HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1636 of 2022**
Date of filing:	**28.07.2022**
First date of hearing:	**28.09.2022**
Date of decision:	**19.05.2025**

Bimla Yadav,
W/o Shri Ram Chand,
R/o P.O. Box-15764, RAS AI Khaimah
AI Khaimah Dubai, United Arab Emirate,
C/o Post Office Manesar,
Tehsil Manesar, District Gurugram ....COMPLAINANT

VERSUS

1. M/s BPTP Limited
   (Through its director)
   Registered office-
   M-11, Middle Circle, Connaught Circus,
   New Delhi- 110001

2. M/s Countrywide Promoters Pvt. Ltd.
   (Through its director)
   Registered office- M-11, Middle Circle,
   Connaught Circus, New Delhi- 110001

....RESPONDENTS

CORAM: Nadim Akhtar **Member**

Chander Shekhar **Member**

Present: - Sh. Tarun Singla, Counsel for the complainant through VC

Sh. Hemant Saini, Counsel for both the respondents.

ORDER:(NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 28.07.2022 by 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 project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Discovery park, Sector-80, Faridabad

2.	Nature of the project.	Residential flats
3.	RERA Registered/not registered	Lapsed project Registered vide registration no. 297 of 2017 dated 16-10-2017
4.	Details of allotted unit.	Unit No.- L-202, 2nd Floor measuring 2440 sq.ft.
5.	Date of Flat Buyer Agreement-	17.09.2013
6.	Deemed date of possession	17.09.2016 (36 months from the date of execution of agreement)
7.	Possession clause	*Clause 3.1, ".....the seller/ confirming party proposes to handover the physical possession of the said unit to the purchaser within a period of 36 months from the date of sanctioning of the building plan or execution of flat buyer agreement whichever is later."*
8.	Amount paid by the complainant	₹22,91,422/-
9.	Basic Sale Price	₹67,10,000/-
10.	Payment plan	Construction linked plan

B. FACTS OF THE PRESENT CASE AS STATED BY THE COMPLAINANT IN THE COMPLAINT:

3. That the Complainant was allotted Flat No. L-202, Second Floor in Tower-L of the Respondent's project titled "Discovery Park", Parklands, Sector-80, Faridabad, Haryana. In pursuance of the said allotment, the parties executed a Flat Buyer's Agreement dated 17.09.2013, wherein the terms and conditions governing the allotment were mutually agreed upon. A copy of the Flat Buyer's Agreement is annexed herewith as Annexure-1.

4. As per Clause 3.1 of the said Agreement, the Respondents undertook to hand over possession of the flat to the Complainant within 36 months from the date of execution of the Agreement, along with an additional grace period of 180 days for obtaining the Occupation Certificate. Accordingly, the Respondents were required to hand over possession by 16.09.2016, or latest by 16.03.2017.

5. The Complainant has till date paid a total sum of ₹19,38,086/- towards the consideration of the said flat. The said amount includes payments of ₹4,50,506/- (receipt dated 20.01.2011), ₹13,46,560/- (receipt dated 05.06.2012), and ₹43,843/- (receipt dated 13.02.2014). Copies of these receipts are annexed as Annexure-2 to Annexure-4. Although all receipts are not presently available with the Complainant, the Respondents have, through

their Statement of Account dated 09.07.2021, acknowledged receipt of the total sum of ₹19,38,086/-. The said statement is annexed as Annexure-6.

6. Despite receipt of the substantial consideration amount, the Respondents failed to make any meaningful progress in the construction of the project. Due to such inordinate delay and the Respondent's failure to fulfill its obligations, the Complainant stopped making further payments after 2017.

7. In order to conceal its default and delay, the Respondents unilaterally cancelled the allotment of the Complainant's flat vide letter dated 10.12.2019, without completing the construction or refunding the amount paid by the Complainant. The said cancellation letter is annexed herewith as Annexure-5.

8. It is submitted that till date, the Respondents have neither offered possession of the flat nor refunded the amount deposited by the Complainant, thereby violating the terms of the Agreement and provisions of the Real Estate (Regulation and Development) Act, 2016. The conduct of the Respondents is unjust, arbitrary and unreasonable. The Respondents have misused its dominant position in the real estate sector and indulged in unfair trade practices, thereby causing grave financial loss, mental agony, and harassment to the Complainant.

9. The complainant has filed an application dated 21.03.2024, wherein the learned counsel for the complainant has annexed his Vakalatnama in compliance with the directions issued by the Authority vide order dated 12.10.2023. Subsequently, the complainant also filed an application dated 03.04.2025, asserting that a total amount of ₹22,91,422/- has been paid by him towards the unit in question. The Authority has duly taken both these applications on record and considered the same for the proper and just adjudication of the matter.

C. RELIEF SOUGHT

10. The complainant initially sought possession of the unit along with interest for delayed possession. However, as recorded in the Authority's order dated 01.04.2024, the complainant clarified that they now seek the following relief:-

> Issue a direction to the respondents to refund the amount paid by the complainant alongwith interest prescribed under the Act and Regulations from the date of deposit till realization while relying on the Section 18 of the RERA Act, 2016.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

11. Learned counsel for the respondents submitted a detailed reply on 15.05.2023 pleading therein:

a. The Complainant has sought relief from this Hon'ble Authority by distorting and misrepresenting material facts. The Hon'ble Supreme Court has consistently held that any party seeking judicial relief must come with clean hands, without concealment or misrepresentation of facts.

b. The FBA executed prior to RERA's implementation remains binding and cannot be reopened. The Government of Haryana rules clarify that disclosures made for RERA registration do not affect the validity of pre-existing agreements.

c. Under Section 19(6) and 19(7) of the Real Estate (Regulation and Development) Act, 2016, the allottee is responsible to pay all dues timely and is liable for payment of interest on delayed payments. Clause 3.2 of the FBA explicitly states that possession will be granted only after full payment of the sale consideration and all charges, including interest. Since the Complainant has failed to pay the balance sale consideration, they have no legal right to possession or to file this complaint. The Hon'ble Supreme Court in *Bangalore Development Authority v. Syndicate Bank* (2007) 6 SCC 711 has ruled that a party defaulting on contractual obligations cannot claim possession against a non-defaulting part.

d. The Complainant willingly accepted all clauses, including Clause 3.3, which expressly provides for delay compensation in the event of delayed possession. Clause 3.3 of the FBA states:

> *"If the Seller/Confirming Party fails to offer possession of the said Unit within the stipulated period, it shall be liable to pay compensation at the rate of Rs. ___ per sq. ft. of super area ('Delay Compensation') for every month of delay until the actual date fixed for possession. The Purchaser shall not be entitled to any other compensation or penalty, including for direct or indirect losses, interest, etc."*

Therefore, the present complaint is not maintainable to the extent relief beyond the agreed delay compensation is claimed. Section 74 of the Indian Contract Act, 1872, upholds the sanctity and binding nature of such pre-agreed liquidated damages, disallowing any claim beyond the contractually stipulated amount.

e. The Complainant falsely asserted that they were entitled to possession of the unit within 36 months plus a grace period of 180 days from the execution of the Flat Buyer's Agreement (FBA). As per Clause 1.14 read with Clauses 3.1 and 10 of the FBA, possession was to be delivered within 36 months from either the sanctioning of the building plan or the execution of the FBA, whichever was later, subject to force majeure. The FBA was executed on 17.09.2013, making the possession due date 17.03.2017, inclusive of the grace period.

f. The Respondents granted an inaugural discount of ₹6,10,000/- and a further discount of ₹2,44,000/- in the basic sale price, facts not disclosed by the Complainant that materially affect the net amount received by the Respondents.

g. The Complainant intentionally hid receipt of numerous demand letters and reminder notices (dated 18.08.2017, 05.02.2018, 16.05.2018, etc.) calling for payment of outstanding balances, demonstrating non-compliance with payment obligations.

h. Clauses 1.14, 3.1, and 10 of the FBA set possession timelines subject to Force Majeure events. The Respondents committed to deliver possession within 36 months from sanctioning of the building plan or execution of the FBA, plus a 180-day grace period. The due date was thus 17.03.2017, which was suspended/delayed due to Force Majeure events beyond the Respondent's control.

Force Majeure Events Affecting Construction

i. Orders by the National Green Tribunal (NGT) banning construction and restricting heavy vehicle movement in Delhi-NCR.

ii. Temporary bans by the Environment Pollution (Prevention & Control) Authority (EPCA) due to severe air pollution in 2018.

iii. Nationwide construction ban in 2019 by the Supreme Court in *M.C. Mehta v. Union of India*, partially lifted later under conditions.

iv. Delays caused by new water usage norms, quarrying restrictions, labor and material shortages, liquidity issues, and government approval delays.

v. COVID-19 pandemic lockdowns from March 2020 onwards causing prolonged halts and labor shortages, including multiple lockdowns in 2021 in Haryana and Delhi.

vi. Bans on construction/demolition imposed by the Commission for Air Quality Management and Supreme Court in late 2021.

vii. Restrictions under Stage III Graded Response Action Plan (GRAP) in October 2022 due to severe pollution halting construction.

12. The Respondent No.1 submits that the Complainant approached the Respondent No.1 for allotment of a residential flat in the project known as "Discovery Park", located at Sector-80, Faridabad, Haryana (hereinafter referred to as the "Project").

13. The Complainant booked a residential flat in the Project opting for the Construction-Linked Payment Plan. The booking was made by the Complainant, as evidenced by the Booking Form and Receipt dated 20.01.2011 is annexed as Annexure-R/1 (Colly.).

14. The Respondent No.1 allotted Flat No. M-601, M Tower, having a super. area of approximately 2,440 sq. ft. (226.68 sq. m.), to the Complainant vide the Allotment-cum-Demand Letter dated 23.03.2011. The Complainant paid the demanded amount against this letter on 25.07.2011, as proved by the receipt annexed herewith and marked as Annexure-R/2 (Colly.).

15. The Respondents raised further demands based on construction progress milestones, including the Demand Letter dated 19.04.2012 for the landmark "At Start of Excavation" (Annexure-R/3), and the Demand Letter dated 24.05.2012 for enhanced External Development Charges (EDC) as imposed by the Government of Haryana (Annexure-R/4). The Complainant paid these amounts on 05.06.2012 as per the receipt annexed as Annexure-R/5.

16. Another demand was raised on 08.02.2013 which the Complainant paid on 13.02.2014 (Annexure-R/7).

17. The Complainant executed the Floor Buyer's Agreement (FBA) (Annexure-R/6) dated 17.09.2013 with the Respondents. Clause 3.1 of the FBA clearly stipulates that possession shall be delivered within 36 months from the date of execution of the agreement plus an additional grace period of 180 days, subject to occurrence of Force Majeure events and timely payments by the Complainant. The due date for possession was thus 17.03.2017, subject to Force Majeure

18. The Respondents, being a customer-centric organization, kept the Complainant informed regularly through construction update emails, copies of which are annexed as Annexure-R/8 (Colly.).

19. The Respondents issued several Reminder Notices regarding outstanding payments on 26.04.2017 (Annexure-R/9), 22.06.2017 (Annexure-R/11), 04.10.2017 (Annexure-R/15), 11.12.2017 (Annexure-R/17), 07.03.2018 (Annexure-R/19), and 09.04.2018 (Annexure-R/21).

20. The Respondents also raised demands corresponding to construction milestones such as:

- On casting of 1st floor slab (Demand Letter dated 18.08.2017 - Annexure-R/13)
- On casting of 4th floor slab (Demand Letter dated 05.02.2018 - Annexure-R/18)
- On casting of 8th floor slab (Demand Letter dated 16.05.2018 - Annexure-R/23)

21. Despite repeated reminders and updates, the Complainant failed to clear the outstanding dues within stipulated timelines. Consequently, the Respondents was constrained to terminate the allotment of the Complainant's unit vide Termination Letter dated 10.12.2019, annexed herewith as Annexure-R/26.

22. The Respondents further submits that any delay in possession, if at all, was caused due to force majeure events beyond the control of the Respondents, including but not limited to government orders, regulatory restrictions,

environmental bans, and the COVID-19 pandemic, which affected construction timelines nationally and locally.

23. The respondents have filed an application dated 01.04.2024, wherein the Vakalatnama of the learned counsel for the respondents have been placed on record. Subsequently, the respondents filed an application dated 16.05.2025, wherein it has been contended that the complainant has not paid a sum of ₹22,91,422/-, as alleged, but has only paid ₹19,38,086/- towards the unit in question. The Authority has duly taken both applications on record and considered the same for the proper adjudication of the matter.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

24. The learned counsel for the complainant reiterated the basic facts of the case and submitted that the total amount paid by the complainant towards the unit in question has been duly clarified through an affidavit dated 03.04.2025, wherein it is affirmed that a sum of ₹22,91,422/- was paid by the complainant. The complainant now seeks a refund of the said amount along with interest, as per the directions issued by the Authority in its order dated 01.04.2024.

25. On the other hand, the learned counsel for the respondents contended that the respondents have filed an affidavit dated 16.05.2025, clearly stating that the

amount actually paid by the complainant was only ₹19,38,086/-, and not ₹22,91,422/- as claimed. A detailed statement of account has been annexed at page no. 3 of the said application, supporting this figure. Furthermore, the respondents emphasized the fact that several reminder and demand letters were issued to the complainant regarding outstanding payments, which were not complied with by the complainant. These letters are annexed at pages 106 to 132 of the respondent's reply, including letters dated 26.04.2017, 22.06.2017, 04.10.2017, 11.12.2017, 07.03.2018, 09.04.2018, and 04.07.2018. As the complainant failed to act upon these repeated reminders, the respondents were left with no other option but to terminate the allotment of the unit on 10.12.2019. The termination letter is annexed as Annexure R-26 at page no. 132 of the reply.

26. The learned counsel for the respondents further submitted that the total sale consideration of the unit was ₹77,28,224/-, out of which only ₹19,38,086/- was paid by the complainant. He argued that the obligation to ensure timely completion of the unit lies on both parties, and failure on part of the complainant to make timely payments inevitably delayed the construction progress. He also referred to the judgment of the Hon'ble Supreme Court of India in *Godrej Projects Development Limited vs. Anil Karlekar & Ors.*, Civil Appeal No. 3334 of 2023, wherein at para 39, it was held that 10% of

the Basic Sale Price (BSP) is a reasonable amount that can be forfeited as earnest money. Further, at para 40, the Court held that while refund of any amount in excess of 10% of BSP is justified, interest on such refunded amount should not be awarded. At para 43, the Hon'ble Court reiterated that interest on the refundable amount was not justified.

27. The Authority enquired whether the Occupation Certificate (OC) had been received for the project. In response, the learned counsel for the respondents confirmed that the OC was obtained from the competent authority on 30.01.2024.

28. The Authority further asked whether any refund had been made to the complainant after termination of the unit. In response, the respondents stated that the original documents related to the unit were still in possession of the complainant. He clarified that in order to process the refund, the original documents must be returned to the respondents. Nonetheless, the respondents expressed readiness to refund the amount paid by the complainant, upon return of the required documents.

29. The Authority then asked the learned counsel for the complainant whether the complainant had submitted the original documents to the respondents. However, no conclusive response was provided on this point.

30. The learned counsel for the complainant reiterated that the complainant had paid a total of ₹22,91,422/-, as also evidenced by receipts annexed by the respondents at pages 53, 56, 61, and 96 of the reply. He submitted that the complainant had also filed a statement of account along with the application dated 03.04.2025, which corroborates the total payment made.

31. He further stated that, as per Clause 3.1 of the agreement, the respondents were obligated to deliver possession of the unit by 16.03.2017 (including the 180-day grace period). However, when no progress was observed at the site, the complainant discontinued further payments. Referring to the Supreme Court judgment cited by the respondents, the complainant's counsel argued that the factual matrix in that case differs materially. In the cited case, the respondents had obtained the Occupation Certificate on 20.01.2017, i.e, within three years of the agreement dated 10.01.2014, as noted in Para 11 of that judgment. In contrast, in the present case, the respondents failed to offer possession or refund the paid amount even after cancellation, clearly indicating default on part of the respondents. Even the occupation certificate in captioned complaint has been received by the respondents on 30.01.2024, i.e., after the delay of 8 years.

32. Finally, the learned counsel for the respondents submitted that the complainant has not disputed the cancellation of the unit. He further stated

that the respondents are willing to refund the amount paid by the complainant after deducting 10% of the Basic Sale Price, in accordance with the judgment *Godrej Projects Development Limited vs. Anil Karlekar & Ors.*, by the Hon'ble Supreme Court.

F. ISSUES FOR ADJUDICATION

33. Whether the complainant is entitled for refund of the amount paid by them along with interest in terms of Section 18 of RERA, Act of 2016?

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

34. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the complainant booked a flat in the real estate project; "Discovery Park, Sector 80, Faridabad, Haryana" being developed by the promoter namely; "M/s BPTP Ltd". Thereafter, complainant executed a Flat Buyer Agreement on 17.09.2013 vide which complainant was allotted Unit no. L-202, 2nd Floor, Tower-L admeasuring 2240 sq. ft. Complainant has paid a total amount of ₹22,91,422/- out of basic sale price of ₹67,10,000/-

35. **Findings on the objections raised by the respondents.**

a. ***Objection that the Complainant has sought relief from this Hon'ble Authority by distorting and misrepresenting material facts. The Hon'ble Supreme Court has consistently held that any party seeking judicial relief***

must come with clean hands, without concealment or misrepresentation of facts.

The respondents have failed to specifically identify or articulate any particular issue that is incapable of being resolved through summary proceedings. It is well established that for such an objection to hold ground, the respondents must clearly demonstrate the specific issues that require detailed examination, complex evidence, or an exhaustive inquiry that goes beyond the scope of summary proceedings.

b. ***The FBA executed prior to RERA's implementation remains binding and cannot be reopened. The Government of Haryana rules clarify that disclosures made for RERA registration do not affect the validity of pre-existing agreements.***

One of the averments of respondents 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, respondents have 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, 2016. 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 floor-buyer agreements. After RERA Act, 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 flat buyer agreement dated 17.09.2013 is admitted by the respondents. Said flat buyer agreement was binding upon both the parties. As such, the respondents are under an obligation to hand over possession on the deemed date of possession and in case, the respondents 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.

c. **Objections raised by respondents that under section 19 (6) and 19 (7) of the Real Estate (Regulation and Development) Act, 2016, obligation to make payment against the unit was on complainant. Therefore, the Complainant cannot seek any relief under the provision of the Real Estate (Regulation and Development) Act, 2016 or rules framed thereunder.**

With regard to this objection raised by the respondents, Section 19(6) and 19(7) of the Real Estate (Regulation and Development) Act, 2016 are reproduced below:

> 19(6)*"Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under*

section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."

As per section 19 (7) of the Real Estate (Regulation and Development) Act, 2016-

"The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)."

The complainant opted for a Construction Linked Payment Plan (CLP) and made payments as per the demands raised by the respondents during each construction stage. The respondents admitted that the complainant made payments according to the construction progress. Additionally, the complainant paid a total amount of ₹22,91,422/-, out of flat's total value of ₹67,10,000/-. The respondent objection, claiming that the complainant is a defaulter under Sections Section 19(6) and 19(7) of the Real Estate (Regulation and Development) Act, 2016 (RERA) and therefore cannot seek relief under RERA, lacks merit. Sections Section 19(6) and 19(7) impose obligations on the buyer to make timely payments and take possession when the promoter issues a notice of possession. However, since the complainant has made timely payments, there is no default on the complainant's part.

Therefore, the respondents claim that the complainant is not entitled to relief under RERA is unsustainable. Under RERA, the promoter is responsible for completing the project on time and obtaining all necessary approvals. Failure to meet these obligations allows the buyer to seek relief under RERA, such as compensation for delays or even refund with interest.

Authority concludes that, the respondent's objection under Section 19(6) and 19(7) is invalid, as the complainant has fulfilled payment obligations. On the other hand, the respondent's failure to deliver possession by the agreed date is in breach of RERA. The complainant is, therefore, entitled to seek relief under RERA provisions.

d. ***The present complaint is not maintainable to the extent relief beyond the agreed delay compensation is claimed. Section 74 of the Indian Contract Act, 1872, upholds the sanctity and binding nature of such pre-agreed liquidated damages, disallowing any claim beyond the contractually stipulated amount.***

Authority observes that the Complainant is an *allottee* as defined under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 having been allotted a residential unit no. L-202 by the respondents promoter under a flat buyer agreement executed for the subject unit dated 17.09.2013.

Section 2(d) of RERA, Act 2016is reproduced below:

> *"'Allottee' in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise*

transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise..."

Thus, being an allottee, the complainant is entitled to the rights and remedies under the provisions of the RERA Act. Further, Section 18(1)(a) of the RERA Act provides a clear and unambiguous remedy to the allottee in cases where the promoter fails to deliver possession of the unit as per the agreed timeline. **Section 18(1)(a)** of RERA Act 2016 is reproduced below:

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building –
(i)in accordance with the terms of the agreement for sale; or
(ii)due to discontinuance of his business as a developer... he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act."

The right to claim refund and interest under Section 18(1)(a) of the RERA Act is a *statutory right*, which overrides any restrictive or exclusionary clause in the flat buyer agreement. Hence, the present complaint has rightly been filed under the provisions of the RERA Act, 2016. The objection raised by the respondents with respect to Clause 3.3 of the agreement is misconceived and hereby stands dismissed by this Authority.

e. ***Objections raised by the respondents regarding force majeure conditions.***

The obligation to deliver possession within the period stipulated in the Flat Buyer Agreement, i.e., 36 months from the date of sanctioning of building

plan or execution of builder buyer agreement, whichever is later is not fulfilled by respondents till date. The Authority observes that there has been a delay on the part of the respondents in completing the project and handing over possession of the unit to the complainant. The various reasons cited by the respondent, ban on the construction activities within Delhi-NCR region expressing alarm on severe air pollution level commenced on 31.10.2018, Hon'ble Supreme Court on 04.11.2019 in MC Mehta V. Union of India banned all construction activities Covid-19lockdown, ban announced by the Commission for Air Quality Management (CAQM) on 16.11.2021, ban of all construction activities in the Delhi- NCR region under the Stage III graded Response Action Plan (GRAP) on 28.10.2022. All these incidents/ justifications mentioned by the respondents are not deemed convincing as all these incidents happen to occur after the deemed date of possession. The deemed date of possession as per the agreement was in the year 2016, which precedes the above said incidents. Thus, this contention of the respondents does not qualify for consideration under the force majeure clause, as the circumstances occurred after the contractual due date for possession. Therefore the respondents cannot be allowed to take advantage of the delay on their part by claiming the delay in statutory approvals/directions. So, the plea of respondents to consider force majeure conditions towards delay

caused in delivery of possession is without any basis and the same is rejected.

f. The learned counsel for the respondents has contended that the complainant was granted an inaugural discount of ₹6,10,000/- and a further discount of ₹2,44,000/-. However, the Authority is of the considered view that these discounts were offered against the total sale consideration of the unit and were conditional upon successful completion and possession of the unit within the prescribed timeline. These discounts do not, in any manner, impact or reduce the actual amount paid by the complainant. The complainant is merely seeking refund of the amount paid by him, i.e., ₹22,91,422/- and not the discounted portion of the consideration. Accordingly, the complainant is entitled to refund of the said paid amount along with interest at the prescribed rate under the provisions of the RERA, Act.

36. Arguments of both the parties were heard at length. As has been admitted between both the parties, upon booking, a unit bearing no. L-202, on Tower L, 2nd floor admeasuring 2440 sq. ft had been allotted to complainant in the project of the respondents namely "Discovery Park" situated at Sector 80, Faridabad, Haryana vide flat buyer agreement executed between the parties on 17.09.2013. As per clause 3.1 of flat buyer agreement dated 17.09.2013,

".....the seller/ confirming party proposes to handover the physical possession of the said unit to the purchaser within a period of 36 months from the date of sanctioning of the building plan or execution of flat buyer agreement whichever is later." Upon reviewing the records submitted by the respondents, it was observed that the respondents failed to provide any documentary evidence, such as official approvals or sanction letters, to substantiate their claim regarding the date of sanctioning of building plans. In the absence of proof regarding the sanctioning of the building plans, the Authority deems it appropriate to rely on the execution date of the Flat Buyer Agreement to calculate the deemed date of possession. The Flat Buyer Agreement was executed on 17.09.2013 and as per the stipulated timeline in Clause 3.1, possession was to be handed over within 36 months. This calculation leads to a deemed date of possession of **17.09.2016**. Possession of the unit should have been delivered by 17.09.2016. Respondents have failed to deliver possession of the flat before or till 17.09.2016 to the complainant.

37. Further, it stands established through the payment receipts annexed by the respondents in their reply, as well as the statement of account submitted by the complainant along with the application dated 03.04.2025, that the complainant has paid a total amount of ₹22,91,422/- towards the unit in

question. The last payment made by the complainant was on 13.02.2014. The complainant had opted for a construction-linked payment plan. However, upon observing that the construction progress of the project/unit was not in accordance with the agreed schedule under the said plan, the complainant reasonably chose to withhold further payments. The Authority further notes that the unit allotted to the complainant was cancelled by the respondents vide termination letter dated 10.12.2019. Upon perusal of Clause 11.2 of the Flat Buyer Agreement, it is noted that:

> *"In case the purchaser fails, for any reason, to pay to the seller the due amounts/installments as per this agreement on time, as stated hereinabove, ... then the seller shall be entitled to terminate this agreement forthwith and may refund the balance amount to the purchaser without any interest after forfeiting the booking amount or amount paid up to earnest money, and deduction of any interest amount."*

The Authority observes that despite cancelling the unit, the respondents failed to refund the balance amount to the complainant in compliance with Clause 11.2. This omission amounts to a default on the part of the respondents. Furthermore, although the respondents have argued that the refund could not be processed due to the complainant's failure to return the original documents, the Authority finds this explanation to be unsubstantiated. There is no official communication placed on record by the respondents requiring or reminding the complainant to return the original

documents to enable processing of the refund. The absence of any such formal intimation further reflects the respondent's lack of diligence and procedural fairness. In any case, Section 18(1)(a) of the RERA Act, 2016 provides a statutory right to refund along with interest in case the promoter fails to hand over possession as per the terms of the agreement. The respondent's failure to refund the complainant's amount, even after cancellation, clearly violates this statutory provision. Moreover, the respondents have not provided any calculation or breakup showing how much amount was forfeited under Clause 11.2 and what amount remains refundable. This lack of transparency further weakens the respondent's defense and points to unfair trade practice. Accordingly, the Authority is of the considered view that the respondents, having cancelled the unit, was under a contractual as well as statutory obligation to refund the amount without unnecessary delay. The respondent's inaction amounts to a breach of both contractual and legal duties.

38. Lastly, with regard to the judgment of the Hon'ble Supreme Court of India in *Godrej Projects Development Limited vs. Anil Karlekar & Ors.*, Civil Appeal No. 3334 of 2023, mentioned by the ld. counsel for respondents during his arguments and with regard to the plea taken by the respondents regarding deduction of 10% of the basic sale price while refunding the

amount to the complainant and seeking delayed interest from the date of termination of the unit to the date of decision. Authority observes that the factual matrix in both the cases are different,

i. Firstly, in judgment of *Godrej Projects Development Limited vs. Anil Karlekar & Ors.*, The homebuyers voluntarily sought cancellation of their apartment booking due to market recession and declining property prices, despite the developer having completed construction and obtained the Occupation Certificate. However in Present Complaint the complainant withheld further payments upon observing that the construction progress did not align with the agreed construction-linked payment plan. Subsequently, the developer unilaterally cancelled the allotment, and the complainant did not initiate the cancellation.

ii. Secondly, in referred judgment the buyers' decision to cancel was influenced by external market conditions, not due to any delay or default by the developer. However, in present complaint, the complainant's decision to withhold payments was a direct response to the developer's failure to adhere to the construction schedule as per the agreement, indicating a breach on the developer's part.

iii. Thirdly, in the case of *Godrej Projects Development Limited vs. Anil Karlekar & Ors.*, the developer obtained the Occupation Certificate on

20.06.2017 and offered possession to the allottees on 28.06.2017. Notably, the said Occupation Certificate was obtained within three years from the date of the agreement, which was executed on 10.01.2014, thereby indicating timely completion of the project. However, in the present case, the facts stand on a completely different footing. Firstly, no offer of possession has ever been made by the respondents to the complainant. Secondly, the Occupation Certificate for the project in question was received only on 30.01.2024 after an inordinate and unjustified delay of approximately eight years from the date of agreement.

39. Therefore, in view of the significant factual differences, the judgment of the Hon'ble Supreme Court in *Godrej Projects Development Limited vs. Anil Karlekar & Ors.*, Civil Appeal No. 3334 of 2023, is not applicable to the present case. Accordingly, the plea of the respondents seeking forfeiture of 10% of the Basic Sale Price on the basis of the said judgment is misconceived and hereby stands dismissed.

40. The facts set out in the preceding paragraph demonstrate that respondents had failed to fulfill their obligation to handover possession by 17.09.2016, i.e., deemed date of possession. Further, respondents neither had placed on record any documents stating explanation with regard to not refunding money of complainant. Keeping the hard earned money of allottees without

justification establishes that respondents want to take advantage of its own wrong first by not completing construction as per agreement, secondly, keeping illegally the hard earned money paid by complainant. Fact remains that respondents have failed to handover possession of the unit within the prescribed timeframe. In these circumstances, the provisions of Section 18(1)(a) of the Act clearly come into play by virtue of which the complainant is seeking refund of paid amount along with interest on account of default in delivery of possession of booked unit within a reasonable period of time.

41. Further, 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, allottee has an unqualified right to seek refund of amount paid to the promoter along with interest. Para 25 of this judgementis reproduced below:

> *"25. The unqualified right of the allottee to seek refund referred underSection 18(1)(a) andSection 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."

42. So, the Authority finds it to be a fit case for allowing refund in favour of complainant. The complainant will be entitled to refund of the paid amount from the dates of various payments till realization. As per Section 18 of 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".."*

43. 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. 19.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

44. Hence, Authority directs respondents to pay refund to the complainant on account of failure in timely delivery of possession 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 of various payments till actual realization of the amount.

45. Authority has got calculated the interest on the total paid amount from the date of respective payments till the date of this order i.e., 19.05.2025 at the rate of 11.10% and said amount works out to **₹34,01,292/-**. Complainant

shall be entitled to further interest on the paid amount till realization beginning from 19.05.2025 at the rate of 11.10%:

Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till 19.05.2025 (in ₹)
1	1346560	2012-06-05	1937763
2.	450509	2011-01-20	717079
3.	450510	2011-07-25	691598
4.	43843	2014-02-13	54852
Total:	**2291422**		**3401292**

H. DIRECTIONS OF THE AUTHORITY

46. 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. Respondents are directed to refund the entire amount of **₹56,92,714/-** (till date of order i.e., 19.05.2025) to the complainant and pay further interest beginning from 19.05.2025 till actual realization of the amount at the rate of 11%.

ii. 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.

Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.

.....
CHANDER SHEKHAR
[MEMBER]

.....
NADIM AKHTAR
[MEMBER]