes, the quantum thereof?

F. OBSERVATIONS AND DECISION OF THE AUTHORITY

27. In view of the facts, circumstances and documents placed on record, this Authority observes that the present complaint pertains to the project "Bawal Residency" located at Plot No. GH-16, Sector 2, Phase-I, Growth Centre, IMT, Bawal, Haryana. Onset of facts reveals that the land on which the project in question has been developed was originally allotted to Respondent No. 2 by HSIIDC and later developed and marketed by Respondent No. 1.

28. Admittedly, complainant Rohit Chandra had booked a flat in the project of the respondent in April, 2016 against which a total amount of ₹42,46,830 /- has been paid to the respondent which is duly substantiated by receipts attached. Out of said paid amount, last payment of ₹3,50,000/- was made to respondent no.1 on 10.05.2016 which implies that respondent is in receipt of total paid amount since year 2016 whereas fact remains that no valid offer of possession duly supported with occupation certificate of the booked flat has been made till date. Authority observes that the floor in question was allotted by respondent



no.1 on 30.04.2016. Allotment letter cum Builder agreement was also executed between the parties on the said date. In present situation, respondent failed to honour its contractual obligations without any reasonable justification. Now the complainant has sought refund along with interest owing to the failure of the respondents to deliver possession within the stipulated time and their continued default thereafter. 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."

29. The decision of the 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 in favour of complainant.

30.The question that now falls for determination is with respect to the entity upon whom the liability to refund the amount ought to be fastened. In this regard, the Authority is of the considered opinion that in the present complaint, the core issue revolves around the unauthorised sale and non-delivery of possession of flats by M/s Asian Developers Ltd., allegedly acting under the authority of M/s Saera Auto India Pvt. Ltd., the landowner and allottee of the plot in question from HSIIDC. It is pertinent to note that the facts of the instant complaint are substantially similar to those adjudicated upon by this Authority at length in Complaint No. 513 of 2018 and connected matters, disposed of by a detailed order dated 29.10.2019.

31.In the said decision, this Authority, after a thorough examination of the MoU dated 16.11.2012 and the undertaking dated 29.07.2012 executed between M/s Saera Auto India Pvt. Ltd. and M/s Asian Developers Ltd., held that the respondent no. 1 was expressly authorised by the landowner respondent no. 2 to develop, market, and sell residential units. The Authority categorically concluded that both parties had acted in connivance, and that the landowner could not subsequently disown its liability under the garb of alleged fraud or ignorance. The Authority further held both respondents jointly and severally are liable to refund the amounts received

from the allottees along with interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016, read with Rule 15 of the Haryana RERA Rules, 2017. Relevant paragraph of the order dated 29.10.2019 is being reproduced below for reference-

"7. The Authority has gone through all the facts and circumstances of the matter. It observes and orders as follows:-

(i) Admittedly, M/s Saera Auto India Pvt. Ltd. is owner in possession of the plot in question on which a group housing colony was approved to be set up in accordance with the terms & conditions set out by HSIIDC. No documents have been placed before the Authority in this regard, but from various submissions made it can be safely concluded that apartments in the group housing colony could have been allotted only to industrial workers and were not meant to be sold in the open market for profit. However, for having sold the apartments to the general public, an explanation of the allottee M/s Saera was called by HSIIDC.

(ii) The building plans of the group housing colony was got approved from HSIIDC by the respondent M/s Saera Auto India Pvt. Ltd. Being owners of the plot as well as holder of the approved plans they were fully responsible and answerable for development and allotment of the colony in accordance with the approved plans and other terms and conditions of allotment. It was the duty of the M/s Saera Auto to ensure that the development of the colony took place in accordance with lawful terms & conditions agreed by them with HSIIDC. As the facts reveal, M/s Saera have failed to abide by the terms and conditions of allotment of land.



(iii) A letter dated 13.12.2013 has been place on record by the complainants vide which an explanation of M/s Saera Auto was sought by HSIIDC for unauthorised selling of flats in the said group housing colony by M/s Asian Developers Ltd. As a consequence of the above notice M/s Saera wrote the letter dated 31.3.2014 seeking explanation from M/s Asian Developers Ltd. Thereafter, they sent a reply to the HSIIDC showing their complete ignorance about the activities of M/s Asian Developers. M/s Saera has also pleaded that since they were basically an auto company had no knowledge regarding construction and allied activities, therefore, for development of the colony they executed the said undertaking and MoU with M/s Asian Developers.

This line of arguments of M/s Saera Auto is totally unacceptable. They are a large auto company. The terms & conditions settled between them and HSIIDC were very clear to them. They could have taken legal advice in the matter from their experts. They kept ignoring activities of M/s Asian Developers of selling the apartments and developing the colony and now they are pleading innocence in the matter which is difficult to accept.

In fact vide their letter dated 7.07.2014 and 6.09.2014, written to HSIIDC M/s Saera has sought to justify the MoU executed by them with M/s Asian vide which all the powers including for sale of apartments had been conferred by them in favour of M/s Asian. After having done so and after signing all the Authorisations, now M/s Saera cannot plead assume that activities of M/s Asian were unauthorised and M/s Saera is not responsible at all for the same. The landowner-licensee is duty bound to ensure



that development takes place as per conditions of allotment. The attending facts and circumstances, in fact, clearly proves that all the actions have been taken by M/s Asian with active consent and authorisation of the landowner i.e. M/s Saera.

(iv) It is assumed that the respondent No.1 M/s Saera Auto India Pvt. Ltd. is a huge company. They have all kind of staff and managers and legal experts working with them. They initially got the allotment of the plot done in their favour at their own level. After allotment of the plot and after execution of the conveyance deed where was the need for signing the undertaking of the MoU with respondent No.2 vide which extensive powers were conferred upon the respondent No.1. Para No.3 of the MoU clearly confers the rights to sell and allot the flats to the respective buyers. Furthermore, para No.10 of the agreement dated 16.11.2012 facilitate the adjustment of the payments to respondent No.2 from the sale proceeds of the flats and receipts.

The Corporation Bank sanctioned the loan in favour of respondent No.2 on the strength of the legal documents presented to them. Shri Brij Bihari Lal Sharma, Advocate for the Corporation Bank has given a detailed legal opinion regarding the legal title over the land etc. by taking into consideration the documents executed by respondent No.1 singularly or respondent No.1 & 2 together.

(v) Keeping the afore-mentioned facts and circumstances in view the authority rejects the pleas of M/s Saera that they were unaware of the activities of respondent No.2 and that they had never authorised the sale of the apartments in the colony. The facts captured in this order tells a totally different story. M/s Saera has been constantly



defending to HSIIDC the signing of MoU with M/s Asian. It is further surprising that even after becoming aware of the facts of sales having been effected by M/s Asian in the year 2013, they merely sought an explanation from them in February, 2014 and never proceeded to terminate their agreement or to file a civil suit or to lodge a criminal complaint against them. They took no action whatsoever to safeguard the interest of the group housing colony or of the allottees of the colony. It was only after when this Authority took recognizance of the matter in September 2018 that they filed a civil suit and a criminal complaint in November, 2018.

From 2014 to 2018 M/s Saera was fully aware of the alleged wrongdoings of M/s Asian, but still they did not bother themselves at all to take corrective actions. It clearly proves that all that was done by M/s Asian was with the consent and with the approval of M/s Saera Auto. This Authority also is surprised as to why even HSIIDC failed to follow through the matter after taking recognizance of the violations of the conditions of the allotment letter by the respondent No.1. No correspondence whatsoever between the allottee respondent No.1 and HSIIDC has been brought on record for taking corrective steps. After becoming aware of the fact that respondent No.1 or his delegates were unauthorisedly selling the apartments in the colony, HSIIDC should have taken corrective steps. In the light of the foregoing discussions and findings, this authority is of the confirmed view that the owner in possession of the plot M/s Saera Auto India Pvt.Ltd. shall be liable jointly and severally with the promoters of the project who was authorised by them to sell and develop the apartments. For achieving their objective, both parties executed several

documents including an MoU and an agreement. For active participation or for the passive ignorance of the facts happening on the ground, both respondent No.1 & respondent no.2 are answerable and liable towards the complainants jointly and severally.

8. *In the light of the foregoing discussions and findings, this authority is of the confirmed view that the owner in possession of the plot M/s Saera Auto India Pvt.Ltd. shall be liable jointly and severally with the promoters of the project who was authorised by them to sell and develop the apartments. For achieving their objective, both parties executed several documents including an MoU and an agreement. For active participation or for the passive ignorance of the facts happening on the ground, both respondent No.1 & respondent no.2 are answerable and liable towards the complainants jointly and severally."*

32. Therefore, this Authority finds no reason to depart from the findings rendered in the earlier order dated 29.10.2019 in Complaint No. 513 of 2018.

33. Accordingly, this Authority holds that both respondent no. 1 (M/s Asian Developers Ltd.) and respondent no. 2 (M/s Saera Auto India Pvt. Ltd.) are jointly and severally liable to refund the amounts deposited by the complainant, along with interest as per Rule 15 of the Haryana RERA Rules, calculated from the respective dates of payment till the actual realization of the amount.



34. 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. 15.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

35. 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".

36. Thus, respondents will be liable to pay the complainant- interest from the dates when the amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of ₹84,47,527/- 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 11.10% (9.10% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the



total amount along with interest calculated at the rate of 11.10% till the date of this order and total amount works out to ₹84,47,527/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till 24.04.2025
1.	2,00,000	09.04.2016	2,00,895
2.	3,50,000	10.05.2016	3,48,266
3.	36,96,830	03.06.2016	36,51,536
4.	Total=42,46,830/-		Total= 42,00,697/-
5.	Total Payable to complainant	42,46,830+ 42,00,697=	₹84,47,527/-

I. DIRECTIONS OF THE AUTHORITY

37. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA 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:

- Respondents are directed to refund the entire paid amount of ₹42,46,830/- with interest of ₹ 42,00,697/- to the complainant- Sh. Rohit Chandra. It is further clarified that respondents will remain liable to pay interest to the complainant till the actual date of realization of the amount.
- A period of 90 days is given to the respondents 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. In view of aforesaid observations, present complaint stands **Disposed of**. File be consigned to the record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET S SACHDEV
[CHAIRMAN]