



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1484 of 2023
Date of filing.:	18.07.2023
First date of hearing.:	23.08.2023
Date of decision.:	16.09.2025

Surender Kumar s/o Sh. Ram Swaroop
R/o House No. 598, Sector-9,
Faridabad, Haryana-121006

....COMPLAINANT

VERSUS

M/S BPTP Limited
Plot No. 28 ECE House, K. G Marg
Connaught Circus
New Delhi, 110001

....RESPONDENT

Present: - Mr Surender, Complainant through VC

Mr. Tejeshwar Singh, Counsel for the respondent through
VC

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed 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 fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, details of sale consideration, amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Sector 75, 82 to 85, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	PE-93-GF measuring 1025 sq. ft.
5.	Date of builder buyer agreement	12.02.2015
6.	Due date of possession	12.08.2018
7.	Possession clause in BBA (Clause 6.1 read with Clause 1.3)	Clause 6.1 The Seller/Confirming Party proposes to make offer possession of the Unit to the Purchaser(s) within the Commitment Period along with Grace Period "1.3 "Commitment Period" shall mean, subject to Force Majeure circumstances, interventions of



		statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities and/or documentation, as prescribed/requested by Seller/Confirming Party, under this agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of all the installments of the Basic Sale Price and Other Charges as per the payment plan opted, the seller/confirming party shall offer the possession of the unit to the Purchaser(s) within a period of 36 (Thirty Six) months from the date of execution of this agreement."
8.	Basic sale consideration	₹19,69,322.25/-
9.	Amount paid by complainant	₹21,37,743.74/-
10.	Offer of possession.	02.02.2024

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that a unit had been booked by original allottees namely Mr. Ravi Bhatia and Mrs. Renu Bhatia, in the project of the respondent namely "Park Elite Floors" situated at Sector 77, Faridabad, Haryana in the year 2011. The original allottees and the respondent had executed a builder buyer agreement dated 17.12.2011 qua unit bearing No. PE-93-GF measuring 1025 sq. ft.

Rathee

4. Subsequently, the original allottee namely Mr. Ravi Bhatia passed away on 16.03.2013. Following the death of the original allottee, the unit was substituted in the name of Mrs. Renu Bhatia as the solo applicant. The substitution letter was issued by the respondent on 01.07.2014.
5. Thereafter, the allottee, Mrs. Renu Bhatia, could not continue with the project and sold the unit in question to the complainant vide agreement to sell dated 25.11.2014. Consequently, the respondent issued a nomination letter in favor of the complainant on 08.01.2015. However, the respondent instead of endorsing the complainant's name in the builder buyer agreement dated 17.12.2011, rather issued a fresh builder buyer agreement on 12.02.2015.
6. Subsequently, on 12.02.2015, a builder buyer agreement was executed between the complainant and the respondent qua the unit in question. That as per Clause 6.1 and 1.3 of said agreement, the respondent was supposed to hand over the possession of the unit within 36 months from the date of execution of the agreement. Further, the respondent was allowed a period of 180 days for making an offer of possession of the unit. That the basic sale consideration of the unit was ₹ 19,69,322.25/- against which the complainant has paid ₹ 21,37,743.74/- to the respondent till date.
7. As per the agreement, possession of the unit should have been handed over by 12.02.2018, however, respondent has failed to offer possession



within stipulated time to the complainant. The complainant has already made almost 90% of the payment to the respondent as per the agreed payment schedule.

8. Further, the current status of the project is not suitable for possession as there is no connectivity of road for reaching the unit, the internal roads have not been constructed, and supporting infrastructure is not at site. Therefore, the complainant has filed the present complaint seeking possession of the booked unit along with delay interest for delay caused in delivery of possession.

C. RELIEF SOUGHT

9. That the complainant seeks following relief and directions to the respondent:-
- i. To declare the validity of the nomination letter dated 08.01.2015, which transferred the residential unit bearing no. PE-93-GF to the complainant.
 - ii. To endorse the complainant's name in the existing builder buyer agreement and recognize the complainant as the rightful owner of the said unit.
 - iii. To enforce the terms and conditions of the builder buyer agreement executed on 12.02.2015, and ensure the respondent's compliance with the same.



- iv. To grant any other relief deemed just and appropriate by this Hon'able Authority.
 - v. To pay complainant the delay compensation charges w.e.f from 12.08.2018 as per prevailing Rule 15 of HRERA Rules, 2017 i.e SBI MCLR +2% (9.30%) HRERA regulations.
 - vi. To complete pending work, handover the floor and execute the conveyance deed in favour of the complainant at earliest.
 - vii. To pay the complainant Rs 8,00,000/- for mental agony/harassment and for deficiency of service and Rs 50,000/-towards cost of legal expenses; and
 - viii. Pass any other order(s) that this Hon'ble Court may deem fit and proper in the present facts and circumstances
10. During the course of arguments, the complainant reiterated the submissions as already placed on record through written documents.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 29.03.2024 pleading therein:

11. That Mr. Ravi Bhatia and Mrs Renu Bhatia, original allottees, had expressed their interest and willingness to purchase a unit in the project of the respondent namely "Park Elite Floors" being developed at Faridabad vide application booking form dated 24.05.2009. Consequently, vide allotment

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letter dated 06.10.2011 an independent unit bearing no. PE-93, Ground Floor, admeasuring 1025 sq. ft. was allotted to them in the said project. Subsequent to the booking, the first allottee, Mr. Ravi Bhatia, passed away. Thereafter, the second allottee, Mrs Renu Bhatia requested for her name substitution as the first and sole allottee in the unit for which relinquishment deed of other legal heirs were submitted by Mrs Renu Bhatia. Thereafter, Mrs Renu Bhatia, and the complainant entered into an agreement to sell and requested the endorsement of the unit in the name of the complainant subsequent to which the unit was thereafter transferred to the complainant. The unit now stands in the name of the complainant.

12.The complainant being a subsequent buyer, has no right to seek delay possession charges. At the time of the nomination of the complainant, the project was already delayed due to reasons beyond the control of the company. That having knowledge of the existing delay, due to circumstances beyond the control of the respondent, the complainant willingly and voluntarily entered into the agreement to sell and the transfer documents thereof leading to their nomination.

13.That with such prior knowledge, willing and self-initiated endorsement of the complainant, without any protest, amounts to acceptance of the existing circumstances and the complainant cannot be allowed to reap benefits by extracting monies from the respondent and forgoing their complete satisfaction against the unit. Hence, the complaint is liable to be dismissed



with costs against the complainant. That reliance is placed to Supreme Court's pronouncement: **Laureate Buildwell Pvt. Ltd vs. Charanjeet Singh 2021 SCC OnLine SC 479**, where it was noted that relief to subsequent allottee has to be fact-dependent:

*" 31..The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent
..... 3 Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat. "*

14. That it is pertinent to note herein that the complainant had undertaken to pay the timely installments towards the balance sales consideration and other charges and to execute the builder buyer agreement and other requisite documents under clause 1 of the indemnity cum undertaking dated 02.12.2014. Hence, the parties mutually, willingly, and voluntarily entered into a builder buyer agreement on 12.02.2015 . At this stage, it is pertinent to highlight that the relationship between the parties was purely contractual and flowed from the explicitly agreed terms and conditions of the agreement dated 12.02.2015. The allegations of the complainant with respect to placing reliance on alleged agreement dated 17.12.2011 cannot be considered. That the said agreement was never executed between with the erstwhile allottee.

Lauree

In any case whatsoever and without any admission on part of the respondent, it is submitted that the agreement dated 12.02.2015 constitutes the entire agreement between the parties and the agreement dated 12.02.2015 along with its annexures, superseded any and all understandings, whether written or oral, if any, between the parties. The Complainant himself agreed to the same as per clause 14.10, of the agreement.

15. That as per clause 6.1 read with clause 1.3 and 1.11 of the buyer's agreement possession of the unit was to be handed over within a period of 36 months from the date of execution of the buyer's agreement along with grace period of 180 days. At this stage, it is submitted that the grace period has also been considered by Ld. Tribunal, Chandigarh in the case titled as **Emaar MGF Land Ltd. Vs Laddi Paramajit Singh Appeal No. 122 of 2022**. Hence, as per aforementioned clauses, the subjective due date comes out to 12.08.2018. However, this due date was subject to the incidence of force majeure circumstances and the timely payment of instalments by the complainant.

16. That in the year 2012, on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. Reference in this regard may be taken from the judgment of **Deepak Kumar v. State of Haryana, (2012) 4 SCC 629**, where the competent authorities took substantial time in framing the rules in case where the process of the availability of building materials including sand



which was an important raw material for the development of the said project became scarce. The Respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 02.11.2015, mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna river bed. These orders in fact inter-alia continued till the year 2018.

Additionally , the construction of the project was marred by the Covid-19 pandemic, whereby, the Government of India imposed an initial country-wide lockdown on 24/04/2020 which was then partially lifted by the Government on 31/05/2020. Thereafter, a series of lockdowns have been faced by the citizens of India including the complainant and respondent herein. Further, during the period from 12.04.2021 to 24.07.2021, each and every activity including construction activity was banned in the State.


G. Rathee

17. That in addition to the above, the construction was also affected by the act of non-receipt of timely payment of instalment against the booked floor by the complainant. Despite issuing several demand/reminder letters, the complainant failed to adhere to the agreed payment plan. Copies of the demand letters, payment receipts, reminders and final opportunity letters are annexed as Annexure R4(colly).

18. Despite innumerable hardships being faced by the respondent, the respondent completed the construction of the Project thereafter the respondent applied for grant of occupancy certificate and successfully obtained the occupancy certificate on 15.12.2023. The respondent then offered the possession of the unit to the complainants on 02.02.2024. It is pertinent to mention that vide letter dated 02.02.2024 regarding offer of possession, the complainant have been asked to make the requisite payment based on the statement of final dues and complete the documentation required to enable the respondent to initiate the process of physical possession of the unit. It is pertinent to mention herein that the respondent also credited a compensation of amount of Rs.45,868,75 to the complainant at the time of offer of possession. A copy of the occupancy certificate dated 15.12.2023 is annexed and marked as Annexure R7. A copy of the offer of possession letter dated 02.02.2024 is marked and annexed as Annexure R8.



19. That the complainant has only made a payment of ₹21,35,554.81/- out of the total sale consideration of ₹ 30,43,237.86/-. The complainant is at fault of payment of ₹ 9,07,683.05/-.
20. That in the given facts and circumstances, it is categorical to note that since the binding rights and obligations of the parties are derived from the builder buyer agreement dated 12.02.2015, which was executed prior to the implementation of the Real Estate (Regulation and Development) Act, 2016, the latter is not applicable and in such a circumstance, the Act cannot be allowed to re-open or re-write a contract. That agreements that were executed prior to the implementation of RERA Act, 2016 and Rules, 2017 shall be binding on the parties and cannot be reopened.
21. During hearing, learned counsel for the respondent submitted that as per clause 6.1 of agreement, due date of possession was 12.08.2018 and complainant had also admitted the same at page no. 14 of the complaint i.e. 36 months from date of execution of agreement along 180 days grace period, which comes to 12.08.2018. Admittedly there is a delay in handing over of possession and respondent-promoter is ready to pay the delay charges to complainant subject to consideration that respondent is liable to pay delay charges from deemed date of possession i.e. 12.08.2018 till offer of possession or till occupation for the unit was obtained by respondent whichever is later. In present case, offer of possession was made on 02.02.2024 which is after obtaining the occupation certificate on



15.12.2023. Respondent counsel further prayed for relaxation in the deemed date of possession on account of force majeure event including 9 months due to Covid-19 outbreak. Further respondent counsel referred to page no. 106 of reply, wherein respondent had mentioned a loyalty bonus of ₹ 45,868.75/- requesting it to be deducted from the amount to be considered as paid amount by complainant, since the same was never paid by the complainant. Lastly, counsel for respondent alleged that offer of possession was made in February 2024 after obtaining occupation certificate in December 2023, however it is the complainant who is liable to pay delayed payment interest to the respondent as per Section 19(6) and 19(7) read with 2(z) of the RERA Act. .

E. ISSUES FOR ADJUDICATION

22. Whether the complainants are entitled to possession of the booked unit along with delay interest in terms of Section 18 of Act of 2016?

F. FINDINGS ON OBJECTIONS OF THE RESPONDENT

23. Respondent in the captioned complaint has submitted that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, the 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 builder buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensures that whatever were the obligations of the promoter as per agreement for sale, the 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 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 builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

G. OBSERVATIONS OF THE AUTHORITY

24. After hearing arguments advanced by both parties and pursuing documents placed on record, it is observed that the complainant in the captioned complaint had purchased the booking rights qua the unit bearing no. PE-93, Ground Floor, measuring 1025 sq. ft. from the one, Mrs Renu Bhatia, vide



agreement to sell dated 25.11.2014. Consequently, the respondent endorsed the unit in the name of the complainant and issued a nomination letter dated 08.01.2015. Thereafter, both parties executed a builder buyer agreement qua the unit in question on 12.02.2015. That the basic sale consideration of the unit was fixed as ₹ 19,69,322.25/- against which the complainant has paid ₹ 21,37,743.74/- to the respondent till date. As per the Clause 6.1 and 1.3 of the builder buyer agreement, the respondent was supposed to hand over the possession of the unit within 36 months from the date of execution of the agreement. Further, the respondent was allowed a period of 180 days for making an offer of possession of the unit. It is the contention of the complainant that the respondent has failed to deliver possession of the booked unit within stipulated time. Hence, the present complaint seeking possession of the booked unit along with delay interest and thereafter execution of conveyance deed in favour of the complainant.

25. As per the agreement possession of the unit should have been delivered within a period of 36 months from the date of execution of floor buyer agreement. Said period expired on 12.02.2018. The agreement further provides that the promoter shall be entitled to a grace period of 180 days after expiry of the said 36 months for making an offer of possession of the unit. As per facts, the respondent has failed to complete the construction of the unit within stipulated time period and make an offer of possession to the



complainant between 13.02.2018 to 12.08.2018 i.e the grace period. The respondent had failed to complete construction of the unit within stipulated time and apply for grant of occupation certificate with the concerned Authorities within the time limit prescribed in the builder buyer agreement i.e immediately after expiry of 24 months of date of execution of agreement. The delay is entirely on the part of the respondent. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter. Thus the deemed date of possession works out to 12.02.2018.

The respondent has averred that the delay in delivery of possession has been due to various force majeure conditions. Respondent has cited delay in construction of the project due to disruption in construction activity due to regulation of mining activities of minor minerals as per directions of Hon'ble Supreme Court, non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal and stay on mining activities by National Green Tribunal in several cases related to Punjab and Haryana. However, respondent has failed to attach copies of the respective orders banning/ prohibiting the construction activities. Respondent has failed to adequately prove that the extent to which the construction of the project in question got affected. Furthermore, respondent has submitted that the construction of the project got severely affected due to COVID-19 outbreak. It is observed that the

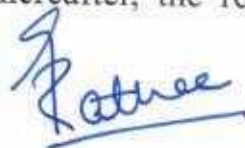


Covid-19 pandemic hit construction activities post 22nd March 2020 i.e six years after the deemed date of possession, therefore, as far as delay in construction due to outbreak of Covid-19 is concerned, respondent cannot be allowed to claim benefit of COVID19 outbreak as a force majeure condition. Further, reliance is placed on judgement passed by Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020 dated 29.05.2020** has observed that:

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

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

26. As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainant by 12.02.2018. However, respondent failed to complete construction of the project and deliver possession within stipulated time. Thereafter, the respondent had



issued an offer of possession to the complainant on 02.02.2024 after receipt of occupation certificate dated 15.12.2023. Complainant has admitted to having received the offer of possession but has further stated that he did not act upon the said offer as there were numerous deficiencies in the unit and also the respondent had failed to adjust the delay interest admissible to the complainant. Complainant has filed an application dated 15.07.2024 in the registry to place on record the latest photographs of the unit in question.

In this regard it is observed that the unit in question has received occupation certificate on 15.12.2023. Thereafter, vide offer of possession letter dated 02.02.2024 respondent had apprised the complainant that occupation certificate has been received and the unit bearing no. PE-93-GF is ready for possession. Respondent had also issued a detailed statement of account of payable and receivable amounts pertaining to the said unit. A bare perusal of the application dated 15.07.2024 filed by complainant reveals that the complainant has merely filed photographs of the unit in question as on 08.04.2024. Complainant has not mentioned as to what are the deficiencies which exist in the unit. Further, from the photographs it can clearly be ascertained that the construction works are complete in respect of the unit and only minor fit out works like attachment of switch boards/ sink, window panel etc are remaining. Generally, as a matter of practice once an allottee accepts the offer of possession it is only thereafter that these fitouts are



added to the unit to avoid corrosion/depletion. The respondent promoter attaches the same before physical handing over of possession. This does not mean that the unit itself is uninhabitable. Also, occupation certificate for the unit in question has been issued by the Department of Town and Country Planning which further makes it clear/evident that the unit is in a habitable condition and is fit for occupation. As on 02.02.2024, the unit in question was ready in all respects and duly supported with occupation certificate. There was no impediment in complainant having accepted the said offer of possession.

It is noteworthy to observe that the respondent vide application dated 07.04.2025 has placed on record the photographs of the unit wherein all the remaining furnishing works have been finished and the unit is ready in all respects.

27. The facts set out in the preceding paragraph demonstrate that in the captioned complaint delivery of possession of the booked unit has been delayed beyond the time period stipulated in the builder buyer agreement. Possession of the unit was to be delivered to the complainant on 12.02.2018, however, a valid offer of possession was issued to the complainant on 02.02.2024, i.e after a gap of more than 6 years. Admittedly there has been an inordinate delay in delivery of possession but the complainant wishes to continue with the project and take possession. In these circumstances,



provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked floor, the complainant is also entitled to receive interest from the respondent on account of delay caused in delivery of possession for the entire period of delay till a valid offer of possession is issued to the complainants. So, the Authority hereby concludes that the complainant is entitled to receive delay interest for the delay caused in delivery of possession from the deemed date of possession i.e 12.02.2018 till the date of valid offer of possession i.e 02.02.2024. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is provided 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”

28. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in 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 10.85% (8.85% + 2.00%) from from the due date of possession till the date of a valid offer of possession i.e 02.02.2024

29. Authority has got calculated the interest on total paid amount from due date of possession and thereafter from date of payments whichever is later till the date of offer of possession in the captioned complaint as mentioned in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of offer of possession i.e 02.02.2024(in ₹)
1.	21,37,743.74/-	12.08.2018	12,71,568/-



Total:	21,37,743.74/-		12,71,568/-
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30. It is pertinent to mention that in the captioned complaint, complainant has received timely payment discount from the respondent as a credit towards payment made within the prescribed time. As a benefit, the said discount was credited towards the total sale consideration made by the complainants and was an essential component in determining the balance payable amount. Perusing the receipts and demand letters, it cannot be denied that these payments form a part of the total amount paid by the complainants. Although it is true that this discount is an act of good will on the part of the respondent but complainants cannot be denied their rights especially when the respondent company itself considers this as a paid amount as per payment policy. Therefore, the complainants cannot be denied of claiming interest on the total amount paid in respect of the booked unit including the component of timely payment discount. Accordingly, the delay interest for delay caused in handing over of possession has been provided on the entire amount for which the receipts have been issued by the respondent.

31. Further, with regard to the issue of execution of conveyance deed, Authority is of the considered view that there is no impediment on execution of conveyance deed in favor of an allottee once an allottee has paid the total sale consideration in respect of the booked unit and is ready/willing to take



possession of the same. After this stage, execution of conveyance deed is nothing but updating of records in respect of transfer of property. Thus, the respondent-promoter is obligated/duty bound under Section 17 of the RERA Act, 2016 to execute a registered conveyance deed in favour of the complainant-allottee after handing over of possession.

32. The complainant is seeking compensation to the tune of ₹. 8,00,000/- on account of mental agony/harassment and for deficiency of service and ₹ 50,000/- as litigation expense. 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.



H. DIRECTIONS OF THE AUTHORITY

33. 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 pay upfront delay interest of ₹12,71,568/- (till the date of offer of possession i.e 02.02.2022) to the complainant towards delay already caused in handing over the possession. 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.
- ii. Respondent shall handover possession of the unit to the complainant within 15 days. Complainant shall make payment of balance sale consideration, if any, and accept the physical possession of the unit within next 15 days.
- iii. Respondent is directed to get the conveyance deed registered within 30 days of the complainant's accepting the possession.
- iv. Complainant will remain liable to pay conveyance deed charges, if any, to the respondent at the time of taking over of possession.



- v. The respondent shall not charge anything from the complainant which is not part of the agreement to sell.

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


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DR. GEETA RATHEE SINGH
[MEMBER]

