



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1237 of 2023
Date of filing:	01.06.2023
First date of hearing:	27.07.2023
Date of decision:	17.11.2025

Mr. Vijay Kumar
S/o, Sh. Salig Ram
R/o D90, Dayal Bagh Colony,
Near Jain Mandir, Suraj Kund Road,
Faridabad, Haryana

....COMPLAINANT

VERSUS

1. M/s BPTP Limited
Registered office-
M-11, Middle Circle, Connaught Circus,
New Delhi- 110001
2. M/s Countrywide Promoters Pvt. Ltd.
Registered office- M-11, Middle Circle,
Connaught Circus, New Delhi- 110001

....RESPONDENTS

Present: - Adv. Yaseen Sethi, counsel for the complainant through VC.

Adv. Neha, counsel for both the respondents through VC.

ORDER:(NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 01.06.2023 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

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

S.No.	Particulars	Details
1.	Name and Location of the project.	"BPTP Park Elite Premium" situated at Sector-84, Faridabad, Haryana.
2.	Nature of the project.	Multi-storey Group Housing Complex
3.	RERA Registered/not registered	Registered (HRERA-PKL-FBD-191-2020)



4.	Details of allotted unit.	Unit No.-D-202, second floor Tower-D measuring 906sq.ft.
5.	Allotment Letter	16.12.2009
6.	Date of Flat Buyer Agreement-	21.12.2010
7.	Deemed date of possession	21.12.2013 (36 months from the date of Flat Buyer Agreement)
8.	Payment plan	Construction linked plan
9.	Total Sale Consideration	₹17,98,003/-
10.	Amount paid	₹4,37,026/-
11.	Occupancy Certificate obtained by respondents	21.08.2023

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

3. That the Respondents approached the complainant in the year 2009 for the sale of a residential flat in their upcoming project titled "BPTP Park Elite Premium" situated at Sector-84, Faridabad, Haryana. It was represented by the Respondents to the complainant that the construction of the said flat would be completed within three years from the date of the agreement and that the project was fully viable and approved for financing through reputed banks.



4. That the total sale consideration of the said flat was fixed at ₹17,98,003/-.
That out of the total sale consideration, the Complainant paid a sum of ₹4,37,026/- towards the purchase of flat No. D-202, BPTP Park Elite Premium, Sector-84, Faridabad, Haryana-121002, in the months of July and October 2009. The receipts dated 08.07.2009 and 06.10.2009 are annexed as Annexure C-1 and Annexure C-2 respectively.
5. That despite the said payments, no substantial progress was made in the development of the project from its inception. Whenever the complainant approached the Respondents regarding the construction status, only false assurances were extended. Thereafter, in the year 2010, complainant applied for a housing loan to pay the balance amount as and when due under the agreement. However, the concerned bank refused to sanction the loan on the ground that there were irregularities in the Respondent's project.
6. That after rejection of the loan, the complainant repeatedly requested the Respondents to rectify the said irregularities to enable him to avail of bank finance, but no corrective steps were taken by the Respondents. Subsequently, on 21.12.2010, the Complainant entered into a formal Flat Buyer's Agreement with the Respondents for Flat No. D-202, BPTP Park Elite Premium, Sector-84, Faridabad, Haryana-121002. A copy of the said Agreement is annexed as Annexure C-3.



7. That even after execution of the agreement, the construction of the flat did not commence till the year 2013. Owing to continuing irregularities in the project, the Complainant was unable to raise any finance from the bank.
8. To the utter shock of the Complainant, the respondent issued a forfeiture/cancellation letter dated 01.07.2013, thereby cancelling the allotment of the flat on the alleged ground of non-payment of subsequent installments. The Complainant came to know of this cancellation only in August 2013. It is pertinent to mention that the Respondents themselves were in breach of the Agreement, as the construction, required to be completed by 2013 had not even commenced by that time. A copy of the cancellation letter dated 01.07.2013 is annexed as Annexure C-4.
9. That immediately upon learning of the cancellation, the Complainant visited the Respondent's office in August 2013 and requested that the cancellation be withdrawn. He explained that his inability to pay the remaining amount was solely due to the Respondent's irregularities, which prevented bank financing, and due to the fact that no construction-linked demand had legitimately arisen. Despite repeated personal visits and requests, the Respondents failed to rectify the project irregularities or reinstate the Complainant's allotment, showing complete disregard for the Complainant's bona fide representations.



10. That the Complainant paid a total sum of ₹4,37,026/- towards the said flat, the details of which are duly reflected in the payment receipts annexed with the Complaint. That the Respondents continued to raise unjustified demands without commencing construction or resolving the issues pointed out by the bank. When the Complainant sought clarification and requested rectification of project irregularities before raising further demands, the Respondents ignored his pleas and acted in an arbitrary and high-handed manner. That realizing he had been misled, the Complainant requested either a refund of the deposited amount or an allotment of any other approved residential unit under the Respondent's projects, adjusting the amount already paid. Despite repeated visits and written complaints, no relief was granted to him. Complainant also served a Legal Notice dated 27.01.2023 upon the Respondents, calling upon them to refund the deposited amount along with interest, or alternatively to allot him another bank-approved flat of equivalent value under any of their projects. The said legal notice is annexed as Annexure C-5.
11. That the Complainant continued to send reminders and requests to the Respondents seeking refund of his money, but to no avail. The Respondents, for reasons best known to them, continued to illegally and fraudulently withhold the Complainant's funds.



C. RELIEFS SOUGHT

12. That the complainant seeks following relief and directions to the respondents:-
- i. To direct respondents to refund the entire amount of ₹4,37,026/- along with interest @ 24% p.a. to the Complainant.
 - ii. To pay punitive and deterrent damages to the tune of ₹1,00,000/- as compensation for harassment and mental agony caused to the complainant.
 - iii. To Pay Rs. 35,000/- as litigation expenses.
 - iv. That the complainant may kindly be exempted from filing the certified/true typed copies of the annexures and allow the complainant to file the photocopy of the annexures.
 - v. Any other order as the Hon'ble Authority deems fit..

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

13. Learned counsel for the respondents submitted a detailed reply on 12.01.2024 pleading therein:
- i. That the present complaint is misconceived, not maintainable, and deserves outright dismissal as the same has been filed with malafide intent to mislead this Hon'ble Authority and to reopen a long-settled issue, which stood concluded more than a decade ago



ii. That the complaint is hopelessly barred by *limitation*. The Flat Buyer's Agreement (hereinafter referred to as "FBA") was executed on 21.12.2010 between the parties, and the allotment of Unit No. D-202, Tower D, Park Elite Premium, Sector-84, Faridabad was terminated vide Termination Letter dated 01.07.2013 (Annexure R-6) due to persistent payment default on part of the Complainant. The present complaint has been filed only in May 2023, i.e., after an inordinate delay of nearly ten (10) years from the date of termination. As per Schedule I, Part II, Entry 137 of the Limitation Act, 1963, the limitation period for instituting any claim is three years when no specific period is prescribed. Accordingly, the present complaint is hopelessly time-barred. Reliance is placed upon:

- *Shipra Gupta v. Vatika Sovereign Park Pvt. Ltd. & Anr.* (HRERA Gurugram), wherein it was held that stale and time-barred claims cannot be entertained; and
- *Jattan Tanwar v. Emaar India Ltd.* (Complaint No. 2186 of 2021), where it was held that once termination is accepted and not challenged within limitation, the buyer cannot reopen the issue before HRERA after several years.

Hence, the complaint deserves dismissal being barred by limitation.



- iii. That Respondent No. 2 (Countrywide Promoters Pvt. Ltd.) has been unnecessarily impleaded as a party. That Respondent No. 2 is only a confirming party to the Flat Buyer's Agreement and has neither developed, constructed, nor dealt with the said unit in any manner. No cause of action or relief is made out against Respondent No. 2, and therefore it deserves to be deleted from the array of parties.
- iv. That the complaint is barred by the *principle of approbation and reprobation*. The Complainant, after being fully aware of all the terms and conditions of the Flat Buyer's Agreement dated 21.12.2010, voluntarily executed the same and continued to act upon it. Having accepted its terms, including those relating to payment schedule, possession, and termination, the Complainant cannot now resile from the same merely because it does not suit their convenience.
- v. That the Complainant has suppressed material facts. The Complainant has intentionally concealed that despite repeated reminders and demand notices, he failed to adhere to the payment plan as per the Agreement. The Complaint is, therefore, liable to be dismissed for want of clean hands.
- vi. That the Complaint pertains to a *Pre-RERA transaction*. The booking, allotment, and execution of the Flat Buyer's Agreement took place between 2009 and 2010, much prior to the coming into force of the Real Estate



(Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017. Hence, the rights and liabilities of the parties are governed by the contractual terms existing before RERA and cannot be reopened under the present proceedings.

- vii. In view of the foregoing, it is humbly submitted that the Complaint is devoid of cause of action, barred by limitation, and not maintainable either in law or on facts, and therefore, deserves dismissal at the very threshold.

Without prejudice to the above preliminary objections, the Respondents submit their reply on merits which is as under:

- i. That the contents of the complaint, save and except what is specifically admitted herein, are denied in totality as false, frivolous, and misleading. The Complainant has distorted facts and suppressed material information to create a false narrative against the Respondents.
- ii. That the Complainant applied for allotment of a residential flat in the project titled "Park Elite Premium", Sector-84, Faridabad, Haryana, and was allotted Flat No. D-202, Tower-D, admeasuring 906 sq. ft., vide Allotment Letter dated 16.12.2009. Subsequently, a Flat Buyer's Agreement dated 21.12.2010 was executed between the parties. Copy of allotment letter is annexed as Annexure R-2 and Flat buyer agreement dated 21.12.2010 is annexed as Annexure R-3.



- iii. That as per Clause 11.1 of the Agreement, timely payment of installments was the essence of the contract. However, the Complainant failed to make payments as per the Construction Linked Plan despite repeated reminders and notices. Copies of the payment request letter, reminders and final notice are annexed collectively as Annexure R-4 (Colly).
- iv. Despite repeated opportunities, the Complainant failed to regularize the payment defaults, leaving the Respondents with no option but to terminate the allotment vide Termination Letter dated 01.07.2013 (Annexure R-6). Accordingly, all rights, title, and interest of the Complainant in the said unit stood extinguished.
- v. That the possession period under Clause 3.1 of the Agreement was 36 months from the date of sanction of the colony, subject to force majeure and timely payments by the allottee. That construction progress and possession schedule were severely affected by multiple force majeure conditions, including:
- Judicial restrictions on mining and sand supply pursuant to *Deepak Kumar v. State of Haryana* [(2012) 4 SCC 629];
 - National Green Tribunal (NGT) orders restraining operations of brick kilns and sand mining;
 - Demonetization in 2016 causing liquidity constraints; and



- Widespread payment defaults by numerous allottees.

Therefore, the delay in project completion was fully covered under Clause 10 (Force Majeure) of the Agreement.

- vi. That the Respondents applied for Occupation Certificate (OC) on 13.05.2019, which was subsequently granted on 21.08.2023, thereby demonstrating that the Respondents have completed the project and acted diligently at all times. Copy of Occupancy Certificate dated 21.08.2023 is annexed as Annexure R5.
- vii. That the termination of the allotment was lawful and in strict accordance with Clause 11.1 of the Agreement. The said clause authorizes the Respondents to forfeit earnest money in the event of non-payment by the allottee. The said contractual right has been consistently upheld by this Hon'ble Authority and the Hon'ble Appellate Tribunal in:
- *Ravinder Pal Singh v. Emaar MGF Land Ltd.* (Appeal No. 255 of 2019);
and
 - *Nick Mehta v. Haamid Real Estates Pvt. Ltd.* (Complaint No. 1662 of 2022).
- viii. Accordingly, upon valid termination, the Complainant ceased to have any right, title, or interest in the said unit. The Respondents, therefore, denies any liability towards refund or compensation as claimed.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

14. Ld. counsel for complainant submitted that the Complainant had opted for a construction-linked plan and made all due payments amounting to ₹4,37,026/- out of the total sale price of ₹17,98,003/-. Despite this, Respondents failed to construct in proportion to the payments received and delayed the project for several years. Obtaining of Occupation Certificate only on 21.08.2023 clearly shows substantial delay attributable solely to the Respondents. Hence, the Complainant is entitled to appropriate relief for delay under the RERA Act.
15. Ld. Counsel for the Respondentssubmits that there was no deliberate delay on part of the developer. The project was delayed due to external factors including delayed payments by several allottees, market slowdown, and force majeure conditions. It is further submitted that the Occupation Certificate has now been obtained, and possession can be offered to the Complainant, therefore no cause for refund or compensation subsists.

F. ISSUES FOR ADJUDICATION

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



G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

17. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the complainant booked a Flat in the real estate project; "BPTP Park Elite Premium", Sector-84, Faridabad, Haryana" being developed by the promoter namely; "M/s BPTP Ltd." vide allotment letter dated 16.12.2009. Complainant was allotted Flat no. D-202, Second floor, Tower-D, admeasuring 906 sq. ft. vide allotment letter dated 16.12.2009. Flat buyer agreement was executed between the parties on 21.12.2010. Complainant has paid a total amount of ₹4,37,026/- out of basic sale price of ₹17,98,003/-. Further, it is an admitted fact that unit of complainant got cancelled by the respondents vide termination letter dated 01.07.2013. Also, respondents were subsequently granted Occupancy Certificate from the competent Authority on 21.08.2023.

18. Findings on the objections raised by the respondents.

a. That the complaint is hopelessly barred by limitation.

Reference in this regard is made to the judgement of Hon'ble Apex Court in Civil Appeal No. 4367 of 2004 titled as "M.P Steel Corporation v/s Commissioner of Central Excise". Relevant part of the said judgment is reproduced here under:-



"It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963." 20. *In Kerala State Electricity Board v. T.P"*

The promoters have till date failed to fulfill their obligations because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

b. Objection regarding impleadment of respondent no. 2 as party to complaint.

With respect to the objection raised by the respondent no. 1 regarding the impleadment of Respondent No. 2 as a party to the Complaint, Authority observed that the Flat Buyer Agreement dated 21.12.2010 was executed between the Complainant, Respondent No. 1 (BPTP), and Respondent No. 2 (Countrywide Promoters Pvt. Ltd.). The Agreement clearly records that both Respondent No. 1 and Respondent No. 2 jointly undertook obligations and responsibilities towards the Complainant in respect of the sale, development, and timely possession of the said apartment. As such, the Complainant has a legal right to seek relief against both respondents, and any liabilities arising under the Agreement, including delay in possession or refund of amounts



paid, are jointly and severally enforceable against both Respondent No. 1 and Respondent No. 2. Therefore, the impleadment of Respondent No. 2 as a party is both valid and necessary, and the objection on this ground is without merit.

- c. That the complaint is barred by the principle of approbation and reprobation. The Complainant, after being fully aware of all the terms and conditions of the Flat Buyer's Agreement dated 21.12.2010, voluntarily executed the same and continued to act upon it.*

That the objection regarding the principle of approbation and reprobation is wholly misconceived and untenable. Mere execution of the Flat Buyer's Agreement dated 21.12.2010 does not preclude the Complainant from exercising statutory rights under the Real Estate (Regulation and Development) Act, 2016. It is a settled law, as held by the Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd. v. GovindanRaghavan* (2019) 5 SCC 725, that one-sided and unfair terms of a builder-buyer agreement cannot bind the allottee merely because it was signed. The said agreement was executed under unequal bargaining power and cannot estop the Complainant from seeking redressal for the Respondent's failure to perform its obligations. Hence, the plea of approbation and reprobation is misconceived and liable to be rejected.



- d. Objection that as per Clause 11.1 of the Agreement, timely payment of instalments was the essence of the contract. However, the Complainant failed to make payments as per the Construction Linked Plan despite repeated reminders and notices.*

Authority is of the view that the Complainant had opted for a *construction-linked payment plan* and made timely payment in accordance with the agreement. As per record, the Complainant paid a sum of ₹4,37,026/- out of the total basic sale price of ₹17,98,003/-. The Complainant duly discharged his obligation by paying the installment as and when demanded; however, the Respondents failed to carry out construction in proportion to the payments received. As per Section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, it is the statutory duty of the promoter to ensure that the project is developed and completed as per the sanctioned plans, specifications, and the timeline declared to the Authority. The Respondents cannot shift their burden of delay upon the Complainant or other allottees. Further, the Occupation Certificate was obtained only on 21.08.2023, which clearly establishes that the Respondents have caused an inordinate delay of approximately 9 years in completion of the project from the committed date of possession as per the Agreement. Such delay squarely falls within the promoter's domain and cannot be justified on the ground of alleged



delayed payments by the Complainant or others. Hence, this objection raised by the Respondents is baseless and stands rejected.

- e. *That the Complaint pertains to a Pre-RERA transaction. The booking, allotment, and execution of the Flat Buyer's Agreement took place between 2009 and 2010—much prior to the coming into force of the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.*

Reference can be made to the case titled M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra), wherein the Hon'ble Apex Court has held as under:-

“41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even



retrospectively to take into its fold the estoppel contract and rights executed between the parties in the larger public interest.

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/agreement might have taken place before the Act and the Rules became applicable. Moreover, occupation certificate was not granted to the respondents till the date of filing of the complaint i.e. 01.06.2023. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder



will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

f. Objections raised by the respondents regarding force majeure conditions.

The obligation to deliver possession within the period stipulated in the Flat Buyer Agreement, i.e., 36 months from the date of issuance of the sanction letter of the colony, is not fulfilled by respondents till date. The Authority observes that there has been a delay on the part of the respondents in completing the project and handing over possession of the unit to the complainant. The various reasons cited by the respondents, Judicial restrictions on mining and sand supply pursuant to *Deepak Kumar v. State of Haryana* [(2012) 4 SCC 629]; National Green Tribunal (NGT) orders restraining operations of brick kilns and sand mining; Demonetization in 2016 causing liquidity constraints; and Widespread payment defaults by numerous allottees, all these incidents/ justifications mentioned by the respondents are not deemed convincing as all these incidents happen to occur after the deemed date of possession. The deemed date of possession as per the agreement was in the year 21.12.2013, which precedes the above said incidents. Thus, this contention of the respondents does not qualify for consideration under the force majeure clause, as the circumstances occurred after the contractual due date for possession. Therefore the respondents cannot be allowed to take



advantage of the delay on their part by claiming the delay in statutory approvals/directions. So, the plea of respondents to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

g. Objection regarding deemed date of possession.

Admittedly, the Flat Buyer Agreement was executed between the parties on 21.12.2010. As per Clause 3.1 of the Agreement, possession of the flat was to be delivered within 36 months from the date of issuance of the sanction letter of the colony, along with a grace period of 180 days for applying and obtaining the Occupation Certificate from the competent authority. Upon reviewing the records submitted by the respondents, it was observed that the respondents failed to provide any documentary evidence, such as official approvals or sanction letters, to substantiate their claim regarding the date of sanctioning of colony. In the absence of proof regarding the sanctioning of the colony, the Authority deems it appropriate to rely on the execution date of the Flat Buyer Agreement to calculate the deemed date of possession. The Flat Buyer Agreement was executed on 21.12.2010 and as per the stipulated timeline in Clause 3.1, possession was to be handed over within 36 months. This calculation leads to a deemed date of possession of **21.12.2013**. Possession of the unit should have been delivered by 21.12.2013.



Respondents have failed to deliver possession of the flat before or till 21.12.2013 to the complainant. As a matter of fact, the promoter did not apply to the concerned Authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the floor buyer agreement, i.e., immediately after completion of construction works within 36 months. Thus, the period of 36 months expired on 21.12.2013. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, the grace period of 180 days cannot be allowed to the promoter.

19. The facts set out demonstrate that respondents had failed to fulfill their obligation to handover possession by 21.12.2013, i.e., deemed date of possession. In these circumstances, the provisions of Section 18(1)(a) of the Act clearly come into play by virtue of which the complainant is seeking refund of paid amount along with interest on account of default in delivery of possession of booked unit within a reasonable period of time.
20. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others " in CIVIL APPEAL NO(S). 6745 - 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, allottee has an unqualified right



to seek refund of amount paid to the promoter along with interest. Para 25 of this judgement is reproduced below:

“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

21. So, the Authority finds it to be a fit case for allowing refund in favour of complainant. The complainant will be entitled to refund of the paid amount from the dates of various payments till realization. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term ‘interest’ is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-



(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

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

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15:“Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost of lending rate +2%:

Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”..”

22. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 17.11.2025 is 8.85.%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.



23. Hence, Authority directs respondents to pay refund amount to the complainant on account of failure in timely delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e., at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2% which as on date works out to 10.85 % (8.85% + 2.00%) from the date of various payments till actual realization of the amount.
24. Authority has got calculated the interest on the total paid amount from the date of respective payments till the date of this order i.e., 17.11.2025 at the rate of 10.85% and said amount works out to ₹7,69,218/-. Complainant shall be entitled to further interest on the paid amount till realization beginning from 17.11.2025 at the rate of 10.85%.

Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till 17.11.2025 (in ₹)
1.	₹ 2,00,000/-	08.07.2009/- (from acknowledgment of respondent)	₹ 3,55,345/-
2.	₹ 2,37,026/-	06.10.2009	₹ 4,13,873/-
Total	₹ 4,37,026/-		(3,55,345/-+4,13,873/-) = ₹7,69,218/-



H. DIRECTIONS OF THE AUTHORITY

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

- i. Respondents are directed to refund the amount of ₹12,06,244/- to the complainant and pay further interest beginning from 17.11.2025 till actual realization of the amount at the rate of 10.85%.
- ii. A period of 90 days is given to the respondents to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.

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



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NADIM AKHTAR
[MEMBER]