



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of Decision	03.11.2025
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Name of the Builder		HOUSING BOARD HARYANA		
Project Name		HOUSING BOARD COLONY, SECTOR-8, JIND, HARYANA		
Sr. no.	Complaint no.	Title of the case	Appearance on behalf of complainant	Appearance on behalf of respondent
1.	491/2022	Jagdish vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
2.	520/2022	Geeta Rani vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
3.	530/2022	Sanjeev Kumar vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
4.	531/2022	Sunita Devi vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
5.	532/2022	Jitender Kumar Mittal and anothers	Adv. Kamal Dahiya, counsel for the complainants,	Adv. Arvind Seth, counsel for the respondent through

Complaint nos.491 of 2022 and anothers

		vs. Housing Board Haryana, through its Estate Manager, Panipat.	through VC.	VC.
6.	623/2022	Ashok Kumar vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
7.	634/2022	Chander Bhan vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
8.	635/2022	Karampal Singh vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
9.	636/2022	Mohinder Singh vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
10.	638/2022	Nidhan Singh vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
11.	639/2022	Parveen vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
12.	643/2022	Rajender Gupta vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.



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13.	645/2022	Rajesh Kumari vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
14.	772/2022	Arun vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
15.	773/2022	Hansika vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
16.	774/2022	Parmilla Devi vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
17.	778/2022	Parvesh Khapra and anothers vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainants, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
18.	780/2022	Pushp Lata vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
19.	782/2022	Ram Niwas vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
20.	786/2022	Rupesh Kundu vs. Housing Board Haryana, through	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.

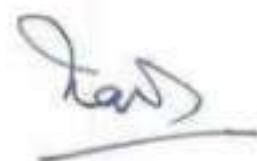
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Complaint nos.491 of 2022 and anothers

		its Estate Manager, Panipat.		
21.	790/2022	Vaishali Kundu vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
22.	791/2022	Sumitra Devi vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
23.	1422/2022	Anil Kumar vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.
24.	1423/2022	Jagdish vs. Housing Board Haryana, through its Estate Manager, Panipat.	Adv. Kamal Dahiya, counsel for the complainant, through VC.	Adv. Arvind Seth, counsel for the respondent through VC.

ORDER(NADIM AKHTAR-MEMBER)

1. This order shall dispose off all the above captioned complaints filed by the complainants before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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



Complaint nos.491 of 2022 and others obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

2. The core issues emanating from the above captioned complaints are similar in nature. The complainant in the above referred Complaint No. 491 of 2022 and other captioned complaints are allottees of the project namely; "Housing Board Colony, Sector-8, Jind" being developed by the same respondent/promoter, i.e., Housing Board Haryana, Estate Branch, Panipat. The fulcrum of the issue involved in the above captioned cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the unit in question and the complainant(s) are now seeking possession of the units along with delay possession charges.

A.UNIT AND PROJECT RELATED DETAILS

3. 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	Housing Board Colony, Jind, Sector-8, Haryana.
2.	Name of the promoter	Housing Board Haryana
3.	Flat No. allotted	19A(FI), Type B
4.	Flat area (Covered area)	45.03 sq. mtr
5.	Date of allotment	04.09.2018



6.	Date of Builder Buyer Agreement	Not executed
7.	Due date of offer of possession	Not available
8.	Possession clause in BBA	Not available
9.	Total sale consideration	₹16,00,081/- as per allotment letter dated 04.09.2018. The same was revised to ₹11,97,000/- vide letter dated 10.07.2021.
10.	Amount paid by complainant	₹1146893/-
11.	Physical Possession offered	Give on 11.06.2021

B. COMPLAINT NO. 491 OF 2022 IS TAKEN AS LEAD CASE AND BRIEF FACTS OF THIS COMPLAINT ARE AS UNDER:

4. Complainant made following submissions in his complaint dated 29.03.2022.

- i. Housing Board Colony, Jind is a project being developed by the respondent, situated at Sector-8, Jind, Haryana. It is pertinent to mention that there were 252 nos. of flats of Type-B (Stilts/ground + three-storeyed) with tentative covered area of 460.00 sq.ft. or 45.03 Sq. mt which were to be constructed as per the layout plan of the said project.
- ii. That in the year 2010, the respondent invited applications and total price of the flat that were TYPE B(Stilt/ground + three storeyed) situated at said project of the respondent was ₹7,50,000/-, as per the price of flats given at



Complaint nos.491 of 2022 and another
pg.no.1 of the brochure issued by the respondent. Further, as per the mode
of payment, ₹75,000/- is mentioned as the amount payable with
application and ₹1,15,000/- as the amount payable after draw of lots.

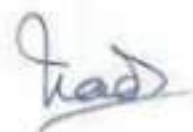
- iii. That the original allottee was allured by the representations of the officials
of the respondent, original allottee invested his hard earned money in
respondent's project and paid an amount of ₹75,000/- to the respondent,
i.e., 10% of the total price of the flat, so as to participate in draw of the
said project.
- iv. That being successful in the said draw, as per the terms and conditions
given by the respondent on the website of Housing Board Haryana, the
respondent allotted one flat to the complainant against final registration
number 214 of the unit. Alongwith allotment respondent further
demanded an amount of ₹1,15,000/-, i.e., 15% of the total price of the flat
that had been duly paid by the original allottee.
- v. That the said flat was offered for a total sale consideration of ₹7,50,000/-.
As per the payment plan issued by the respondent of the said unit, 10% of
the total sale consideration of the unit was to be paid for participating in
draw. Upon being successful in draw, further 15% of the total sales
consideration was to be paid before allotment. Rest of the amount was to
be paid either in instalments or lump sum at the time of getting physical
possession. Hence as per the said payment plan, the original allottee had
paid a total sum of ₹1,90,000/- in 2010.



- vi. That the respondent has clearly violated the provisions as enumerated under Section 13 of the RERA Act as more than 10% of total sale price of the unit has been demanded and accepted by the respondent, before execution of any written agreement between the parties.
- vii. That the possession of the allotted unit was to be given in December 2012. However, from 2012 till 2018, the respondent did not make any conversation with the original allottee either verbally or in writing regarding the payment or delay in possession and did not even gave any tentative date of possession. Accordingly, no clear date has been intimated qua the offer of possession.
- viii. That pursuant to the Final Registration No.214, the respondent offered possession of Type B unit to the original allottee bearing Tenement no. 19A(FF) admeasuring 45.03 sq. mt. vide letter dated 04.09.2018. It has been stated in the said letter that the unit has been allotted to the original allottee on Hire-Purchase basis at final price of ₹16,00,081/- that includes ₹15,22,400/- as the price of the house and ₹77,681/- as the Enhanced Land Cost(ELC). The original allottee has also been advised vide said letter to deposit sum of ₹6,10,480/- and take possession within 30 days from the date of issue of said letter. The balance price of the unit is mentioned to be payable in monthly instalments of ₹13,554/- each over a period of 10 years. Copy of letter dated 04.09.2018 is annexed as Annexure C-1.



- ix. That as the possession had been offered at the price that was 219% times more than the price of the unit mentioned in the brochure/advertisement, that was ₹7,50,000/-. Hence the complainant and other allottees requested the Chairman of the Housing Board to reduce the price of the said unit. The allottees also raised queries with respect to the corpus fund, the rate of GST etc. in the representation.
- x. That the respondent demanded transfer charges from the complainant in June 2021 that had been duly paid by the complainant. Complainant paid total amount of ₹1,76,893/- which includes transfer fee of ₹27,832/-, Possession fees of ₹1,46,111/- and ₹2500/- against Process fee. The copies of bank deposit receipts of said payments dated 09.06.2021 are annexed as Annexure C-2(Colly).
- xi. That the respondent offered physical possession of the unit in question vide letter dated 11.06.2021 and invited the original allottee to sign the possession papers. Possession Certificate had also been issued to the original allottee on 11.06.2021. Copies of letter dated 11.06.2021 and possession certificate are annexed as Annexure C-3 and C-4.
- xii. That the respondent transferred the allotment of the flat no. 19-A, in the name of the complainant vide letter dated 16.06.2021 and advised the complainant vide said letter to deposit the monthly instalment and other dues of the allotted unit in the account of the Housing Board. It has been further specified that the allotment of Unit no. F.No.19-A would be



Complaint nos.491 of 2022 and anothers treated in the name of the complainant for future purpose. Copy of letter dated 16.06.2021 is annexed as Annexure C-5.

- xiii. Complainant had paid lump sum amount of ₹6,72,000/- to the respondent against the total price of the unit as determined by the respondent, i.e., ₹11,97,000/-. Thus, the respondent had adjusted the amount of ₹6,72,000/- against outstanding amount of the unit and the revised calculation, for leftover amount of unit, i.e., ₹4,15,640/-, of the monthly instalment had been sent by the respondent vide letter dated 07.07.2021. Copy of Letter of respondent dated 07.07.2021 regarding revision of instalment is annexed as Annexure C-6.
- xiv. That it is pertinent to mention here that on another representation of the association of allottees for reduction of price of the flat, the price of the flat in question was reduced to ₹11,97,000/- and the same was informed to the complainant vide letter dated 10.07.2021. Copy of letter dated 10.07.2021 is annexed as Annexure C-7. However the respondent did not bother to reduce Rate of GST, CORPUS FUND etc. It is pertinent to mention here that the complainant is entitled for interest on the amount paid by him in 2010 for delay in offer of possession. However the respondent denied to pay/adjust such interest also in the total outstanding against the complainant.
- xv. As the respondent did not respond to several queries/requests of the complainant and other allottees, the allottees formed an Association



Complaint nos.491 of 2022 and another
namely "Housing Board Jind Flat Owners Welfare Association", Sector-8,
Jind. The said association gave representation to the respondent whereby
the grievances of the allottees had been brought to the notice of the
respondent. The respondent had been requested to reduce the price of the
units as the allottees have been overburdened financially without any fault
on their part. Copy of representation is annexed as Annexure C-8. Various
grievances of the allottees raised in the said presentation are adduced
hereunder:

- a. **Enhanced Cost:** The cost of each unit/flat at the time of offer
possession in 2018 was more than ₹16Lacs, that was 219% times
higher than advertisement cost. The revised cost of ₹13,42,300/-
was also exorbitant and 182% higher than advertisement cost.
However the Market price and Collector Rate as per executive
Engineer HB, Karnal is ₹15000/- per sq. yards.
- b. **Interest and other charges:** A huge amount has been added to the
final cost of the unit under various headings such as Interest,
Administrative Charges, Conveyance Expenses and other charges
which were arbitrary and needs to be waived off.
- c. **12% GST:** The respondent charged GST @ 12% per flat of
Housing Board Colony, sector-8, Jind as depicted in Allotment &
Possession letter dated 04.09.2018(Annexure C-1). Whereas the
construction work of the said project had been completed in the



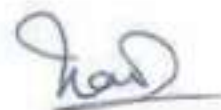
Complaint nos.491 of 2022 and another's year 2016, when the GST was not leviable. It is pertinent to mention here that GST came into effect from 01.07.2017. However, the date of completion of construction work as intimated by XEN is 30.03.2016, as is evident from page no..1 of Annexure C-9. Further it is submitted that the respondent levied wrong slab of GST on wrong amount(i.e. on amount total of Principle plus interest) and the calculation of GST is also incorrect

- d. **Corpus Fund:** The respondent charged an amount of ₹50,000/- as Corpus Fund against unit in question, i.e., 1 BHK. The complainant has raised objection against said charges as it has not been mentioned anywhere in the booking form, brochure etc. Thus, such Corpus Fund is not payable by the complainant at all.
- e. **The Interest on amount paid by allottee in 2010 denied by respondent:** The complainant is entitled for interest on ₹1,90,000/- for period of delay from the date of payment made by the complainant till physical possession of the unit in question. However, the respondent did not mention that interest in Allotment cum Possession Letter issued to the complainant on 10.07.2021. It is pertinent to mention that respondent has admitted in their own documents that they would levy interest @10% for delay in making payments by the allottees, thus, the complainant is entitled for same rate of interest for delay in delivery of possession. The respondent



Complaint nos.491 of 2022 and another has prepared a Cost Sheet for the completion of said project, which is annexed herewith as Annexure C-9. Wherein it is mentioned that Rate of interest of scheme is 10%. Thus, the respondent are liable to pay the interest for delay in delivery @10% p.a or as per provision of RE(R&D),2016, whichever is higher.

- f. **No provision of Basic amenities:** That the water, electricity and sewerage connections were not available at the project site at the time of offer of possession was made by the respondent. Hence the offer of possession without basic amenities is not a valid offer of possession.
- g. **Non availability of Electricity Connection Till Date:-** That respondent has admitted in their reply to RTI, which has supplied to the complainant during appellate court under RTI Act, that till 27.05.2020 only two allottees has taken the physical possession of the units in the said project and electricity connection has not been applied to DHBVNL by the respondent for the said project. Copy of the reply submitted vide letter dated 27.05.2020 during hearing of Appeal case no. 9597/2019 under RTI Act is annexed as Annexure C-10. Furthermore, it is important to point out that DHBVNL had raided the premises of the said project on 18.06.2021 and found grave illegalities at the project site, consequently penalty was levied

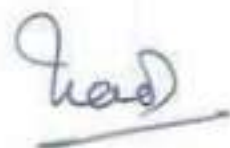


Complaint nos.491 of 2022 and others
on the respondent for illegalities committed by the respondent at
site.

The respondent has admitted in their reply to RTI that there were
certain illegalities found at the time of raid conducted by the
DHBVNL, thus in compliance of the statutory provisions of law,
the respondent has deposited part penalty amount to the tune of
₹20000 with DHBVNL. Copy of report prepared by the officials of
DHBVNL at the time of raid conducted by them at site of the
project is annexed as Annexure C-11.

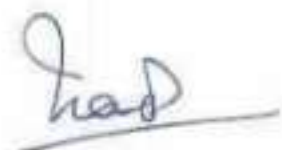
That in furtherance to show their arrogance and to mislead
DHBVNL, the respondent wrote a letter dated 21.06.2021, i.e, just
after two days of raid, vide which the respondents have admitted
that raid has been conducted by DHVBNL and then to cover up
their misdeeds, the respondents have denied that they have no
knowledge that allottees are taking illegal connection and also
denied that respondent is not reselling the electricity to their
allottees. Copy of the letter dated 21.06.2021 is annexed as
Annexure C-12.

That it is apparent from the misconduct and misdeeds of the
respondent that after raid carried out by DHVBNL, the respondent
became apprehensive about their modus operandi of the mischief
and wrongful act as well as theft committed by them at the project



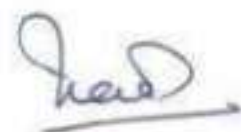
Complaint nos.491 of 2022 and another's site, thus, to cover up their case, the respondent issued a letter dated 21.06.2021 to the DHVBNL stating that they have no knowledge of the connection taken by the allottees from their site office. However, it is strange and makes the case more dubious, when the respondents themselves have admitted that two allottees are residing and have taken physical possession at the project site, thus, such allottees must have been using the electricity for their daily purposes, so, if the stand of the respondent about having no knowledge about taking electricity connection is justified then onus of proving that those allottees who have taken possession and are using electricity at project site without the consent of the respondent, lies on the shoulder of the respondent only, especially in the light of the fact when respondent has admitted that they have not applied for electricity connection to DHVBNL for the project site.

That the above said facts with respect to the raid by vigilance team of electricity department and problems faced by residents due to disconnection of electricity has also been highlighted by various news agencies in different newspapers so as to bring the same into knowledge of Public at large and concerned authorities, the clippings of which are annexed with this complaint as Annexure C-13(Colly).



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The misdeeds and falsity of the respondents is further proved by the fact that DHVBNL has approved the estimate to lay down the internal infrastructure(i.e., Transformers and 11 KV Line etc.) in year 2021 only, wherein it has been recorded by the DHVBNL while preparing the estimate for laying the Internal Infrastructure for electricity at the project site, that respondents have laid down the internal electrification infrastructure without sanction and approval from DHVBNL and such electrification plan has been wrongly executed. It is specifically observed by the DHVBNL that project site has been checked by S.E Op Circle, Jind along with XEN divn. Jind and SDO, Op Jind and during checking it has been found that internal electrical infrastructure work done by respondent is dangerous to life of the allottees, as Transformers and electrical poles and lines are laid down in public park/green area, which may be disastrous for the allottees in future. The copy of the complete estimate plan prepared by the DHVBNL for the purpose of laying down the internal electrical infrastructure is annexed herewith as Annexure C-14.

- h. **Transformers installed in open green:** That as per the sanctioned layout of the project and the Haryana Building Code, 2017, 15% of the total project site must be open green permissible/parks. As such, as per the site map of the said project there are three parks



Complaint nos.491 of 2022 and another measuring 1630 sq. mtr. at Gate no.2, 435 sq. mtr. and 1270 sq. mtr. at Gate no.1. However the respondent has installed 6 transformers of electricity in park measuring 1630 sq. mtr. and 5 transformers in park measuring 1270 sq. mtr. The site map and actual site condition is annexed as Annexure C-15 and C-16. Copies of newspaper clippings with respect to such grievances of the allottees are annexed as Annexure C- 17(Collv).

(xvii) That the respondent has made several changes in the layout of the sanctioned project plan. The comparative analysis of brochure provisions of the Haryana Building Code, 2017 and actual site conditions depicts following layout changes:

- (i) **Water recharge systems in park:** There are also two water recharge systems installed in each park that are not in accordance to the layout plans and specifications approved by the competent authorities.
- (ii) **No Ramps for disabled persons:** As per the Haryana Building Code, 2017, there must be separate ramps for disabled persons and for parking in each of the block of the said project. However no ramps have been constructed for disabled persons.
- (iii) **No provision of Lift:** As per the layout plans and the Haryana Building Code, 2017, it is necessary to provide lifts in the



Complaint nos.491 of 2022 and another block/Tower, the height of which is more than 15.00 meters high. However, the respondent failed to follow layout plan and no provision of lift has been made in such Towers/Blocks.

(xviii) That there are several structural defects found in the said project of the respondent and various towers are under construction till date. Some of the defects are adduced hereunder:

- 1. No fire safety:** Fire safety system is not in working condition. The pipe outlet of the fire safety system is in the mid of the road that could be disastrous and could cause unexpected casualty.
- 2. Unsafe installation of transformers:** The installation of electric network by the respondent is not safe as the transformers have been erected in public parks of the society.
- 3. Illegal Submersible:** There is an illegal submersible in the premises of the project and total water supply is done by this submersible only.
- 4. Dangerous Water Recharge System:** There are four water harvesting systems, two in each park which are very deep and open. Hence, all four water harvesting systems are dangerous and amenable to lives of allottees.



5. Unsafe Roads: There are trenches and potholes on the roads and the roads are not properly levelled that is unsafe and could lead to accidents.

6. Old and worn concrete in parking and stairs: The parking and stairs are in such a poor condition that can cause slip hazard especially during inclement weather.

7. Open sewerage manholes: The sewerage manholes are open that pose severe risks of falling in. These manholes have not been covered and cleaned before offering possession of the units to the allottees that shows how the respondent is callous towards the safety of the allottees. The photographs that depicts various such defects are annexed as Annexure C-18(Colly).

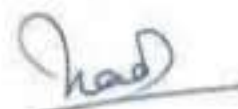
(xix) That the respondent miserably failed to deliver the possession of the unit in question to the complainant by Dec 2012 that was the tentative date of possession. Further the basic services/public facilities that render the flats in habitable condition has also not been provided by the respondent. However, the respondent neither pay heed to the grievances of the complainant nor took into account the structural defects and forced the complainant to take possession in June 2021. That the respondent issued show cause notices to all the allottees on dated NIL wherein it had mentioned that as the outstanding amount had not been paid by the



Complaint nos.491 of 2022 and another allottees and the possession had not been taken, the allottees were given the last opportunity to deposit the requisite amount and take over the possession of the flat/unit within 30 days from the date of issue of the letter. It had been further mentioned that the failure to take possession in 30 days of issuance of said letter would amount to cancellation of the allotment. That as the said letter/show cause notice does not contain any date and there is only reference no. of one of the official letter of respondent, i.e., letter no. 299 dated 10.02.2021, the determination of 30 days is infeasible. Copy of show cause notice received by one of the allottee is annexed as Annexure C-19.

(xx) That the association of allottees replied to the said show cause notice vide letter dated 18.04.2021 and requested the respondent to halt the proceedings of said notice as the delay in provision of basic amenities to the allottees has been caused by the respondent itself and the grievances of the allottees are still subsisting. The reply dated 18.04.2021 of show cause notice is annexed as Annexure C-20.

(xxi) That as the said show cause notices have been returned unserved, i.e., the notices have not been delivered to few of the allottees due to certain reasons, the respondent issued public notice in the newspaper mentioning the names of 34 allottees. It has been informed to the allottees vide said Public Notice to take possession of their units by 15.06.2021 and if the



Complaint nos.491 of 2022 and anothers allottees would fail to take possession by 15.06.2021, their allotment would be cancelled without any further notice to the allottees in this regard. Copy of public notice issued by the respondent in various newspaper and their clippings mentioning issuance of said show cause notices and grievances of allottees against said notice are annexed as Annexure C-21(colly).

(xxii) Respondent neither had obtained Occupancy certificate/Completion certificate nor had applied for the same till date. Thus, it is crystal clear that the possession offered by the respondent is not valid and legal offer of possession.

(xxiii) That the complainant made timely payments as per each and every demand raised by the respondent. Despite the complainant having paid substantial amount of ₹9,56,893/- till 06.03.2022 and discharged his part of obligations as per the policy of allotment, the respondent betrayed the said policy of the Housing Board Haryana and failed to perform his part of duties as per the said policy as the project has not been completed within stipulated time period. Neither the Occupancy Certificate has been obtained by the respondent nor provision of basic amenities has been made till date and even the respondent denied to pay delay interest which the complainant is entitled as per RERA norms. Copy of Bank deposit receipts of ₹9,56,893/- are annexed as Annexure C-22(Colly).

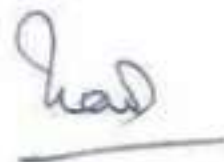


(xxiv) That the complainant does not want to withdraw from the project. As per the obligations on the respondent/promoter under Section 18 of the Act, 2016 read with Rules 15 and 16, 2017, the Promoter has an obligation to pay interest on the delayed possession on the amount deposited by the complainant at the rate prescribed. It is further submitted that the respondent has charged interest at the rate of 10% as the rate of interest of scheme as is evident from page no. 1 of Annexure C-9. Hence the complainant is also entitled for interest for delayed possession at the rate of 10%.

C. RELIEFS SOUGHT

5. Complainant has sought following relief :

- i. To give necessary directions to the respondent to hand over the possession of the allotted unit along with delay interest @ 10% till date along with the prescribed rate of interest as per the provisions of Sec. 18 and Sec. 19(4) of the RE(R&D)Act.
- ii. To direct the respondent to repair all structural defects found in the project.
- iii. To direct the respondent to provide all basic amenities to the complainant to render the physical possession of the unit in habitable condition.
- iv. To impose penalty upon the respondent as per the provisions of Section 60 of RERA Act for willful default committed by them.



- v. To impose penalty upon the respondent as per the provisions of Section 61 of RERA Act for contravention of Sec. 12, 13,14and Sec. 16 of RERA Act.
- vi. To issue directions to make liable every officer concerned i.e., Director, Manager, Secretary, or any other officer of the respondent 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 HRERA Rules, 2017.
- vii. To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.
- viii. To issue direction to pay the cost of litigation.
- ix. Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint

D. REPLY ON BEHALF OF RESPONDENT

6. Respondent had made following submissions in reply dated 05.01.2023 which are as follows:

- i. That as per the record the possession of flats in question was given to the original allottee that is namely Rohit S/o Sh. Rohtas Singh, vide letter no. EM/HBH/2021/312 dated 11/06/2021 bearing Flat no. 19-A, First Floor, Type B situated at Housing board colony Sector 8, Jind.



Complaint nos.491 of 2022 and anothers

The complainant purchased the said flats from the original allottee after verification of title and after spot inspection. All things and amenities were in proper order and only then the complainant purchased the flat in question.

- ii. That regarding estate service such as road sewerage, storm, drainage and water supply were completed before handing over the possession of the flats in question. Moreover the complainants admitted in complaint in the para no 31 that the possession of the flats are given to the complainant within in stipulated period. Complainant have no locus standi to file this false and frivolous complaint. Hence the present complaint is liable to be dismissed.
- iii. That the present complaint is bad for non-joining of the necessary party and mis-joinder of the necessary party and hence the present complaint is liable to be dismissed. Complainant did not make the necessary party, i.e. SDO (OP), DHBVN, Jind and hence the present complaint is liable to be dismissed on this sole ground.
- iv. That the possession of flat in question was given to the original allottee but not to the applicant/complainant.
- v. That GST is charged as per GST Act and as per instructions issued by the Central Government.



- vi. That Housing Board, Haryana is an autonomous body who take its own decision. That respondent is service provider and not is in the business of Real Estate.
- vii. That Housing Board Haryana advertised about the project and the applicant agreed to the terms and conditions mentioned in the brochure issued by the respondent. Hence the original allottee took possession on 11.06.2021.
- viii. That respondent did not violate the provisions as enumerated under section-13 of the RE (R&D) Act. It is further wrong and denied that Housing Board Haryana is not promoter. That section-13, Sub para 1 of RERA Act, 2016 is not applicable upon the respondent because the complainant never entered into a written agreement for sale.
- ix. That rate of GST, CORPUS FUND pertain to Central Government. That the respondent never offered the possession at the price which was 219% times more than the price of the unit mentioned in the advertisement.
- x. That rate of GST is related to Central Government and Corpus Fund are related to welfare of the colony residents.
- xi. That physical possession of the unit in question is delivered to the original allottee in time without any delay and deficiency. It is wrong and denied that the complainant is entitled for interest on ₹1,90,000/- for period of delay. That respondent is charging interest as per



Complaint nos.491 of 2022 and another's allotment cum possession letter. That complainant is not entitled for the same rate of interest because the complainant did not deposit the remaining amount of instalments in limitation.

- xii. That electricity connection is already provided by the Dakshin Haryana Bijli Vitran Nigam Ltd. There is no deficiency of services on behalf of respondent.
- xiii. That the location and installation of transformers was changed keeping in view the safety of human being. It is wrong to say that the green park area is less than 15% of the total project sites as per building code which still can be verified as per prevailing site conditions.
- xiv. It is vague to say that the changes have been made in the layout of the sanctioned project plan for the provision of water supply, sewerage system, ramp for disabled person, provision of lift as the project was approved as per Haryana Building Code and with the due approval of the competent authority of board.
- xv. That the flat of the complainant is not in the height where lift is mandatory. That all the facilities are in working conditions and if any problem comes in the notices of this office the same is got rectified immediately in the public interest. That fire safety systems is in working conditions.
- xvi. That there is no illegal water pump in the premises of the project and water recharge system are not dangerous. That there is no unsafe road



Complaint nos.491 of 2022 and anothers in the project. It is wrong and denied that parking and stairs are in poor conditions. It is wrong and denied that sewerage manholes are open rest of the contents are wrong and hence denied. That there is no deficiency of any type on the part of answering respondent. That the habitual conditions has been provided by the respondent.

xvii. That issuance of said notices by the respondent is not illegal and uncalled. The issuance of public notice becomes mandatory for the welfare of public at large.

xviii. It is submitted that respondent provide the unit in perfect habitable condition.

E. DETAILS OF ADDITIONAL DOCUMENTS FILED BY BOTH THE PARTIES ARE AS FOLLOWS:

i. DETAILED COMMENTS BY PRATAP SAINI ESTATE MANAGER HOUSING BOARD, HARYANA, PANIPAT ON BEHLAF OF RESPONDENT ON 18.07.2023

- Detailed comments on points related to increase of cost and basic amenities in Housing Board Colony, Sec-8 Jind are given as under:-

A) Increase of Cost

The cost of unit/flats was submitted on basis of actual execution of work and liabilities of work to the concerned branch of Head Office.

The cost of type-B flats was also reduced from ₹13.42 lakh to ₹11.97



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lakh each as per decision taken in 217th meeting held on 07.12.2020.
The Board also agreed to give possession to the allottee without
demanding additional amount at the time of possession as conveyed
vide letter No. HBH/CRO (PM)/2021/849 dated 02.02.2021
(Annexure-A). The registration of scheme was floated in the year 2010
by the Housing Board Haryana and construction work & development
work (basic amenities) has been completed in the year 2018. The cost
taken in the advertisement is always tentative and actual cost is always
been recovered from the respective allottees, after considering various
factors as per policy. The cost might be increased due to increase in
cost of construction and other facts by passage of time. Enhancement
cost, Interest, other charges and 12% GST has been added by the
concerned branch of the Board of Head Office as per costing policy of
the Board. Corpus Fund has been demanded as per decision of
Competent Authority of the Board from the allottees considering
maintenance of basic amenities. After completion of basic amenities,
the maintenance thereof is required to be done by the Board till the
maintenance of basic amenities (i.e., Water Supply, Sewerage, Water
Strom, Roads, etc.) is handed over to RWA. The corpus fund is
refundable to the RWA at the time of taken over of maintenance of
basic amenities. The amount of corpus fund is being maintained in
Accounts Branch of Head Office.

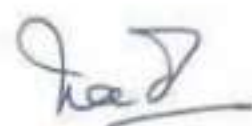


B) Basic Amenities

The basic amenities (i.e., Water Supply, Sewerage, Water Strom, Roads & Electrification) have already been completed. The electricity have been energized on 24.11.2022 and about 85 electricity connections have been released by the DHBVNL to the allottees till today (i.e, 18.07.2023). The work related to the transformers for which tender was called (as stated vide office letter No. 3127 dated 10.08.2022) has been completed on 15.02.2020. At present there is no shortcoming of basic amenities.

ii. REPRESENTATION OF ALLOTTEES WHICH THEY WANTED TO PRESENT BEFORE LOCAL COMMISSIONER- APPLICATION FILED ON 30.10.2023.

- This application encompass a presentation addressing the concerns and grievances against the Local Commissioner cum Ld. CTP supported by whiten submissions of all complainants regarding deficiencies and defects in their respective units. These deficiencies have been supported with appropriate documentary evidence that were initially raised by the complainants when they took possession of their properties under protest. Documents are annexed as Annexure A to the letter dated 28.10.2023.



- It is crucial to note that the complainants had initially attempted to submit Annexure A directly to the Local Commissioner cum Ld. during their site visit. Regrettably, the Ld. CTP declined to accept these documents at that time. That the Ld. CTP took/accepted single presentation with common grievances dated 25.10.2023 that was compiled by the RWA and annexed as Annexure B to the letter dated 28.10.2023.

iii. APPLICATION FOR PLACING ON RECORD CERTAIN DOCUMENTS REFERRED DURING PROCEEDINGS ON 20.05.2024-APPLICATION FILED BY THE COMPLAINANT ON 04.12.2024.

- That the Offer of Possession was given by the Respondent on 11.06.2021 pursuant to which the instant complainant took physical possession on the same day. Copy of offer of possession dated 11.06.2021 and Possession Certificate are annexed as Annexure A-1. It is pertinent to mention that the possession of the unit in question was taken by the complainant under protest as the basic amenities were not available in the project at the time of taking of physical possession by the complainant. Copy of letter addressed to Housing Board regarding Conditional Possession taken by the complainant is annexed as Annexure A-2. Hence, it is construed that a valid offer of possession, as per the provisions of RERA Act, has not been given by



Complaint nos.491 of 2022 and another
the respondent till date. However the respondent promised to give
offer of possession of unit in question in December 2012.

- That complainant has paid an amount of ₹11,46,893/- till date against the unit in question. That as per the policy for allotment of flats in the project in question, the period of Registration was 02.03.2010 to 30.03.2010 and an amount of ₹75000/-, i.e., registration amount was mandatorily to be paid before 30.03.2010 for participation in draw of lots. Copy of application is annexed as Annexure A-3 that substantiates receipt of ₹75000/- in lieu of registration of unit in question. However, as the date is not mentioned on said application by respondent, the said payment may be considered as paid in March 2010.
- That the draw was held on 04.08.2010 and as per terms and conditions of registration, it was mandatory to pay an amount of ₹1,15,000/- on or before 30.09.2010. Hence it can be safely construed that the allottees had paid an amount of sum total of ₹1,90,000/- till 30.09.2010 and the very fact had never been denied by the respondent either in reply or during oral arguments. Further, as the physical possession had been taken by the complainant, the receipt of amount of ₹1,90,000/- till 30.09.2010 could not be denied. Copy of receipts of amount paid against the unit in question are annexed as Annexure A-4(Colly).



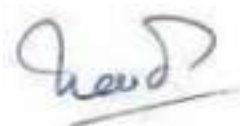
iv. REPLY IN COMPLIANCE OF ORDER DATED 20.05.2024 AND
09.12.2024-APPLICATION FILED BY THE RESPONDENT ON
14.02.2025

- That the possession of flat no. 19-A has been handed over to allottee on 11-6-2021 by Housing Board Haryana and at the same time the Hire-Purchase-Tenancy-Agreement has also been executed between the Housing Board Haryana (called Owner) and the purchaser (called Hirer). All the basic amenities were present when possessions were offered to the complainant. The details of basic amenities on the work of 252 flats sector-8, Jind is given as under:

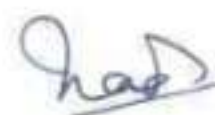
Sr. no.	Name of work	Date of completion	Remarks
1.	Building work	30.03.2016	Attached as Annexure R1
2.	Road work	30.04.2018	Attached as Annexure R2
3.	Estate Services such as water supply, sewerage, storm water drainage and rain Water harvesting system	28.03.2018	Attached as Annexure R3
4.	Electrical connection for PH supply of flats	24.01.2019	Attached as Annexure R4
5.	External Electrification	That External Electrification work inside the colony was completed on 26.06.2019 by the agency (JBS as Electrical) (Copy attached annexure R5) and department has applied for handing over external electrification system and energization vide letter no.SPL-1 dated 13.02.2019, and various remainders were issued to DHBVN, Jind on dated 19.02.2019 21.02.2019, 24.05.2019 10.07.2019,	



	24.06.2019, 15.12.2020, for 17.02.2021 (Copy enclosed as annexure R6(Colly) energization system but no revert was received from DHBVN, Jind. The matter was enquired from the O/o DHBVN, Jind and it was verbally informed that the CEI report (Chief Electrical Inspector) main/ major documents was required to be submitted and the same was pending on the part of Contractor as per the agreement and was submitted on 06.11.2020. After that department of Housing Board Haryana pursued the matter with DHBVN Jind to energize the system. After that the agency (JBS Electrical) moved to Arbitration on 07.01.2021 and on 19.04.2021 Hon'ble Punjab & Haryana High Court has appointed Sh. S.P Singh (Retd. District & Session Judge) as Sole Arbitrator. But on 02.07.2021 SDO(E), DHBVN, Jind informed AE(E), HBH, Karnal vide his office letter No. 1084 dated 02.07.2021 (Copy attached at annexure-R7) that the residents of Housing Board Colony Sec-8, Jind has visited the office of SE(OP), DHBVN, Jind regarding irregularities in the said the colony, in response of that AE(E), HBH, Karnal intimated SDO(OP), DHBVN, Jind that, to maintain the 1.2 mtr. distance from HT line the transformers were shifted to the park area vide this office letter No. 204 19.07.2021 (Copy attached at annexure-R8). Further for shifting of transformers from park area, SDO(OP), DHBVN, Jind submitted an estimate of Rs.75,64,600/- vide his office letter No. 1473 dated. dated 26.08.2021 (Copy attached at annexure-R9) to AE(Elect.), HBH, Karnal. But after considering all the safety measures between the two departments, it was the decided to separate transformers area from park	
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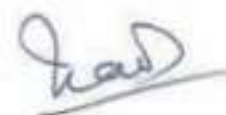


	by constructing boundary wall or proper fencing around the transformer instead of shifting of transformer and the same was intimated to SE, DHBVN, Jind by Chief Engineer, HBH, Panchkula letter No. 1628 dated 12.10.2021 (Copy attached at annexure-R10). On dated 09.07.2021, SDO (OP), Jind demanded Rs.11,79,400/- for the independent feeder vide his office memo no. 1124 dated 09.07.2021 (Copy attached at annexure-R11) and the same was deposited by the office of Housing Board Haryana on 11.04.2022 (Copy attached at annexure-R12). Further, the O/o Executive Engineer, HBH, Karnal vide letter No. 3951 dated 23.12.2021 (Copy attached at annexure-R13) informed Chief Engineer, HBH, Panchkula that office had contacted the office of SE(OP), DHBVN, Jind for approval of the layout plan's and prepared duly marked actual/exact position transformer installed in layout plan of Sector-8, Jind and submitted to of Chief Engineer, HBH, Panchkula for approval and the same has been approved by Chief Engineer, HBH, Panchkula letter No. 50 dated. 10.01.2022 (Copy attached at annexure-R14).. Accordingly the department after following the necessary procedure, the tender was allotted on 22.08.2022 vide letter No. 3228-33 dated 22.08.2022 (Copy attached at annexure- R15 with an agreement amount of Rs.32,04,681/- and the work i.e. Meter Room and Providing fencing around the Transformers and Repair of Damage Services ie. (Copy attached at annexure- R16). Further as stated by Estate Manager, HBH, Panipat, Housing Board Haryana started offering the possession of flats from July 2020 and the 24 complainants who have taken the possession duly	
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		signed the consent vide which it has been mentioned in point No. 2 which is reproduce as under " <i>I personally or my representative inspected the house and I am fully satisfied with Civil Work, Public Health & Electrical Services. The details of fixtures provided in the house as given in the attached annexure A, B &C" (Copy attached at annexure-R17).</i> Moreover, HSVP has already been issued Occupation Certificate to the Housing Board Haryana on dated 25.7.2018. It grants permission for the occupation of the building which was constructed by HBH in Sector 8, Urban Estate, Jind. (Copy attached at annexure-R18).	
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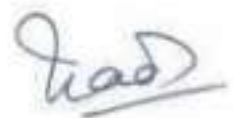
- That that as per point no. 3 of the order dated 20.05.2024, Authority put specific query to respondent that how respondent has issued 'Bedakhali notice to the complainant when matter is subjudice before the Authority. In this regard, it is submitted that No 'Bedakhali' notice [ST-FORM-3: (बेदखली के लिए कारण बताओ नोटिस)has been issued to the allottee/complainant by Housing Board Haryana
- That as per point no. 4 of the order dated 20.05.2024, Authority directed the respondent to maintain status quo as on today regarding Bedakhali notice till the matter is subjudice before the Authority. Respondent is directed to file clarification as to why bedakhali notice has been issued during the pendency of the case before the Authority.



In this regard, it is submitted that No 'Bedakhali' notice [ST-FORM-3: बेदखली के लिए कारण बताओ नोटिस) has been issued to the allottee/complainant by Housing Board Haryana. Moreover, it is also submitted that after issuance of the order dated 20-5-2024 status qua has been maintained by the answering respondents

v. COPY OF REPLY BY RESPONDENT IN COMPLIANCE OF ORDER DATED 09.12.2024-APPLICATION FILED ON 14.02.2025

- That the Authority has directed the respondent vide order dated 09.12.2024 to file the statement of account issued to the complainant. In compliance of that order, respondent had filed statement of account with allotment letter in which the details of payment are mentioned. Copy of the statement of account and allotment letter are annexed as Annexure A-1 of the said application.
- Respondent also submitted occupation certificate which was issued by Haryana Urban Development Authority (HSVP) 25.07.2018. It grants permission for the occupation of the building which was constructed by HBH in Sector 8, Urban Estate, Jind. Copy of the occupation certificate is annexed as Annexure A-2 of the said application.



vi. WRITTEN SUBMISSIONS IN COMPLAINEE OF ORDER DATED
17.02.2025-APPLICATION FILED BY RESPONDENT ON
04.04.2025

- That there is no requirement of registration of the project of the respondent. The "On Going Projects" is defined under Section-2(0) of the HRERA Rules, 2017 and according to the said definition, an On going projects means for which license was has been issued for the development under the Haryana Development and Regulation of Urban Areas Act, 1975 on or before 01.05.2017 and where development works are yet to be completed on the said date. The Housing Board do not require any License for development as per exemption granted under section 18 of the Haryana Development and Regulation of Urban Areas Act, 1975. It is also clear from the certificate dated 04.07.2016 that the construction work was completed on 30.03.2016, therefore, the provisions of RERA Act are not applicable in the present case. Importantly Section-3 of the RERA Act, 2016 came into force on 01.05.2017 vide notification published in the official gazette of India on 19.04.2017. Keeping in view the above, there is no need of registration of the said project under HRERA as there is no requirement of completion certificate.
- That the State of Haryana, in order to regulate the use of land in order to prevent ill-planned and haphazard urbanization in or around towns



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enacted an Act, namely, The Haryana Development and Regulation of
Urban Areas Act, 1975. That the license to the colonizers and the
developers is granted under the aforesaid Act, 1975 and the process to
submit the application for setting up the colony and conditions thereon
are prescribed in the Haryana Development and Regulation of Urban
Areas Rules, 1976.

- That Section 18 of the said Act, 1975 saves the power of Housing Board Haryana for carrying out the development of land in urban areas and it is specifically prescribed in Section 18 of the Act, 1975 that the housing board Haryana, Government Improvement Trust and any other local authorities are not restricted to use and develop any area. From the perusal of the aforesaid provisions, Section-18 of the 1975, Act it is clear that the respondent Housing Board Haryana is not required to seek any license under the above said Act, 1975.
- That it is only colonizers/developers who have been granted the license under the Haryana Development and Regulation of Urban Areas Act, 1975. They are required to submit the application to the Director for seeking completion certificate in accordance with Rule-16 of the Haryana Development and Regulation of Urban Area Rules, 1976. Thus, the answering respondent is not required the completion certificate of any provisions of the law; therefore, the Housing Board Haryana cannot be acquitted as a private builder/developer.



- That the Housing Board Haryana has been constituted under the Haryana Housing Board Act, 1971. That the aim and object of the Haryana Housing Board Act is to ease the housing problem by constructing more houses. The Haryana Housing Board Act receive the assent of the President of India on 14.05.1971 and was published in Haryana Government Gazettee on 18.05.1971. The Housing Scheme is defined in Section 2(h) of Haryana Housing Board Act, 1971.
- That Article 246 of the Constitution of India prescribes the distribution of the powers of making laws by the Parliament and by the Legislature of the State. In Article 246(1), it is provided that the Parliament is empowered to make the laws with respect to any of the matter enumerated in List-1 in the 7th Schedule (Referred to as the Union List). Similarly Article 246(2) of the Constitution of India provides that the Parliament and the Legislature of any State also have also powers to make laws of any respect of the matters enumerated in the list-III in the 7th Schedule, referred to as the "Concurrent List". Similarly, Article 246(3) of the Constitution of India provides the Legislature of any State to make laws in respect to the matters enumerated in the list-II in the 7th Schedule, referred to as the "State List". That in the present case, flats are being constructed as per the scheme the land allotted by the Haryana ShehriVikasPradhikaran vide



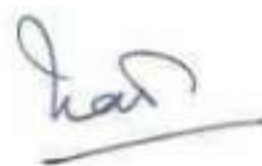
Complaint nos.491 of 2022 and another
allotment letter dated 17.02.2009. Copy of the allotment letter is
annexed as Annexure R-1.

- That as a matter of record, the land allotted by HSVP is acquired by the Government of Haryana which has been handed over to the HSVP for the purpose of development of Sector. The land on which the flats have been constructed has been vested in the State free from all encumbrances after passing of the award under the Land Acquisition Act, 1894, therefore, as per the Entry No. 35 of the State List, the State Legislature is having the powers to make an enactment to regulate, develop and dispose off the land which is in the possession of the State.
- That the land on which the flats are being constructed is not the land purchased by any private builder, however, the land was acquired as per the provisions of Land Acquisition Act, 1894 and after passing of the award, the said land becomes free from all encumbrances. Therefore, the provisions of RERA Act, 2016 are not applicable on the land on which the flats are being constructed under the Entry of 35.
- That the Parliament and the State Legislature have the powers to make the laws regarding transfer of property which is enumerated in Entry-6 of the Concurrent List.
- That Housing Board, Haryana was constituted by the Act of State Legislature which has received the assents of President of India on



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14.05.1971, which was published in the Government Gazette on
18.05.1971.

- That the Housing Board Act, 1971 is a complete code in itself to regulate the construction, allotment and regulates the default in case of non construction as well as breach of condition by an applicant or allottee. The Housing Board Haryana has the powers under the Act of 1971 to frame and execute the schemes sanctioned by the State Government.
- That Chapter III of the Haryana Housing Board Act, 1971 prescribes the Housing Scheme. Section 20 casts a duty on the Board to undertake housing schemes. That it is clear that the appellant Board has to execute the housing scheme as may be entrusted to it by the State Government.
- That the annual housing programme, budget and establishment schedule is prepared under Section 23 of the Housing Board Act, 1971. Section 24 empowers the state government to sanction programme/ budget and established schedule and section 25 provides publication of sanctioned programme. That Section 28 provides that the sanctioned housing scheme to be executed. That Section 29 provides that the Housing Scheme has to be published in the Official Gazette.



- That from the aforesaid provisions of Haryana Housing Board Act, 1971, it is clear that Housing Scheme by appellant is launched framed strictly as per the provisions of Haryana Housing Board Act, 1971. The State Government has been empowered to grant sanction of the housing scheme. Therefore, the Haryana Housing Board cannot be acquired by the private developer, as the allotments of flats as per the scheme in the present case was to be made as per the housing scheme made under the provisions of the Housing Board Act, 1971.
- That the allotment of tenements is provided in Regulation 3 of Housing Board Haryana (allotment, management and sale of tenements), Regulation, 1972. It prescribes that allotment has to be made as soon as the building is ready for occupation.
- That the Regulation 4 of the Housing Board Haryana (allotment, management and sale of tenements), Regulation, 1972 prescribes procedure of issuing notice for inviting applications and power of board to allot tenement (Houses).
- That the allotment of tenements (houses) is provided in Regulation 8 of Housing Board Haryana (allotment, management and sale of tenements), Regulation, 1972. Said Regulation 8 provides allotment of tenements as per the terms of allotment and as per the provisions of these Regulations.



- That the scheme for constructing the flats was launched in the year 2010 vide which applications were invited for allotment of the said flats after draw of lots. 252 successful applicants had deposited the earnest money.
- That in view of the constitutional and legal provisions enumerated above, it is clear that the Housing Board Haryana does not falls under the purview of HRERA and there is no requirement of taking registration from the Haryana Real Estate Regulatory Authority interalia on the ground that the construction of the building work was completed on 30.03.2016. A copy of the certificate dated 4.7.2016 was issued by Executive Engineer, HBC, Sector-4, Karnal in this regard is annexed as Annexure R-2 of the said application.
- That in view of the provisions of Section-18 of the Haryana Urban Development and Regulations of Urban Areas Act, 1975, requirement of completion certificate is not required.
- That Section-3 of the RERA Act, 2016 came into force on 01.05.2017 vide notification dated published in the official gazette of India on 19.04.2017. Registration of Real Estate Projects is required only of the On Going Projects. It is clear from the certificate dated 04.07.2016, in the present case, registration of the project was not required as on 01.05.2017 when the said section came into force, the construction



Complaint nos.491 of 2022 and another's work was completed before that date, i.e., on 30.03.2016 and thus the present case does not fall under the purview of the RERA Act, 2016.

- That as per the advertisement issued for allotment of flats, as agreed between the complainant and the respondent, it was specifically mentioned in the said advertisement that the cost of the flat will be calculated as per actual cost after completion of construction. Therefore, after completion of the construction work, the cost of the flat was calculated on the basis of actual cost which comes to ₹16.78,107/- However, it was after giving the benefit of interest on the amount deposited by complainant of ₹1,90,000/-, his interest amount was deducted from the total cost of the plot, i.e., ₹1,55,750 and the total cost of the flat was reduced to ₹15.22,400/-. Thereafter, it was reduced to ₹13.42 lacs and one month time was given to take the possession. Only three allottees have taken the possession at the reduced cost of the flat of ₹13.42,000/-. The allottees again requested to reduce the cost and the court case filed in the Hon'ble Punjab and Haryana High Court, Chandigarh. Due to non possession, flats are deteriorating day by day and huge amount of the board is involved in the matter. The allottees were not interested to take the possession on reduced cost of ₹13,42,000/-. The matter regarding reducing the cost of the flat at Sector-8, HBC, Jind was considered and cost was reduced by omitting additional interest @ 10% on total cost and thus



Complaint nos.491 of 2022 and another reduced the cost of ₹1,45,000/- from the already reduced cost of Flat of ₹13,42,000/- and then notified the cost of the project as ₹11,97,000/-. Copy of the cost Sheet is annexed as Annexure R-3 of the said application.

- That on the principle of promissory estoppel, the complainant cannot be allowed to resign from the assurance which he was given at the time of submission of application for the allotment of flat because it was specifically mentioned in the advertisement that the price mentioned in Table-I has been worked out on the rough cost estimates. The price is tentative and subject to revision after completion of the construction of flats, the price will be worked out as per the pricing policy of the board on the basis of actual expenditure and the flats will be handed over at that price. Copy of the advertisement issued by the respondent at the time of inviting applications for allotment is annexed as Annexure R- 4 of the said application.
- That from the perusal of record, it is clear that the allotment letters were issued in August, 2018, however, the complainant keep on pressing for reduction of cost. This itself clearly shows that the complainant himself miserably failed to take the possession in time, however, after getting the satisfaction of the reduced price of the flat, the complainant with his free WILL had taken the possession and after taking possession he had not raised any objection regarding the



Complaint nos.491 of 2022 and another's possession of the flat, therefore, the present complaint is nothing but it is an abuse of process of law and thus liable to be dismissed.

- That as per the statutory provisions of Housing Board Haryana (Allotment, Management and Sale of tenements) Regulations, 1972 no interest is payable on the amount of refund if any applicant surrender or did not deposit the amount within a period of 30 days from the date of issue of the allotment letter. From the perusal of the Regulations 12 and 13, no interest is payable on the balance amount which has been deposited at the time of registration, therefore, the impugned order dated 18.10.2023 is liable to be set aside, which is contrary to the Regulations 12 & 13 of the Housing Board Haryana (Allotment, Management and Sale of tenements) Regulations, 1972.
- That the complainant has breached the conditions of the brochure. The complainant has refused to deposit the final cost of the flat which was worked out strictly on the basis of the actual price, therefore, the complaint is not entitled for any interest as the complainant is guilty of not honouring the terms and conditions either of the brochure or allotment letter, as he has miserably failed to deposit the final amount of the flat allotted to her at the stage when the flats are ready for possession.
- That the jurisdiction of RERA is barred by as the complainant is not the allottee but he is the tenant as per regulation 2(g) of the Housing

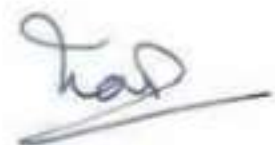


Complaint nos.491 of 2022 and anothers
Board Haryana (Allotment. Management and Sale of tenements)
Regulations, 1972.

- That the complaint is not maintainable under RERA Act because above said project was advertised in the year 2014. The RERA Act 2016 comes into effect from 25.03.2016. The Haryana Real Estate (Regulations and Development) Rules 2017 comes into the effect from 28.07.2017. It is clearly mentioned in the rule that they shall came into force from the date of publication in the official gazette.
- That as per electricity plan sanctioned from the DHBVNL authorities an independent feeder was required to be erected from the DHBVNL for the load of 252 flats at Sector-8 Jind. All the required formalities were already completed from the HBH before offering of possession and regular persuasions were already being made with the DHBVNL as already submitted. So, in this case DHBVNL did not provide the main connection to the society on time. It is requested to the Authority that DHBVNL be impleaded as respondent in this case to explain its status about the delayed caused by DHBVNL in energisation of the grid or giving further connection to allottee.
- As per the direction issued vide order dated 17.02.2025 in para 5 of the order, that all the basic amenities were completed before offering the possession of flats to the allotted by Housing Board Haryana.



- DHBVNL raided the premises on 18.06.2021 and found that some allottees were illegally using electricity connections from the connections taken by Housing Board Haryana for public Health and office use purpose. To penalise such defaulters an amount of ₹92,169/- imposed by the DHBVNL, Jind. Which may be recovered from the allottees of HBC, Sector 8 Jind. In that case, HBH was not in fault, that incident happened due to the unauthorized act of the some allottees. As regards structural defects, no structural defects are present at the site. All safety measures were already taken during the construction and execution of the project. All the designs/ drawings were vetted by appropriate authorities before execution. So, it is requested to dismiss the complaints.
- That Building work of all the flats including their Public Health and electrical work were completed on 31.03.2016, i.e, before HRERA came into existence. Housing Board Haryana received occupation certificate on 25.07.2018 as already submitted from Estate Officer HSVP.
- In the present case, since the construction was already completed on 30.03.2016 and the certificate dated 04.07.2016 was issued to this effect, therefore, by no stretch of imagination and under no provision of law, there is requirement of registration with RERA, because the construction was completed before coming into force of the RERA

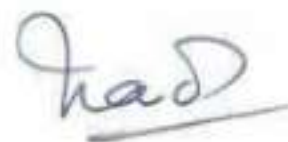


Complaint nos.491 of 2022 and another
Act, 2016, i.e., 01.05.2016 and the HRERA Rules, 2017, i.e.,
09.02.2018, therefore, the answering respondent was not required to
take the registration certificate from HRERA.

- That the jurisdiction of Real Estate Regulatory Authority is barred as
the Haryana Housing Board Act, 1972 has received the assent of the
President of India. Therefore, the allotment and cancellation of
scheme is to be dealt under the Haryana Housing Board Act, 1972.
Article 254 of the Constitution of India provides that the Legislations
passed by the State Legislature which has received the assent of the
President of India have to prevail until and unless the State Legislation
is repealed by the Parliament. Therefore, the jurisdiction is barred as it
is hit by the Article 254 of the Constitution of India.
- That the complainant has portrayed the respondent as a Developer of
Real Estate whereas Housing Board Haryana is an establishment of
Government of Haryana under the Haryana Housing Act, 1971
(Haryana Act No. 20 of 1971). Hence the respondent is a statutory
body and not a mere Real Estate Developer.

vii. REPLY OF THE COMPLAINANT TO THE REPLY DATED
04.04.2025-APPLICATION FILED ON 05.08.2025

- RESPONDENTS CLAIM OF NON-APPLICABILITY OF RERA IS
LEGALLY UNSUSTAINABLE:



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That respondent has erroneously contended that the project in question does not fall within the purview of Section 3 of the RERA Act of 2016, on the purported ground that the construction work was completed on 30.03.2016 and a completion certificate was obtained on 04.07.2016. However, the said certificate was issued by the Executive Engineer, Housing Board Colony, Karnal, which is an internal department of the respondent itself and cannot be termed a valid or independent Completion Certificate under the provisions of RERA or the applicable building bye-laws.

That as per Rule 2(q) of the Haryana Real Estate (Regulation and Development) Rules, 2017, a valid "completion certificate must be issued by a competent authority authorized under law, which in this case would be an independent statutory authority under the Town and Country Planning Department or equivalent local body-not the Respondent's own department. Self-certification by the respondent defeats the object of RERA and cannot be relied upon to escape statutory liability.

Furthermore, the admission by the respondent that the basic amenities were not available till the year 2018, clearly show their claim of project completion in 2016. The Haryana Real Estate (Regulation and Development) Rules, 2017, were notified on 28.07.2017, however the

has

Complaint nos.491 of 2022 and another project was completed till 2018 as admitted by respondent themselves and basic amenities were not available till 2022. The definition of "completion under Section 2(q) of the RERA Act requires that the Completion Certificate be validly issued by the competent authority, which includes confirmation of basic amenities and habitability. Therefore, no valid completion occurred until 2018, thereby triggering the mandatory obligation for registration under Section 3(1).

The project is not exempt under Section 3(2) as the total area exceeds 500 square meters and the number of residential units are more than eight. Therefore, the Respondent is squarely covered under the mandate of Section 3(1) and was legally obligated to register the project with the Haryana Real Estate Regulatory Authority (HRERA).

- **RESPONDENT IS A PROMOTER UNDER RERA**

That respondent, Housing Board Haryana, qualifies as promoter under Section 2(zk) of the RERA Act, 2016, which defines "*.....a promoter as a person who constructs or causes to be constructed an independent building or a building consisting of apartments... for the purpose of selling all or some of the apartments to other persons and includes any development authority or public body in respect of allottees to whom plots, apartments or buildings are allotted or sold...*"



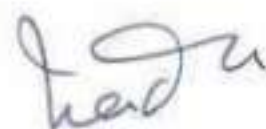
Thus, even a government agency is not exempt from obligations of the RERA Act if it undertakes real estate development and allots units to citizens. As held in the case of "Madhu Sareen vs. BPTP Ltd." The HRERA Gurugram Authority clearly held that delay in delivery of possession beyond agreed timelines, even by government bodies or public sector developers, attracts liability under Section 18 of RERA.

- **OVERRIDING EFFECT OF RERA - SECTION 89 & SECTION 79**

That respondent's claim that the Haryana Development and Regulation of Urban Areas Rules, 1976 or the Haryana Housing Board Act would govern the project and not RERA, is baseless. The RERA Act is a central legislation enacted by the Parliament and has an overriding effect over any other inconsistent state legislation.

- **NO EXEMPTION FOR GOVERNMENT AGENCIES UNDER RERA**

That the Act does not provide any exemption to Government agencies, development authorities, or Housing Boards from compliance with its provisions. Even public sector bodies are required to register projects, obtain proper Completion/Occupancy Certificates and hand over possession in accordance with the declared timeline.



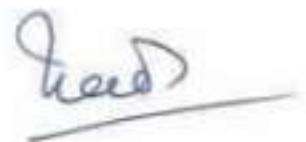
- PENALTY FOR NON-REGISTRATION - SECTION 59

That non-registration of the project is a contravention of Section 3(1) and is punishable under Section 59(1), which states: *"If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent of the estimated cost of the real estate project as determined by the Authority."*

- DELAY IS ADMITTED BY RESPONDENT

That the project was floated in 2010 and was slated to be completed by 2012. However, the Respondent has themselves admitted that allotment letters were issued in 2018 and the development works were completed only in 2019. However there was no provision of electricity and other basic amenities even till date of offering physical possession in the year 2021. This amounts to a delay of almost 9 years, which is unjustifiable, especially when compared with the interpretation given by this Hon'ble Authority in the Madhu Sareen case, where similar delay was held to entitle the allottees to interest for delay under Section 18(1).

- POSSESSION TAKEN UNDER DURESS WITHOUT COMPLETION OF BASIC AMENITIES



Complaint nos.491 of 2022 and anothers

That the complainants were compelled to take physical possession of the allotted units under threat and coercion, rather than of their own free will. This fact is evident from the documents placed on record by the complainants. One such instance is reflected in Complaint No. PKL/778/2022, wherein the complainant has submitted a copy of the order passed in appeal before the Housing Board, Haryana. The said order restored the allotment of the unit subject to the payment of outstanding dues along with a 5% surcharge. It further directed that if the allottee fails to make the payment within 15 days from the issuance of the order, the possession of the unit shall be resumed by the authority and no further appeal or hearing would be entertained.

That the said order dated 24.12.2021 clearly indicates that the complainant was left with no choice but to accept possession under compulsion and threat of cancellation, despite the fact that essential and basic amenities such as electricity, water, sewerage, and road infrastructure were not made available in the project at the time. The complainant has placed on record the said order of the Housing Board, Haryana, via email dated 03.04.2022 along with submission of a hard copy. Copy of the said email addressed to the Hon'ble Authority and marked to the respondent is annexed herewith as Annexure W-1.



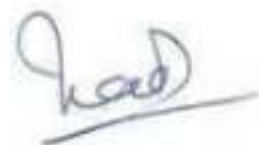
Complaint nos.491 of 2022 and others

That it is further evident from the undated show cause notice issued by respondent (Annexure C-19 of complaint no. 491 of 2022), which clearly warned allottees that failure to deposit the outstanding amount and take possession within 30 days would result in cancellation of allotment. Thereby coercing allottees into accepting possession under threats

That the forceful nature of possession and absence of essential amenities at the time is in violation of Sections 14(3), 18(1), and 19(3) of the RERA Act, 2016. The promoter's failure to hand over possession in a habitable condition, coupled with the imposition of penal consequences on the allottee for non-acceptance, renders the act of taking possession involuntary and in protest.

- **PROJECT INCOMPLETE AT TIME OF POSSESSION LACK OF ELECTRICITY AND UNSAFE INFRASTRUCTURE**

That the respondent has admitted that electricity connections for residential use were not available at the time of the offer of possession. The respondent blames DHBVNL for delays in providing the main connection, but this admission itself confirms that until 18.06.2021, electricity was only available for public health and office use, not for the allottees flats.



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That the respondent also claims that all structural drawings/designs were vetted by authorities, but fails to specify which authorities or whether the project was executed as per the sanctioned plans. No supporting evidence has been placed on record.

That contrary to the respondent's claim that electrical works were completed by 31.03.2016, the DHBVNL (Jind) report (Annexure C-11 of complaint no. 491 of 2022) and RTI reply (Annexure C-10 of complaint no. 491 of 2022) clearly show that no application for electricity connection had been made by the Respondent as of 27.05.2020 and only two allottees had taken possession by then. Additionally, newspaper clippings (Annexure C-13 Colly of complaint no. 491 of 2022) highlight problems faced by residents, including raids by the electricity department and disconnection of illegal supply. The situation worsened when DHBVNL inspected the site in 2021 and that the internal electrification had been carried out without sanction, using unsafe methods-placing transformers and electrical poles in green areas and parks, creating a serious threat to life and safety of allottees(Annexure C-14 of complaint no. 491 of 2022).

- UNJUSTIFIED CHARGES AND STRUCTURAL DEFECTS - NON-COMPLIANCE WITH APPROVED PLANS



Complaint nos.491 of 2022 and another

That the respondent has arbitrarily added excessive amounts to the final cost of the flat under heads such as Interest, Administrative Charges, Conveyance Expenses, etc., which are unjustified and liable to be waived.

That several unauthorized changes have been made to the approved layout plan, including unsafe water recharge systems, absence of ramps for disabled persons and lack of lifts in high-rise blocks-all in violation of the Housing Building Code, 2017 and Section 14 of the RERA Act.

That multiple structural and safety defects exist at the project site. As confirmed by DHBVNL (Annexure C-14 of complaint no. 491 of 2022), internal electrification is unsafe, with transformers wrongly placed in public parks. Additionally, as per photographs annexed as Annexure C- 18 (Colly) of complaint no 491 of 2022, serious hazards such as non- functional fire safety systems, illegal submersible-based water supply, open manholes, unsafe roads and poor-quality stairs and parking areas continue to pose significant risks.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

7. Ld. counsel for complainant and respondent reiterated the written submissions already filed.



G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT

(i) **Objection raised by the respondent with respect to jurisdiction of Authority being hit by the Article 254 of the Constitution of India.**

Authority observes that the Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e., allottee) and seller (i.e., promoter) of real estate, i.e., plot, apartment or building, as the case may be and matters incidental thereto. The scope of this Act is limited to contracts between buyers and promoters and transfer to property. Both these items fall within the concurrent list III: entry-6 and entry-7 read with entry-46. This Act regulates the transactions relating to the sale of above-mentioned real estate products, for an orderly growth of real estate market, by protecting the interests of different stake holders in a balanced manner and facilitating the consumer/buyer to make informed choice. In support of the same, Hon'ble Bombay High Court in the case **Neelkamal Realtors Suburban Pvt. Ltd. and Ors. v. Union of India and Ors.** 06.12.2017 - BOMHC, observed: *"In my opinion RERA does not fall under Entry 42 in List III- Concurrent List of the Seventh Schedule, namely, Acquisition and requisitioning of property. RERA fall under Entry 6, namely, Transfer of property other than agricultural land; registration of deeds and documents, Entry 7-contracts, including partnership, agency, contracts of carriage and other special forms of contracts, but not including contracts relating to*



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*agricultural land and Entry 46, namely, jurisdiction and powers of all
courts, except the Supreme Court, with respect to any of the matters in List
III-Concurrent list of the Seventh Schedule"*

**(ii) Objections raised by the respondent that completed projects are outside
the purview of RERA Act, 2016.**

Respondent has taken an objection that since the project in question is not an ongoing project, therefore, provisions of RERA Act, 2016 are not applicable to the project. In this regard reference is made to the first proviso to section 3(1) of the RERA Act, 2016 which provides that the projects which were 'ongoing' on the date of commencement of the Act and for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act. The position further becomes clear from Section 3(2)(b) of the Act which states that the registration of the real estate project shall not be required where the promoter had received the 'completion certificate' for the said project prior to the commencement of the Act. Thus, if we read Section 3 of the Act, it is evident that only that project shall be excluded from the purview of the 'ongoing project' which had received the completion certificate prior to the commencement of the Act and such project will not require registration. All 'ongoing projects', i.e., those that commenced prior to the Act coming into



Complaint nos.491 of 2022 and others force, and in respect of which no completion certificate is yet issued, are covered under the Act. It is apparent that the legislative intent was to make the Act applicable to not only to the projects which were to commence after the Act became operational but also to ongoing projects. Only those projects which had got the completion certificate before the commencement of the Act will not require registration and will certainly fall beyond the purview of the 'ongoing project'.

Further, this issue has also been dealt with and settled by the Hon'ble Supreme court in **Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** herein reproduced: .

" 37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority. "



Wherein Hon'ble Apex 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, complainant in the present complaint is seeking possession along with interest i.e, a statutory relief under Section 18 of RERA Act, 2016. Authority observes that Section 18 of the Act relates to obligation of promoter regarding return of amount and compensation. Section 18 is reproduced herein below:

If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, 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 by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.



(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

This provision nowhere states that the remedies provided hereunder will be available only to the allottees of a registered project or registrable project. Therefore, even if the project is not registered with the Authority, same does not extinct the remedy available to an allottee of a real estate project

(iii) Findings on the objection raised by the respondent with respect to respondent not being a promoter and complainant not being an allottee.

Respondent has taken another objection that it is a statutory body and not mere a real estate developer/promoter and the complainant is not an allottee of the project of the respondent. Here, Authority observes that the first issue which needs adjudication is whether the respondent Housing Board, Haryana is a 'promoter' of the real estate project as per provisions of RERA Act, 2016. For this purpose, reference has been made to the definition of



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"promoter" under Section 2(zk) of RERA Act, 2016. Definition is
reproduced herein below:

(zk) "promoter" means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government,

*for the purpose of selling all or some of the apartments or plots;
or*

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the



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*owner of the land on which the building or apartment is
constructed or plot is developed for sale; or*
*(vi) such other person who constructs any building or apartment
for sale to the general public.*

The Act covers all bodies private and public which develop real estate projects for sale to the general public. Section 2(zk) defines the term 'promoter' which includes both private and public real estate promoters. Thus, both Development Authorities and the Housing Boards, when involved in sale are covered under the Act.

(a) Development authority or any other public body is a promoter in following cases:

- (i) Such buildings or apartments constructed by such authority or body.
- (ii) Such buildings or apartments constructed either on lands owned by them or placed at their disposal by the Government.
- (iii) Such buildings or apartments constructed by such Authority or body for the purpose of selling all or some of the apartments.

Or

(b) in respect of allottees of plots

- (i) (a) the plots owned by such Authority or body; or (b) the plots placed at their disposal by the Govt; and
- (ii) For the purpose of selling all or some of the plots.



Accordingly, development authorities and public bodies engaged in construction of buildings or apartments or development of plots are promoters under this Act. It is irrespective of the fact whether the buildings or apartments are constructed or plots are developed on the land owned by them or placed at their disposal by the government. Here, Housing Board Haryana is a Development Agency, that is engaged in the construction of building/apartments for the purpose of sale, issued an allotment letter to original allottee, i.e, Rohtash Singh on 04.09.2018 allotting a unit 19A at Sector 8, Jind and thereafter, offered physical possession of the unit on 11.06.2021. Respondent transferred the unit no. 19 A in name of complainant, i.e, Jagdish on 16.06.2021. Hence, the relationship between the allottee and developer is very well established and hence, Housing Board is covered under the definition of promoter under Section 2(zk).

Next it is to be seen whether the complainant Jagdish is an allottee or not as per Section 2(d) of the RERA Act,2016. In this regard reference is made to the definition of allottee. As per Section 2(d) of the RERA Act, "allottee" is defined as follows:

(d) "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



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includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given, on rent;

The definition of allottee' covers any person to whom a plot, apartment, building has been allotted, sold (whether as freehold or leasehold), or otherwise transferred by the promoter. It also includes the person who subsequently acquires the said allotment through "sale", "transfer", or "otherwise". In the present case, allotment letter was issued to original allottee, i.e, Rohtash Singh on 04.09.2018, allotting a unit 19A at Sector 8, Jind and thereafter, offered physical possession of the unit on 11.06.2021. Then, respondent transferred the unit no. 19 A in name of complainant, i.e, Jagdish on 16.06.2021.

Further reference is made to Section. 2(zj) & (zn) of the RERA Act wherein "project" & "real estate project" are defined respectively as follows:

(zj) "project" means the real estate project as defined in clause (zn):

(zn) "real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or

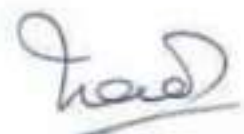


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*apartments, as the case may be, for the purpose of selling
all or some of the said apartments or plots or building, as
the case may be, and includes the common areas, the
development works, all improvements and structures
thereon, and all easement, rights and appurtenances
belonging thereto;*

A conjoint reading of the Section 2(d) 2(zk) and Ss. 2(zj) & (zn) leaves no room for any ambiguity and makes it clear that Housing Board Haryana is a promoter in respect of complainant allottee of the unit allotted by it in its real estate project at Jind and there exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainant and respondent is established and the issues deals with real estate project developed by respondent, hence, provisions of RERA Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter.

(iv) Finding on objection regarding applicability of provisions of RERA Act, 2016 where land has been acquired by the State and developed by a state agency.

Respondent contended that the provisions of RERA Act, 2016 are not applicable to cases where the land has been acquired by way of acquisition under the Land Acquisition Act and thereafter developed under the provisions of respective Acts of state agencies. Before adjudicating upon



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said issue, Authority considers it important to refer to the Preamble of RERA
Act, 2016 and has reproduced below for reference:

"Preamble: An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute. The preamble provides that it shall be the function of the Authority to ensure sale of plot, apartment or building in an efficient and transparent manner and to protect the interest of consumers in the real estate sector by establishing a mechanism for speedy dispute redressal.

The Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e. allottee) and seller (i.e. promoter) of real estate i.e. plot, apartment or building, as the case may be and matters incidental thereto. Hon'ble Bombay High Court in the case *Neelkamal Realtors Suburban Pvt.Ltd.and Ors. v. Union of India and Ors.* 06.12.2017 – BOMHC observed:



"In my opinion RERA does not fall under Entry 42 in List III-Concurrent List of the Seventh Schedule, namely, Acquisition and requisitioning of property. RERA fall under Entry 6, namely, Transfer of property other than agricultural land; registration of deeds and documents, Entry 7-contracts, including partnership, agency, contracts of carriage and other special forms of contracts, but not including contracts relating to agricultural land and Entry 46, namely, jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in List III-Concurrent list of the Seventh Schedule".

The scope of this Act is limited to contracts between buyers and promoters and transfer to property. Both these items fall within the concurrent list III: entry-6 and entry-7 ready with entry-46.

This Act regulates the transactions relating to the sale of units in above mentioned real estate project, for an orderly growth of real estate market, by protecting the interests of different stake holders in a balanced manner and facilitating the consumer/buyer to make informed choice. Section-88 of the RERA, Act, 2016 clearly provides that the provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force. Furthermore, Section 89 provides that the provisions of this Act shall have the effect, notwithstanding anything inconsistent therewith, contained in any other law for the time being in force. Thus, there remains no ambiguity with respect to the fact that the Authority while



Complaint nos.491 of 2022 and anothers adjudicating the complaints filed under Section 31 of the Act are only deciding the rights and obligations of the parties, i.e., the builder/Promoter/developer and the allottee inter-se as per the agreement for sale entered into between them for sale of a real estate project.

H. OBSERVATION OF THE AUTHORITY

8. After considering the facts and submissions of both parties, Authority observes that it is an admitted fact that in the year 2010, a unit was booked by Mr.Rohtash Singh, i.e., original allottee who paid an amount of ₹1,90,000/- (₹75,000/- + ₹1,15,000/-) to the respondent for the unit in Housing Board Colony, Sector-8, Jind, Haryana. After that, no communications took place between the parties from the year 2012 till 2018. After almost 06 years from booking of the unit, respondent issued a letter dated 04.09.2018 which mentioned that unit no.19A, Type B allotted to original allottee at the enhanced price of ₹16,00,081/- and intimated that allottee is required to take possession within 30 days from the date of issue of said letter. In the year 2021, respondent offered physical possession of unit to the original allottee vide letter dated 11.06.2021 and thereafter, transferred the unit in the name of complainant vide letter dated 16.06.2021. It is matter of record that present complainant paid an amount of ₹9,56,893/- to the respondent and all these payments were made in the year 2021 and 2022 after taking the possession of the unit. Meaning thereby, amount received by the respondent till date is ₹11,46,893/-.

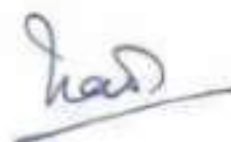


9. Now main question which arises is what is the deemed date of possession in the present case. In general circumstances in absence of builder buyer agreement, reliance is placed on **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr 2018 STPL 4215 SC** wherein Hon'ble Apex Court has observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. Therefore, 3 years can be taken from the date of allotment. In present complaint, complainant booked the unit in the year 2010 and thereafter, allotment letter dated 04.09.2018 was issued to the original allottee and possession was offered in the year 2021. There was no communications either in verbal or written form between the parties for a long period of eight years. This delay is not reasonable on the part of respondent and respondent had not made any submissions as to why there was no communications regarding progress of the project? The complainant has also not placed on record any document showing that he communicated/inquired regarding stage of construction of the project from the respondent. However, complainant during the course of hearing on 17.02.2025, made submissions that an amount of ₹1,90,000/- was paid by the complainant till 30.09.2010 (₹75000/- at the time of registration and ₹115000/- after draw of lots which were held on 04.08.2010). This fact is also not denied by the respondent either in reply or during the course of hearing. This amount is utilised by the respondent in the construction of the project and remained in the custody of the respondent since 2010 till

Hand

Complaint nos.491 of 2022 and another
2021. When an allottee becomes the part of the project after paying his hard
earned money, legitimate expectations of the complainant would be that
possession of the flat will be delivered within a reasonable period of time.
However, respondent has failed to fulfil its obligations as promised to the
complainant. Therefore, keeping in view of the interest of the allottee, who
had paid an amount of ₹1,90,000/- way back in 2010, Authority deems it
appropriate that 3 years be taken from the 30.09.2010, therefore deemed date
of possession comes to 30.09.2013.

10. Next issue which needs to be adjudicated is whether the physical possession
given by the respondent to the original allottee on 11.06.2021 is a valid offer
of possession or not? In this regard, contention of the complainant is that
allotment offered by the complainant at enhanced price and possession
offered was not valid as basic amenities were not laid down at that time and
possession was offered under compulsion/threat. The Authority in its order
dated 17.02.2025 has recorded as: *".....Ed counsel for complainant stated
that the original price of the unit of complainant was ₹7,50,000/-. However,
subsequently possession of flat was offered to the complainant on
04.09.2018 by increasing price by 219% from the price of unit mentioned in
brochure and revised price of the unit was fixed as ₹11,97,000/-. In
pursuance to which complainant and other allottees requested Chairman of
Housing Board, Haryana to reduce the price of the unit. Vide letter dated
11.06.2021, respondent offered physical possession of the flat to original*



Complaint nos.491 of 2022 and another allottee and a copy of said letter is annexed as Annexure C-3. A copy of possession certificate is annexed as C-4. Vide letter dated 16.06.2021, unit was transferred in name of the complainant. On 10.07.2021, allottees made representation for reduction of price which was consequently reduced to ₹11,97,000/- and same was informed to the complainant vide letter dated 10.07.2021, a copy of which is annexed as Annexure C-19. Ld. counsel for complainant emphasized that the offer of possession dated 11.06.2021 was not valid offer of possession in terms of law as the price of unit was not determined by the respondent while giving offer of possession to the complainant. Moreover, respondent forced the complainant to take possession of the unit within 30 days, by stating that otherwise allotment of unit will be cancelled. The allottees who did not take the forced possession of the unit, respondent had cancelled their allotment, which shows the malafide intention of the respondent and therefore, under compulsion complainant accepted the possession of the unit."

In response to this, contention of the respondent is that possession was duly accepted by the original allottee. Also during the course of proceeding on 17.02.2025, ".....Further, Ms. Deeksha, Executive Engineer stated that water supply, sewerage, storm water drainage were laid down by 28.03.2018, electricity connection for PH supply of flats was obtained on 24.01.2019 in the project. After receiving occupation certificate in year 2018, only then respondent offered the possession of unit to the complainant,



Complaint nos.491 of 2022 and anothers therefore same is valid offer of possession. Further, respondent had discharged its liability by providing electrification work inside the colony by 26.06.2019. The department had applied to the DHBVN, Jind for energization of the electrical system of the project vide letter dated 13.02.2019. However, no satisfactory reply was received till the year 2021. On 02.07.2021, SDO (E), DHBVN, Jind informed AE(E) Karnal that residents of Housing Board Colony Sector-8, Jind had visited the office of SE(OP), DHVBN regarding the irregularities in the colony. Then it was intimated by the SDO(OP), DHVBN, Jind to maintain distance of 1.2 mtr from the HT line, and in compliance transformers were temporarily shifted to park area. Further, for shifting transformers from park area, SDO(OP) DHBVN, Jind submitted an estimated cost of ₹75,64,600/- to AE(Electrical) HBH, Karnal. Also, for ensuring proper safety measures, fencing has been done near the transformer area. The green area is also complete in all respect. It is only due to inter-departmental issues and representation made by the allottees of the project that led to delay in energizing the electricity services at the project site. All the services were timely laid down by the respondent prior to handing over of possession."

It is a settled position that under the Real Estate (Regulation and Development) Act, 2016 the validity of an offer of possession is contingent upon the issuance of a valid Occupancy Certificate in the case of residential units, or a Part Completion Certificate/Completion Certificate in the case of



Complaint nos.491 of 2022 and others plotted developments. In the present case, the construction work of the project was completed on 30.03.2016, and the Occupation Certificate (OC) was issued by the Estate Officer, HUDA, Jind on 25.07.2018 in favour of the respondent/Haryana Housing Board, Jind. Complainant has challenged the legitimacy of the said Occupation Certificate on the ground that it was issued by an "internal department" of the respondent, and therefore does not meet the statutory requirements under the RERA Act of 2016. For proper adjudication, it is necessary to refer to the definition of "Occupancy Certificate" as provided under Section 2(zf) of the RERA Act of 2016, which reads as follows:

Section 2(zf) – "occupancy certificate" means the occupancy certificate, or such other certificate, by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;

Furthermore, the term "competent authority" is defined under Section 2(p) of the Act as:

Section 2(p) – "competent authority" means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

A conjoint reading of both these provisions elucidates that an Occupation Certificate must be issued from an authority established under the



Complaint nos.491 of 2022 and another appropriate government's law, which is empowered to regulate land development and certify readiness for occupancy. In the instant case, the appropriate government is the Government of Haryana, which has enacted HSVP Act-1977, which authorises the Estate Officer, HSVP to issue Occupation Certificates of projects/buildings falling within its jurisdiction. Accordingly, the Occupation Certificate dated 25.07.2018 was issued by the Estate Officer, HSVP, being an officer duly empowered under the law by the appropriate government, qualifies as a certificate issued by a "competent authority" within the meaning of the RERA Act of 2016. As such, the Authority, being a quasi-judicial body, does not possess the jurisdiction to adjudicate upon the validity or legality of an Occupation Certificate issued by an authority duly empowered by the State Government. Therefore, once a occupation certificate is issued by the competent authority, it is deemed to be a conclusive proof of the availability of basic civic infrastructure and compliance with applicable norms and standards as laid down under the law. Hence, the contention raised by the complainant regarding the invalidity of the Occupation Certificate is hereby rejected.

11. Therefore, it can be concluded for the reasoning mentioned above that since occupation certificate was issued to the respondent from the competent Authority, offer of possession was valid one. It was also submitted during all the hearings and also in pleadings that possession has been taken by the



Complaint nos.491 of 2022 and another complainant. However, complainant raised the contention that possession was taken under threat and coercion, rather than free will of the complainant. To elucidate the same complainant has placed on record copy of order passed in appeal before the Housing Board, Haryana in complaint no. 778 of 2022. Complainant has further stated that respondent had issued the undated show cause/bedhakali notice to the other complainants which clearly warned allottees that failure to deposit the outstanding amount and take possession within 30 days would result in cancellation of allotment. Thereby coercing the allottees into accepting the possession of the units. In this regard, it is better to go through the contents of the order dated 24.12.2021 passed by Chief Administrator, Housing Board, Haryana, Panchkula which are reproduced for reference:

"The above appellant has not taken the possession of flat within stipulated period thus the allotment was cancelled by this office and appellant has request for taking the possession of flat allotted to her.

In view of above, taking a lenient view, the possession of flat of above stated appellant is hereby restored provided she will deposit the entire outstanding dues as per policy of the Board. Estate Manager, HBH Panipat will intimate outstanding dues to the appellant and handover possession after recovering up to date dues alongwith 5% surcharge. If appellant failed in depositing the amount within 15 days from the date of issuance of this order the



Complaint nos.491 of 2022 and another
*possession of flat will be resumed and no further appeal or hearing
shall be entertained in this behalf. "*

Authority, upon careful perusal of the order dated 24.12.2021, observes that the complainant/appellant did not take possession of the allotted unit within the period stipulated under the terms and conditions of allotment, as a consequence of which the respondent proceeded to cancel the said allotment. The order does not disclose any material or documentary evidence to establish that the complainant was coerced, compelled, or otherwise forced to take possession of the unit. On the contrary, it is evident that the complainant herself appeared before the Chief Administrator, Housing Board Haryana, Panchkula, in appeal and specifically requested restoration of the unit in her name, thereby clearly indicating her intention to continue with the project. It is also pertinent to note that the complainant was at liberty to withdraw from the project but chose not to exercise such an option. Furthermore, as reflected in the order, she was directed to deposit the outstanding dues, which she complied with voluntarily, and has thereafter taken possession of the unit on 11.03.2022. In light of the aforesaid facts and circumstances, the Authority is of the considered view that the possession of the unit was taken by the complainant voluntarily, without any element of coercion, compulsion, or undue influence.

Regarding the bedakhali notice, it is clear from reply to the order dated 20.05.2024 and 09.12.2024, where of the respondent themselves admit that



Complaint nos.491 of 2022 and anothers
no bedakhali notice has been issued to the complainant. Hence both the
contentions of the complainant are rejected.

12. For the reasoning mentioned above, Authority observes that physical possession of unit was offered on 11.06.2021 to the original allottee and possession certificate was also issued to the original allottee. Unit was transferred in name of the complainant on 16.06.2021. The said offer of possession was made after receipt of occupation certificate. However, respondent is liable to pay the delay interest to the complainant from the deemed date of possession to the actual date of offer of possession.
13. It is pertinent to record that in all the present complaint cases, the original allottee had deposited a sum of ₹1,90,000/- with the respondent-builder towards the consideration amount for the respective residential units up to 30.09.2010. It further stands established from the record that the respondent failed to offer possession of the said units to the original allottee within the stipulated period, and no valid offer of possession was made up to the deemed date of possession, i.e., 30.09.2013. Subsequently, on 04.09.2018, the respondent issued allotment letters in favour of the original allottee, and thereafter, around June 2021, the physical possession of the units was eventually offered. It is also borne out from the material on record that the said units were subsequently transferred in favour of the present complainants (i.e., the subsequent allottees) during the financial year 2021-



Complaint nos.491 of 2022 and anothers
2022, after which the complainants made further payments to the respondent
towards the respective units.

14. Upon meticulous perusal of the receipts and documentary evidence placed on record, it emerges that the complainants made payments to the respondent only after the transfer of title and delivery of possession of the units in their names. Hence, the payments made by the complainants were subsequent to the completion of possession formalities. It is a well-settled proposition of law that where a valid offer of possession has been made, the allottee is entitled to compensation in the form of delay interest only for the period commencing from the deemed date of possession or from the date of respective payments made by the allottee (whichever is later) until the date of valid offer of possession. However, no delay interest is admissible or payable in respect of payments made after the allottee has taken physical possession of the unit, as in such cases, the allottee is deemed to have accepted the possession with full awareness of the prevailing facts, conditions, and circumstances attached thereto.
15. In view of the foregoing, and applying the settled legal principles to the facts of the present cases, it is held that the complainants are entitled to delay interest only on the amount of ₹1,90,000/-, being the sum paid by the original allottee up to 30.09.2010. The said delay interest shall be calculated from the deemed date of possession, i.e., **30.09.2013**, until the date on which possession of the respective units was offered by the respondent to the



Complaint nos.491 of 2022 and another's original allottee. No delay interest shall accrue or be payable for any payments made subsequent to the date of possession or transfer in favour of the complainants.

16. Therefore, complainants herein are entitled to delayed possession charges which is provided under the proviso to Section 18 (1) of the Act,

Section 18 (1) proviso reads as under :-

"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".

17. 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;



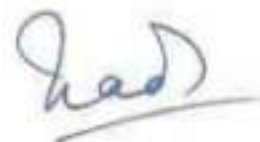
(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

18. Payment of delayed possession charges at the prescribed rate of interest.

Interest for every month of delay, till the handing over of possession at such rate, as it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced 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".*

19. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date, i.e., 03.11.2025 is 8.85% Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% , i.e., 10.85.%



20. In view of aforesaid observations and reasoning, the Authority hereby concludes that the complainant are entitled for the delay interest from 30.09.2013 (deemed date of possession) to date of offer of possession. Authority has got calculated the interest on paid amount from the deemed date of possession till the date of offer of possession at the rate of 10.85% till date. Details are given as below:

Sr. no.	Complaint no.	Unit no.	Amount paid by the original allottee/complainant prior to deemed date of possession (i.e., 30.09.2013)	Date of offer of possession	Delay interest from 30.09.2013 till date of offer of possession @ 10.85%
1.	491/2022	19A(F)	₹1,90,000/-	11.06.2021	₹1,58,820/-
2.	520/2022	32B	₹1,90,000/-	16.06.2021	₹1,59,103/-
3.	530/2022	32GF	₹1,90,000/-	14.06.2024	₹1,58,990/-
4.	531/2022	11GF	₹1,90,000/-	30.06.2021	₹1,59,893/-
5.	532/2022	50A	₹1,90,000/-	17.06.2021	₹1,59,159/-
6.	623/2022	4GF	₹1,90,000/-	14.06.2021	₹1,58,990/-
7.	634/2022	68GF	₹1,90,000/-	17.06.2021	₹1,59,159/-
8.	635/2022	49A	₹1,90,000/-	11.06.2021	₹1,58,820/-
9.	636/2022	47A	₹1,90,000/-	11.06.2021	₹1,58,820/-
10.	638/2022	6A	₹1,90,000/-	11.06.2021	₹1,58,820/-
11.	639/2022	15B	₹1,90,000/-	11.06.2021	₹1,58,820/-
12.	643/2022	33GF	₹1,90,000/-	17.06.2021	₹1,59,159/-
13.	645/2022	23A	₹1,90,000/-	11.06.2021	₹1,58,820/-
14.	772/2022	45B	₹1,90,000/-	11.03.2022	₹1,74,239/-



Complaint nos.491 of 2022 and anothers

15.	773/2022	55C	₹1,90,000/-	30.06.2021	₹1,59,893/-
16.	774/2022	67C	₹1,90,000/-	30.06.2021	₹1,59,893/-
17.	778/2022	21A	₹1,90,000/-	11.03.2022	₹1,74,239/-
18.	780/2022	39A(FF)	₹1,90,000/-	11.06.2021	₹1,58,820/-
		40A,	₹1,90,000/-	06.08.2021	₹1,61,983/-
19.	782/2022	72A	₹1,90,000/-	11.06.2021	₹1,58,820/-
20.	786/2022	59GF,	₹1,90,000/-	11.08.2021	₹1,62,265/-
		60B	₹1,90,000/-	25.08.2021	₹1,63,056/-
21.	790/2022	50GF,	₹1,90,000/-	24.09.2021	₹1,64,751/-
		1B	₹1,90,000/-	01.09.2021	₹1,63,452/-
22.	791/2022	7A	₹1,90,000/-	11.06.2021	₹1,58,820/-
23.	1422/2022	36GF,	₹1,90,000/-	09.07.2021	₹1,60,402/-
		51A	₹1,90,000/-	09.07.2021	₹1,60,402/-
24.	1423/2022	44A	₹1,90,000/-	06.08.2021	₹1,61,983/-

21. With regard to relief under clause (ii) and (iii), Authority observes that vide order dated 18.07.2023, Authority had appointed Ld. CTP of the Authority as Local Commissioner to visit the site on the request of both the parties. He was directed to visit the site and submit a report in the Authority mentioning present status of the project and provision of basic amenities as stated by the complainants in their complaints. Local Commissioner had submitted his report on 30.10.2023. Contents of the report are produced for reference:



Complaint nos.491 of 2022 and anothers

"The undersigned had visited the site on 25.10.2023 at 10:30 AM after giving due notice to the parties. The present site is in Sector 8, Jind and comprises of 252 flats constructed by Housing Board, Haryana.

The main grievance of the complainants was that though they were handed over the possession of these flats by the Housing Board, Panipat on 04.09.2018 but the water supply was provided in January 2019 and the electric connections given in December, 2022. In the absence of these basic facilities, Housing Board should not impose interest and penalty charges on allottees from February 2021.

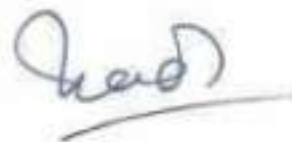
The allottees were also against the charge of 12% GST imposed on them since the possession of the flats should be considered to be given in December, 2022 when basic services were provided to the allottees and by which time the GST rates on built flats/accommodation were reduced from 12% to 5%.

It is also informed here that most of the residents/complainants who are in possession of these flats today are not actually the original allottees.

However, the overall project executed by the Housing Board, Haryana can be termed 'above par'."

Therefore, considering the report, Authority observes that all the basic amenities are present in the project of the respondent. Furthermore, if any grievance of the complaint pertaining to structural defects or any other defects remains, then respondent will remain liable as per Clause (3) of Section 14 of RERA Act of 2016 which is as follows.

Section 14(3): In case any structural defect or any other defect in workmanship, quality or provision of services or any other



Complaint nos.491 of 2022 and another's obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

22. Complainant in this captioned complaint vide relief clause no. (iv), (v) and (vi) sought to impose penalty upon the respondent under the provisions of Section 60, 61 and 69 of RERA Act of 2016. In respect to this issue the Authority observes that the Real Estate Regulatory Authority Act 2016, Rules and Regulations made thereunder provides for various obligations of a promoter including but not limiting to obligations towards the allottees, association of allottees and the competent authority. With respect to the allottees the Act provides that promoter shall:-

A. Be responsible for all obligations, responsibilities and functions under the provision of the Act.

B. To fulfil all obligations as per the agreement for sale.

In case a promoter fails to complete or unable to give possession of an apartment, plot or building in accordance with the terms of agreement to sale or duly completed by the dates specified there in, the complainant



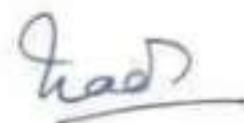
Complaint nos.491 of 2022 and others shall be entitled to either withdraw from the project and seek refund of the amount paid with interest at such rate as may be prescribed including compensation. Provided, where the allottee does not intend to withdraw from the project, he is entitled to interest at the prescribed rate for every month of delay till the handing over of the possession. Further, in case promoter fails to discharge "any other obligation" imposed upon him under this Act or the Rules or Regulations or in accordance with terms of agreement to sale made there under, the allottee is entitled to seek the relief of compensation in the manner provided under the Real Estate Regulatory Authority Act 2016. However, the Real Estate Regulatory Authority Act 2016, nowhere provides that an allottee, aggrieved by an act of non-compliance of an obligation on part of promoter, shall entitle him or her to a "relief of imposition of penalty". The Authority observes that when an aggrieved person, who is an allottee in the present case, files a complaint under Section 31 of the Real Estate Regulatory Authority Act,2016, the same is for adjudication of his rights that have accrued due to the violations committed by the respondent-promoter.

That "imposition of penalty" is actually the power entrusted upon the Authority. The Real Estate Regulatory Authority Act 2016, provides for extensive powers and mandate to the Authority including the power to impose penalty or interest. However, nowhere does the Real Estate Regulatory Authority Act 2016 or the Haryana Real Estate (Regulation &



Complaint nos.491 of 2022 and another (Development) Rules, 2017, provides that in case of any non-compliance of the obligation towards the allottees, allottee can seek "relief of imposition of penalty or interest." Where ever the Act provides for relief of refund of amount with interest or interest including compensation it cast "liability" on the promoter and entitlement in favour of the allottee to seek the same.

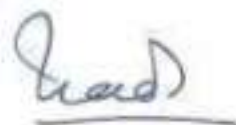
Therefore, the Authority is of the considered view that exercise of its own powers by the Authority under the Act cannot be sought as a "relief" by an "aggrieved person/ allottee." A person may be aggrieved by contravention or violation of his rights and can seek relief to compensate itself in the best possible manner. The Act effectively deals with such violations of rights of the allottees and also provide adequate relief to the aggrieved complainant. However, by no stretch of imagination, it can be interpreted that the Real Estate Regulatory Authority Act 2016, which is a social piece of legislation and aimed at providing effective remedy and mechanism to compensate the allottee for violation of their rights, intend to provide for the relief of "exercising of its powers by the Authority" to the allottee for violation of their rights. The Authority is conscious of its mandate and powers as entrusted under the Act and have been exercising them since its establishment in the interest of justice. However, it is to be understood that the provisions of the Act have to be read and interpreted in the way they were intended at the time of passing this piece of



Complaint nos.491 of 2022 and anothers beneficial social legislation. It has to be understood that there is a wide difference between a relief that can be sought and the powers that can be exercised. An aggrieved person is well within his rights to seek relief, however, the same has to be for the violation by the promoter against him, the allottee.

23.Complainant under clause (vii) sought criminal action against the respondent for the offence of cheating, fraud and criminal breach of trust. In this regard, Authority directs the complainant to approach the appropriate court as the said relief cannot be adjudicated within the provisions of RERA Act of 2016.

24.Further, complainant is seeking litigation cost. 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.



I. DIRECTIONS OF THE AUTHORITY

25.Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA, Act of 2016 to ensure compliance of obligation cast upon the promoters as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. Respondent is directed pay upfront delay interest as calculated in para 13 of the order to the complainants towards delay already caused in handing over the possession within 90 days from the date of uploading of the order.
- 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 against the respondent.

26.**Disposed off.** Files be consigned to the record room after uploading of the order on the website of the Authority.


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NADIM AKHTAR
[MEMBER]