



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	263 of 2018
Date of filing:	28.05.2018
Date of first hearing:	30.07.2018
Date of decision:	24.04.2025

Sh. Jarnail Singh S/o Sh. Dharampal
R/o Phool Singh Enclave, Shivaji Colony,
Behind SPS Convent School, Jhansi Road,
Karnal (Haryana)

....COMPLAINANT

VERSUS

M/s TDI Infrastructure Ltd., through its Managing Director
R/o 09, Kasturba Gandhi Marg, Connaught Place,
New Delhi-110070

....RESPONDENT

CORAM:	Parneet S Sachdev	Chairman
	Nadim Akhtar	Member
	Chander Shekhar	Member

Present: - None for the Complainants.
Mr. Shubhnit Hans, Counsel for the respondent through
VC.

ORDER (PARNEET S SACHDEV - CHAIRMAN)

1. Initially, the present complaint was decided by the Authority vide order dated 30.07.2018, whereby interest for delayed possession was awarded and the complainant was allowed to take possession after obtaining the occupation certificate. Being aggrieved by the said order, the complainant preferred an appeal before the Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh, bearing Appeal No. 225 of 2019, seeking relief of refund along with interest and compensation. The Hon'ble Appellate Tribunal, vide its judgment, set aside the order dated 30.07.2018 passed by this Authority and observed as under:

"The only question involved in the present appeal is as to whether the Real Estate Regulatory Authority was competent to grant the relief of refund along with interest including compensation or not. This question is not res integra as we have already answered this question in a bunch of 19 appeals, the lead appeal being Appeal No. 6/2018 titled as Sameer Mahawar vs. MG Housing Pvt. Ltd. vide our detailed order dated 02.05.2019...

...We have laid down as under:

- (i) That violations and causes of actions arising out of the same bundle of facts/rights giving rise to the multiple reliefs shall be placed before one and the same forum for adjudication in order to avoid the conflicting findings.*
- (ii) The complaints for the grant of relief of compensation can only be adjudicated by the adjudicating officer as per the provisions of section 71 of the Act and rule 29 of the Rules.*
- (iii) Similarly, if compensation is provided as a part of the multiple reliefs along with refund/return of investment with interest flowing from the same violation/violations*



and causes of action, the complaints have to be placed before the adjudicating officer exercising the powers under Sections 31, 71(1) read with Rule 29 of the Rules as only the adjudicating officer is competent to deal with the relief of compensation."

Accordingly, the Hon'ble Tribunal allowed the appeal and directed as under:

"The impugned order dated 30.07.2018 is hereby set aside. The complaint filed by the appellant/allottee stands transferred to the Adjudicating Officer, Panchkula, for adjudication in accordance with law. It has been informed by the Ld. counsel for the parties that Shri A.K. Singh Panwar, the Judicial Member of the Authority, is also discharging the functions of the Adjudicating Officer. But the present case should not be placed before him as he has already dealt with this case and expressed his opinion in the capacity of the Member of the Authority. So, this case be placed before some other Adjudicating Officer for adjudication in accordance with law. The Adjudicating Officer will allow the appellant/allottee to amend his complaint in order to bring it within the parameters of Form "CAO" as provided in Rule 29 of the Rules. Copy of this order be forwarded to Ld. Real Estate Regulatory Authority, Panchkula for compliance."

2. In light of the above, the present matter has been remanded back to this Authority by the Hon'ble Appellate Tribunal for adjudication.
3. Present complaint has been filed on 20.09.2023 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

4. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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	Tuscan Heights ,TDI Mall, Tuscan City, Kundli, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Un-Registered.
4.	DTCP License no.	177 of 2007 dated 13.04.2007.
	Licensed Area	22.864 acres
5.	Unit no.	T-8/1101
6.	Unit area	1080 SQ FT
	Revised Unit area (after increase)	1285.200 sq. ft
7.	Date of Allotment	24.06.2011
8.	Date of Builder Buyer agreement	01.10.2011
9.	Due date of offer of possession-30 months from the date of execution of BBA	01.04.2014
10.	Possession clause in BBA	Clause 30 <i>"However, if the possession of the Apartment is delayed beyond a period of 30 months from the date of execution hereof and the reasons of</i>



		<i>delay are solely attributable to the wilful neglect or default of the Company then for every month of delay, the Purchaser shall be entitled to a fixed monthly compensation/damages/penalty quantified @ Rs.5 per square foot of the total super area of the Apartment. The Purchaser agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the Apartment."</i>
11.	Total sale consideration	₹ 35,76,573/- (as per pg. 9 of complainant pleadings)
12.	Amount paid by complainants	₹ 28,33,228/- Complainants in their pleadings claims to have paid an amount of ₹ 28,12,836/-. However, on perusal of statement of account attached by the complainant and the respondent, annexed as Annexure C4 & R6 of complaint & reply, total paid amount comes out to ₹28,33,228/-.
13.	Offer of possession	05.03.2018
14.	Status of Occupation Certificate	Not received.

B. FACTS OF THE COMPLAINT

- Facts of the complaint are such that the respondent is a private limited company incorporated under the Companies Act, 1956, and is engaged in the business of real estate development. It undertook development of a residential group housing project named "Tuscan Heights" situated



near TDI Mall, Tuscan City, in the revenue estate of Village Kundli, District Sonapat, Haryana. The project was licensed by the Director, Town and Country Planning (DTCP), Haryana, in favour of the landowners.

6. In the ordinary course of business, the Respondents promoted the project through newspapers and channel partners, portraying an attractive picture of the upcoming residential colony. Relying on these advertisements and the verbal assurances made by the Respondents' representatives at the time of the site visit, the complainant booked a flat admeasuring 1080 sq. ft. in the said project and paid a booking amount of ₹2,50,000/- via cheque.
7. An Allotment Letter dated 24.06.2011 was issued in favour of the complainant confirming the allotment. Thereafter, an Apartment Buyer's Agreement (ABA) was executed on 01.10.2011, detailing the terms and conditions of allotment. The total sale consideration for the unit was fixed at ₹35,76,573/-, which included various charges such as EDC, IDC, IFMS, PLC, club membership, maintenance and car parking charges, excluding statutory dues.
8. As per the ABA and the Allotment Letter, the possession of the apartment was to be handed over by December 2013. The complainant adhered to the construction-linked payment schedule and paid a total sum of ₹28,12,836/-, amounting to approximately 85% of the total sale



consideration. In addition, the Respondents charged a separate amount of ₹1.75 lakhs for car parking, which was over and above the basic sale price and contrary to settled legal norms.

9. Despite the agreed possession timeline, the Respondents failed to deliver possession on time. Instead, they issued demand for the 14th instalment on 08.12.2016, citing completion of external finishing, but offered possession only on 05.03.2018, reflecting a delay of more than 4 years and 5 months from the committed date. The delay in handing over possession is in gross violation of the provisions of the RERA Act, 2016, which came into force on 26.03.2016.
10. To the surprise of the complainant, the Respondents unilaterally increased the area of the flat by 205.200 sq. ft., raising the total to 1285.200 sq. ft., and communicated this change for the first time through a letter dated 06.03.2018, quoting a basic rate of ₹1975/- per sq. ft. This arbitrary increase in area and corresponding demand for enhanced payment was made without obtaining the complainant's prior consent, amounting to a breach of Section 14(1) and 14(2)(i) of the RERA Act.
11. The complainant also states that the Respondents altered the layout plan, design and specifications of the originally allotted flat, never registered the project under Section 3 of the RERA Act, and consistently failed to provide construction updates despite repeated



requests — violating Section 19(2) of the Act. These actions further demonstrate the Respondents' mala fide intent and disregard for statutory compliance.


12. Due to the misrepresentations, breach of agreement, and non-delivery of possession within the stipulated period, the complainant has suffered severe financial loss, emotional distress and mental agony. The complainant seeks refund of the deposited amount with interest and compensation under Section 12 of the RERA Act, claiming that the acts of the Respondents amount to unfair trade practice, misrepresentation, and criminal breach of trust.

C. RELIEFS SOUGHT

13. Complainants in their complaint have sought the following reliefs:
 - i. To give necessary directions to the respondents for return of the payment made in lieu of unit/apartment till date along with 18% interest from the date of execution of Allotment Letter till realization as per the provisions of Sec. 18 and Sec. 19(4) of the RERA Act.
 - ii. To impose penalty upon the respondents as per the provisions of Section 60 of RERA Act for willful default committed by them.



- iii. To impose penalty upon the respondents as per the provisions of Section 61 of RERA Act for contravention of Sec. 12, Sec. 14, Sec. 15 and Sec. 16 of RERA Act.
- iv. To direct the respondents to pay penalty upto 10% of project cost to the complainant under Sec. 59 of RERA, Act, 2016.
- v. To direct the respondents to refund the amount collected from the complainant in lieu of interest, penalty for delayed payments under Rule 21(3)(c) of RERA Rules, 2017.
- vi. To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RERA Act, 2016 to be read with RERA Rules, 2017.
- vii. To direct respondent to deliver the flat to the complainant without charging the additional charges for the increased area of the flat.
- viii. To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420, 406 and 409 of the Indian Penal Code.
- ix. To issue direction to pay the cost of litigation.



- x. To issue direction to pay the compensation to complainant for compensation for his mental agony, pain and harassment.
- xi. Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint.

D. REPLY SUBMITTED ON BEHALF OF THE RESPONDENT

Learned counsel for the respondent filed detailed reply on 24.06.2018 pleading therein:

- 14. At the very outset, Id. counsel for the respondent has categorically denied all allegations made in the complaint, except those specifically admitted in the present reply. He submitted that the respondent Company is a reputed real estate developer having successfully completed various projects across the country. The Respondent emphasizes that its reputation is built on the pillars of quality construction, ethical practices, and timely delivery, and its projects have received widespread customer satisfaction.
- 15. Id. counsel contends that the complainant voluntarily invested in its residential group housing project known as "Tuscan Heights", located near TDI Mall in Tuscan City, Kundli, Sonapat, Haryana, solely owing to the goodwill and reputation of the Respondent Company. It is



admitted that the Complainant was tentatively allotted Apartment No. T-8/1101 in Tower T of the said project, which is covered under License No. 177 of 2007 issued by the DTCP, Haryana. Copies of the license, its renewal letter dated 06.09.2017, and the layout map of the colony are annexed as **Annexures R-2, R-3, and R-4** respectively.

16. It is specifically submitted that the present project is not registered under the Real Estate (Regulation and Development) Act, 2016 ("the Act") and hence, the complaint is not maintainable before this Authority. The Respondent asserts that the Complainant has not stated in the complaint as to how and why the Respondent was required to register the project under the Act. In the absence of such pleadings, the Respondent contends that the complaint is liable to be dismissed at the very threshold.
17. Without prejudice to the above, it is submitted that the Respondent Company had applied for Occupation Certificate for the said group housing colony measuring 22.864 acres on 09.05.2014, well before the coming into effect of the Haryana Real Estate (Regulation and Development) Rules, 2017, which came into force on 28.07.2017. As per Rule 2(o) of the said Rules, a project for which development works were complete and application for grant of completion/occupation certificate was made before publication of the Rules does not fall within the scope of an "ongoing project," and therefore falls outside the



purview of the Act. The application dated 09.05.2014 is annexed as **Annexure R-5.**

18. The Respondent submits that in light of the above, the project is exempt from the requirement of registration under Section 3 of the Act. Accordingly, the claims raised by the Complainant before this Authority are not maintainable and ought to be dismissed *in limine*.
19. The Respondent further submits that the relief of refund along with interest and compensation sought by the Complainant falls within the exclusive jurisdiction of the Adjudicating Officer under Section 71 of the Act. As such, the present complaint is also not maintainable before this Authority on the ground of lack of jurisdiction.
20. The Respondent admits the issuance of Allotment Letter dated 24.06.2011 and the execution of the Apartment Buyer's Agreement (ABA) dated 01.10.2011. The Respondent emphasizes that by executing and signing the ABA, the Complainant became bound by all its terms and conditions, including clauses relating to tentative area, possession timelines, and other commercial terms.
21. It is clarified that the total sale consideration of the unit was ₹35,88,581/-, and the Respondent has received an amount of ₹28,24,844/- from the Complainant. The Respondent states that approximately ₹8,00,000/- remains unpaid and outstanding from the



Complainant. A detailed Statement of Account dated 21.06.2018 is annexed as Annexure R-6.

22. The Respondent denies that the possession of the flat was deliberately delayed. It submits that the Occupation Certificate for the project was applied for in May 2014, and the unit of the Complainant is ready for fit-out possession. The Complainant has been invited to make the balance payment and take over the unit once the Occupation Certificate is granted. The Respondent, thus, refutes the Complainant's claim of being left in the lurch or suffering harassment.
23. Regarding the allegation of area enhancement, the Respondent denies any arbitrariness or malafide. It submits that any increase in area has been made strictly in accordance with the terms of the ABA, specifically Clause 6, which provides for the possibility of variation in the super area and carpet area. The Respondent reiterates that the allotment was always tentative and subject to change, and that no misrepresentation or cheating has occurred. The Complainant is bound by the ABA which was duly executed and signed on every page.
24. The Respondent asserts that all actions taken by it are strictly within the bounds of law and contractual obligations. It denies any deficiency in service or unfair trade practice and contends that the complaint has been filed with the intent to unjustly seek refund and compensation, despite the availability of the unit for fit-out possession.



25. In view of the above submissions, the Respondent prays that the present complaint be dismissed as non-maintainable, both on merits and on jurisdictional grounds, and no relief as claimed by the Complainant be granted.

**E. ARGUMENTS OF LEARNED COUNSELS FOR
COMPLAINANTS AND RESPONDENT**

26. During the course of proceedings, when the matter was called for hearing, none appeared on behalf of the complainant for oral arguments. However, learned counsel for the respondent, Mr. Shubhnit Hans, appeared through video conferencing and submitted that the respondent has already placed on record its detailed written submissions in the form of a written reply and does not wish to make any further oral submissions.
27. Accordingly, Authority, having perused the material available on record, including the pleadings and documents submitted by both parties, proceeds to adjudicate and decide the matter on the basis of the merits of the case and evidence as placed on record. However, after exhausting of whole of the cause list, Adv. Manoj Kumar appeared on behalf of the complainant and requested that refund be awarded in the captioned complaint.



F. ISSUES FOR ADJUDICATION

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

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.**G.I Objection Regarding Non-Maintainability of Complaint Due to Non-Registration of the Project.**

29. The objection of the respondent that the project in which the complainant is seeking refund is not registered with this Hon'ble Authority and hence, this complaint is not maintainable and the Hon'ble Authority does not have jurisdiction to entertain the present complaint. This issue that whether such complaint is maintainable before RERA or not and whether this Authority has jurisdiction to entertain the present complaint as the project is not registered has been dealt and decided by the Authority in *Complaint No. 191 of 2020 titled as Mrs. Rajni and Mr. Ranbir Singh vs Parsvnath Developers Ltd.* Relevant part of said order is being reproduced below:

"Looked at from another angle, promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Sector 3 of the Act. The argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special



undeserved protection of law because their allottees cannot avail benefit of summary procedure provided under the RERA Act for redressal of their grievances. It is a classic argument in which violator of law seeks protection of law by misinterpreting the provisions to his own liking.

14. The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.

15. For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected."

G.II Objection Regarding Non-Maintainability of Complaint Due to Execution of BBA Prior to RERA and Project Not Being an Ongoing Project

30. One of the averments of the respondent is that the provisions of the Real Estate (Regulation and Development) Act, 2016 are not applicable to agreements executed prior to the coming into force of the Act. Accordingly, the respondent has argued that the relationship of builder

and buyer in the present matter, governed by the Apartment Buyer's Agreement dated 01.10.2011, cannot be examined under the provisions of the RERA Act, 2016, and must be regulated exclusively by the terms of the agreement executed prior to the enforcement of the Act.

31. In this regard, the Authority observes that such a contention is misplaced. After the coming into force of the RERA Act, the jurisdiction of the civil court stands barred under Section 79 of the Act. This Authority is empowered under Section 34 to ensure compliance of obligations cast upon the promoters, allottees, and agents under the Act and the Rules made thereunder. Authority has consistently held that disputes between builders and buyers shall be decided strictly in accordance with the terms of the buyer agreements; however, the enforcement of such terms shall now be governed by the framework of the RERA Act. The Act does not re-write the pre-existing agreements. Instead, it ensures that the obligations arising out of such agreements are fulfilled within the framework of law. This issue has already been comprehensively dealt with by this Authority in *Complaint No. 113 of 2018 titled Madhu Sareen vs. BPTP Ltd.* decided on 16.07.2018, wherein it was observed:

"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."

32. Furthermore, as held by the Hon'ble Supreme Court in *Newtech Promoters and Developers Pvt. Ltd. vs. State of UP & Ors.* [Civil Appeal Nos. 6745–6749 of 2021], even those projects in which the completion certificate has not been issued fall within the ambit of "ongoing projects" under the RERA Act. In the present case, it is an admitted fact that the Occupation Certificate had not been granted at the time of coming into force of the Act. Thus, the project in question falls squarely within the definition of "ongoing project" and is liable to be regulated under the provisions of the RERA Act. It is further noted that execution of the Apartment Buyer's Agreement dated 01.10.2011 is admitted by the respondent and is binding upon both parties. As such, the respondent was under a contractual obligation to offer possession of the allotted unit within the time stipulated in the agreement. Failure to do so entitles the complainant to either seek delayed possession interest under Section 18(1) of the RERA Act or to claim refund of the amount paid, along with interest, till actual realization. Therefore, the objection raised by the respondent regarding non-maintainability of the present



complaint due to execution of the builder-buyer agreement prior to the enactment of RERA stands rejected.

G.III Objection regarding jurisdiction of the Authority to adjudicate and grant relief of refund.

33. The complainant filed the present complaint in the year 2018 seeking refund of the deposited amount along with interest, on account of delayed possession and other grievances pertaining to the project "Tuscan Heights" being developed by the respondent. The respondent filed its reply on 24.06.2018 and raised an objection regarding the maintainability of the complaint, stating that this Authority lacks the jurisdiction to adjudicate and grant the relief of refund along with interest and compensation, that such relief can only be granted by the Adjudicating Officer under Section 71 of the Act.
34. In this regard, Authority observes that it has complete jurisdiction to proceed with the complaint and to adjudicate the claim for refund. This legal position is well-settled by the Hon'ble Supreme Court in *Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. and Ors.*, 2021-2022 (1) RCR (Civil) 357, and reaffirmed in *Ramprastha Promoter and Developers Pvt. Ltd. vs. Union of India and Others*. CWP No. 6688 of 2021, decided on 13.01.2022. The Hon'ble Supreme Court categorically held as under:



"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the Regulatory Authority and Adjudicating Officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the Regulatory Authority which has the power to examine and determine the outcome of a complaint..."

In view of the authoritative pronouncement of the Hon'ble Supreme Court, this Authority has jurisdiction to entertain and adjudicate the present complaint seeking refund along with interest, and accordingly, the objection raised by the respondent is found to be without merit and stands rejected.

II. OBSERVATIONS AND DECISION OF THE AUTHORITY

35. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

- (i) Admittedly, vide allotment letter dated 24.06.2011 complainants in this case had been allotted the floor in question in the project of the respondent for a total sale consideration of ₹ 35,76,573/- against which an amount of ₹ 28,33,228/- has been paid by the complainants. Out of said



paid amount, last payment of Rs 12,008/- was made to respondent on 22.04.2017 by the complainants which implies that respondent is in receipt of total paid amount till year 2017 whereas fact remains that no valid offer of possession of the booked floor has been made till date.

- (ii) In its written statement, the respondent has stated that offer for fit out of the unit dated 05.03.2018 has been made to the complainant with outstanding amount of ₹8,00,000/- (approx). Further, they are willing to handover possession to the complainant after receipt of the balance amount once Occupation certificate is received. Complainant did not accept said offer as it was not supported with occupation certificate. Fact remains that occupation certificate which stands applied by the respondent on 09.05.2014 has not been received till date. Hence, the fit out offer of possession was not a valid offer of possession and complainant was not bound to accept the same by making payment of balance amount.
- (iii) Authority observes that the builder buyer agreement got executed between the complainant and respondent on 01.10.2011 and in terms of clause 30 of it, the respondent was supposed to handover possession upto 01.04.2014. In present



case, respondent failed to honour its contractual obligations of offering possession of the allotted unit within stipulated time without any reasonable justification. Further, respondent has not committed any specific timeline even in its reply regarding delivery of possession. This status of project is duly supported by the fact that occupation certificate which stands applied in year 2014 by the respondent has not been yet received and respondent is not having reasonable justification for non-receipt of occupation certificate even after delay of 8-9 years. Complainant has unequivocally stated that he is interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

- (iv) 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. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section



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

The decision of the 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.

36. The project/unit in question did not get completed within the time stipulated as per agreement nor specific date for handing over of possession has been committed by the respondent. In these circumstances the complainant cannot be kept waiting endlessly for possession of the unit, therefore, Authority finds it to be fit case for allowing refund along with interest in favor of complainant.



37. 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;

38. 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%.
39. Rule 15 of HIREA 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".

40. Thus, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of Rs 28,33,228/- 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.
41. It is pertinent to note that the complainant, in their pleadings, has claimed to have paid an amount of ₹28,12,836/-. However, upon perusal of the statement of account annexed by the complainant as Annexure C-4, and the corresponding statement of account annexed by the respondent as Annexure R-6, the total amount actually paid by the complainant is reflected as ₹28,33,228/-. Although there is a discrepancy in the amount pleaded and the actual amount paid, with the amount stated in the pleadings being marginally lesser than the amount supported by documentary evidence, this appears to be an inadvertent error or omission on part of the complainant's counsel. In the



considered view of the Authority, the complainant should not be made to suffer on account of such a technical lapse or clerical inaccuracy.

42. Accordingly, for the purpose of determining the relief of refund, Authority takes into account the actual paid-up amount as borne out from the statements of account on record, which comes to ₹28,33,228/-, and directs that the same be refunded to the complainant. 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 Rs ₹63,86,879/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 24.04.2025
1.	2,50,000	23.11.2010	400436
2.	1,06,269	07.02.2011	167760
3.	1,80,000	07.02.2011	284154
4.	13,731	07.02.2011	21676
5.	2,50,000	07.06.2011	385535
6.	1,00,000	23.08.2011	151872
7.	1,50,000	10.01.2012	34276
8.	23,220	10.01.2012	221422
9.	93,000	28.01.2012	136773



10.	90,000	29.05.2014	109042
11.	1,25,000	05.09.2014	147683
12.	95,000	10.09.2014	112095
13.	1,20,000	29.10.2014	139805
14.	99,000	01.01.2015	113413
15.	1,11,000	27.02.2015	125235
16.	2,24,000	14.01.2016	230861
17.	1,10,000	16.03.2016	111295
18.	1,10,000	10.06.2016	108418
19.	1,68,000	29.07.2016	163081
20.	1,83,000	13.10.2016	173412
21.	1,10,000	11.11.2016	103266
22.	1,10,000	04.01.2017	101460
23.	12,008	22.04.2017	10681
Total=₹28,33,228/-			Total=₹35,53,651/-
Total Payable to complainant		28,33,228 + 35,53,651 =	₹63,86,879/-

43. The complainants are seeking cost of litigation in relief clause (ix) and compensation in relief clause (x) on account of mental agony, pain and harassment caused for delay in possession. It is observed that Hon'ble



Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & ors.*" (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

44. I.d. counsel for complainant neither argued nor pressed upon relief clause no. ii, iii, iv, vi, vii, and viii. Hence, no direction is issued/passed against the said relief clauses.

I. DIRECTIONS OF THE AUTHORITY

45. 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 paid amount of ₹28,33,228/- with interest of ₹35,53,651/-. It is further



clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

46. **Disposed of.** File be consigned to record room after uploading of order on the website of the Authority in each complaint case.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET SINGH SACHDEV
[CHAIRMAN]