



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	329 of 2025
Date of filing:	10.03.2025
First date of hearing:	21.04.2025
Date of decision:	12.01.2026

Ravinder Singh,
S/o Satnam Singh,
R/o C-330, (25 Yard),
DSIDC, Raghubir Nagar,
New Delhi-110027

.....COMPLAINANT

Versus

Housing Board Haryana
C-15, Awas Bhawan,
Sector-6, Panchkula, Harayana

.....RESPONDENT

Present: Adv. Tej Pal Singh Chauhan, counsel for the complainant through VC..
Adv. Arvind Seth, counsel for the respondent through VC.

ORDER (NADIM AKHTAR-MEMBER)

Present complaint is filed by the complainant 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 obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

1. UNIT AND PROJECT RELATED DETAILS-

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

S.No.	Particulars	Details
1.	Name of the project	Built up multi storeyed flats for industrial workers at Barhi, Sonipat
2.	Name of the promoter	Housing Board Haryana
3.	RERA registered/not registered	Unregistered
4.	Unit no.	Final Reg. No. 64, Type-I, Tenement No. 149-B
5.	Date of builder buyer agreement	Not executed
6.	Due date of offer of possession	Not available
7.	Possession clause in BBA	Not available

S.No.	Particulars	Details
8.	Total sale consideration	₹15,40,309/-(as per allotment letter)
9.	Amount paid by complainant	₹1,99,000/-
10.	Offer of possession given on	19.02.2018

2. FACTS OF THE PRESENT COMPLAINT

- i. Housing Board Haryana issued an advertisement along with prospectus inviting applications for purchase of Built Up Multi Storeyed Flats for Industrial workers and Industrial Units/ Entrepreneurs in the project located at Barhi, District Sonipat. Copy of brochure is annexed at page no. 16 to 22 of complaint book. The complainant is an industrial worker in an industrial unit and lived in Delhi while doing his job in Barhi. To save himself from this daily commute of 40km one way, the complainant applied under the above scheme of Housing Board Haryana on 19.03.2010 through application form and deposited an amount of ₹79,000/- through demand draft as 10% for advance deposit for booking the flat. Copy of acknowledgment receipt issued by Housing Board Haryana is annexed at page no.24 of the Complaint book.
- ii. That respondent vide letter dated 27.07.2010 issued provisional registration number 64 and final registration number 64 asking for an additional deposit of ₹1,20,000/-. Copy of the same is annexed at page



no. 25. Following the above communication, complainant deposited the said amount for confirming his booking. A copy of receipt of payment dated 06.09.2010, issued by Housing Board Haryana is annexed at page no. 24

iii. That the complainant never received any communication from the respondent for 8 long years without issuing any acknowledgment or information relating to the flat. On 19.02.2018, the complainant received the acknowledgement. However, he was shocked to know that the total cost of the flat was raised to double from the previously mentioned amount without any explanation. The only option given to the complainant was to withdraw after deduction of 50% from the earnest money. Copy of allotment letter dated 19.02.2018 is annexed at page no. 27 of the complaint book.

iv. Aggrieved by the same, complainant visited the office of Estate manager, Housing Board Haryana, Sonipat to discuss the arbitrary increase in the price of the flat and asked the respondent to review the two-fold increase. The complainant clarified that the increased amount is not affordable to him and he would not be able to pay the amount mentioned above. He requested for surrender of the flat, if the amount is not reduced to the initial amount.

v. That the respondent issued a show cause notice to the complainant, as the possession was not taken by the complainant on the revised amount and



gave time up to 25.04.2018 to explain why his flat may not be cancelled and earnest money forfeited. Copy of show cause notice is annexed at page no. 28 of the complaint book.

- vi. That the complainant on 01.05.2018 wrote a letter to the Housing Board Haryana stating that the project cost has increased substantially to a very high amount and the cost has almost doubled. The complainant specifically mentioned that the increased cost is not fair and requested for the refund of money as soon as possible. Copy of the letter is annexed at page no. 29 of the complaint book.
- vii. Aggrieved by the arbitrariness of the respondent, the complainant again visited the department twice requesting the Authorities to reduce the increased amount or refund the money. However, the authorities did not pay any heed to the requests which left the petitioner with no other option than to file this complaint. The RTI was filed by the complainant for inquiring the status of water connection and the status of electricity by HSIIDC and UHBVN, respectively, in Housing Board Multi Story flats in Barhi. HSIIDC replied that only 1 water connection was released by HSIIDC on 10.07.2019 to provide drinking water to Housing Board. No reply w.r.t to electricity connection has been provided till date. Copy of RTI is annexed at page no. 30 and 31 of the complaint book.
- viii. That the complainant has faced mental and financial agony during these 14 years wherein he had to travel 40 kms one way to reach Barhi. The



respondent has been utilising the complainant's money for the last 14 years without a just cause. That HRERA Panchkula was faced with similar facts and circumstances in **complaint number 92 of 2019** in case of "**Ram Mehar Singh V. Housing Board Haryana**" and **complaint no. 589 of 2020** titled as "**Indra Chauhan versus Housing Board Haryana**" wherein the Hon'ble Authority has ordered for refund to the complainants in both the complaints.

3. RELIEF SOUGHT -

Complainant sought following relief:

1. That the deposit of the complainant of ₹1,99,000/- shall be refunded with interest @18% P.A. which becomes ₹4,98,696/-. Total amount becomes ₹6,97,696/-.
2. ₹50,000/- as cost of legal and other expenses.
3. Complainant be compensated with ₹50,000/- for harassment and mental trauma.
4. Any other order which the Authority deems fit.

4. REPLY SUBMITTED ON BEHALF OF RESPONDENT:-

Respondent filed its reply on 18.08.2025, wherein it is pleaded that:-

- That there is no requirement of registration of the project under RERA as it is clear from the certificate dated 14.05.2014, that the construction works were completed on 15.04.2014 and this project was not an ongoing project. Copy of the Certificate dated 14.05.2014 is annexed as Annexure



R-1. 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 Housing Board Haryana has been constituted under the Haryana Housing Board Act, 1971. 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 received the assent of the President of India on 14.05.1971 and was published in Haryana Government Gazette 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 matters 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 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 entry-35 of the State List (List-II) provides as under-

"Works, lands and building vested in or in the possession of the State."

- That in the present case, flats are being constructed as per the scheme on the land allotted by the HSIIDC vide allotment letter dated 04.06.2010.
- That as a matter of record, the land allotted by HSIIDC is acquired by the Government of Haryana which has been handed over to the Housing Board Haryana 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.
- Hence, 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 the Article 254(2) of the Constitution of India provides as under:-

"...254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.-

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament, which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

*(2) Where a law made by the Legislature of a State [***] with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:*

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

- That in the present case, Housing Board Haryana was constituted by the Act of State Legislature which has received the assent of President of India on 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. Therefore, 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. That Section 24 empowers the state government to sanction programme/ budget and established schedule and section 25 provides publication of sanctioned programmes. That Section 28 provides for 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 allotment 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 definition of an allottee is prescribed in Section 2(b) of Housing Board Haryana (allotment, management and sale of tenements), Regulation, 1972. Relevant Section 2(b) of the said regulations is reproduced hereunder:

"2. Definition.

(b) "Allottee" means a person to whom a tenement is allotted in a building constructed under any scheme referred to in regulation 1(2) by way of sale or hire-purchase;"

- That the definition of allottee is given in the Real Estate (Regulation and Development) Act, 2016. Section 2(d) is reproduced hereunder:

"2. Definition.

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

- That it is clear from the application submitted by the complainant and the scheme that the flats were to be allotted on Hire Purchase Basis. The Hire



Purchase is defined in Section 2(g) of the Housing Board Haryana (allotment, management and sale of tenements), Regulations, 1972.

Relevant extract of 2(g) is reproduced hereunder:

"2. Definition.

"Hire-Purchase" or "Hire-Purchase System" means a system in which a participant takes steps to secure rights in a property under a scheme by payment of deposit and also a specified number of monthly instalments spread over a specified number of years during which he remains a tenant on the terms and conditions set for the purpose and on the expiry of the number of said years ceases to be a tenant and becomes owner after payment of all dues."

- From the perusal of the definition of hire purchase, it is clear that the participants under the scheme can become the Allottee/ owner only after payment of all dues. Until all the installments are paid, he remains the tenant. As the complainant did not accept the terms and conditions of the allotment letter, therefore, the complaint filed by the complainant who is not the allottee is not maintainable before RERA.
- 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 earnest money.
- That in view of the constitutional and legal provisions enumerated above, it is clear that the Housing Board Haryana does not fall under the purview of HRERA and there is no requirement of taking registration from the Haryana Real Estate Regulatory Authority inter alia on the ground that the construction of the building work was completed on 15.04.2014. A copy of the certificate dated 14.05.2014 was issued by Executive Engineer, HBC, Sector-4, Karnal in this regard is annexed as Annexure R-1 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 published in the official gazette of India on 19.04.2017.



Registration of Real Estate Projects is required only for 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 work was completed before that date, i.e., on 15.04.2014 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 ₹15,40,309/- after adjusting the already paid amount of ₹1,99,000/-. However, as per the revised policy of the Housing Board, the cost of flat was reduced to ₹13,12,800/- and one month time was given to take possession. Only four allottees have taken the possession at the reduced cost of the flat of ₹13,12,800/-. The allottees have again requested to reduce the cost and the court case has been filed in the Hon'ble Punjab and Haryana High Court, Chandigarh. Due to not taking possession by the complainant, the Housing Board is suffering recurring loss as a huge amount of the board is involved in the construction. Copy of the allotment letter dated 19.02.2018 is annexed as Annexure R-2.



- That on the principle of promissory estoppel, the complainant cannot be allowed to resile from the assurance which he gave 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. A copy of the advertisement issued by the respondent at the time of inviting applications is annexed herewith as Annexure R-3 of the said application.
- That the complainant has portrayed the respondent as a Developer of Real Estate whereas Housing Board Haryana (hereinafter 'the Board') is an establishment of Government of Haryana under the Haryana Housing Board Act, 1971 (Haryana Act No. 20 of 1971). Hence, the answering respondent is a statutory body and not a mere Real Estate Developer.
- That the brief facts of the present case are that in the present case land measuring 42538.50 Sq. mtr. was allotted to the respondent by the Haryana State Industrial Infrastructure Development Corporation (HSIIDC) vide allotment letter dated 04.06.2010. Said allotment of the land was made in terms of the scheme which was framed by the Board.



- That as per the salient features of the said scheme, the respondent invited the applications for the allotment of built up multi storey flats to industrial workers and the entrepreneurs of Haryana at Bawal and Barhi under the Hire Purchase Scheme. Present case is of Barhi, District Sonapat.
- That the registration for submitting the applications were started from 19.02.2010 and closing date was 19.03.2010. In the present case, complainant submitted the application for the allotment of the flat at Barhi and the tentative price of the flat was ₹7.90 lacs. Complainant deposited the amount of ₹79,000/- (10% of the total cost of the flat) as the registration money.
- That the draw of lots was held and the respondent vide letter dated 27.07.2010 informed that his application has been considered for the allotment of the flat subject to eligibility of the industrial worker and the complainant was asked to deposit the sum of ₹1,20,000/- (i.e. 15% of the tentative total cost of the flat).
- That the complainant deposited the said amount of ₹1,20,000/- on 28.08.2010.
- That as per the terms and conditions of the brochure which has been accepted by the complainant, cost of the said flat was rough cost, and it was specifically mentioned in the brochure that the price is tentative and after completion of the construction of the flats, the price will be worked



out with the pricing of the board on the basis of the actual expenditure and flats will be allotted/will be given the possession at the revised/actual price.

- That the complainant duly accepted the terms and conditions as mentioned in the brochure and while submitting the application form, he undertook to adhere to all the terms and conditions of the brochure. This fact is clear from the perusal of the application submitted by the complainant, whereby the complainant acknowledges the acceptance of the terms and conditions put on the application form.
- That as per the general conditions, respondent reserves the right to make modifications in the design, scope of work and specification of the price of the flat. It is further prescribed in the general conditions that any change in the price shall be binding on the applicant.
- That as per the terms and conditions of the brochure, the possession will be handed over to the allottee as under. Relevant part of the brochure is given hereunder :-

"HANDING OVER OF POSSESSION:

The allottee be entitled to the delivery of possession of the flat only after he/she has completed all the formalities paid all dues and furnished/executed all the documents as required/prescribed. The flats will on "as is where is basis" and the Board will not entertain any claim for additions or alterations or whatsoever regarding the



condition of flats, price of flats, its design, the quality of material be hander any comp used, worship etc."

- That vide allotment letter dated 19.02.2018, the complainant was informed regarding actual price of the flat which comes to ₹15,40,309/-. After adjusting the already paid amount of Rs. 1,99,000/-, complainant was asked to deposit the balance amount within a period of 30 days from the date of issue of the said letter, which is required as per Clause-2 of the said allotment letter.
- That as per the terms and conditions of the allotment letter, it is clear that the allottee will remain as tenant till all the outstanding amount is not deposited by the allottee. From the perusal of Clause-2 of the allotment letter, it is clear that in case the allottee fails to deposit the amount then the allottee shall be the tenant of the said flat.
- That as per the allotment letter dated 19.02.2018, complainant was required to deposit the balance amount in 120 instalments @ ₹12,079/- within a period of ten years.
- That the statutory provisions as prescribed in the Housing Board Haryana (Allotment, Management and Sale of Tenements) Regulations, 1972, regulate the allotment and the process, if the allottee fails to comply with the terms and conditions of the allotment letter. Regulation-13 prescribes the procedure of consequences on failure of the allottee to take the possession. Relevant Regulation 13 is reproduced hereunder:-



"13. Compensation on Failure of allottee to take possession- Where any applicant is allotted a tenement under those regulations but he fails to take possession of the same within a period of 30 days from the date of receipt of the allotment letter issued to him or surrenders the same at any time, his name shall be removed from the allotment register and 50% of the amount deposited with the application at the time of registration shall be forfeited to the Board and Balance refunded to him without interest."

- That in the present case, complainant failed to take the possession of the flat and did not deposited the amount as prescribed in the allotment letter dated 19.02.2018 within a period of 30 days from the date of issue of the said allotment letter, therefore, by exercising the powers under Regulation-13 of the Housing Board Haryana (Allotment, Management and Sale of Tenements) Regulations, 1972, issued the Show Cause Notice on 05.04.2018 regarding cancellation of the allotment letter dated 19.02.2018. A copy of the Show Cause Notice dated 05.04.2018 is annexed as Annexure R-4.
- That thereafter, complainant sent a letter to the answering respondent on 02.05.2018 vide which he requested to surrender the flat and also requested to refund the amount of ₹1,99,000/-. A copy of the letter dated 02.05.2018 sent by the complainant is annexed as Annexure R-5.
- That as per the provisions of contained in Regulation No. 13 of the Housing Board Haryana (Allotment, Management and Sale of



Tenements) Regulations, 1972 which is reproduced above, any applicant who surrender the allotment, his/her 50% deposited amount of the earnest money which was deposited as registration money will be forfeited. Therefore, the balance amount of ₹1,59,500/- will be refundable to the complainant.

- 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 surrendered or did not deposit the amount within a period of 30 days from the date of issue of the allotment letter.
- 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 as the complainant is not the allottee but he is the tenant as per regulation 2(g) of the Housing Board Haryana (Allotment, Management and Sale of tenements) Regulations, 1972.



- That the respondent has no profit motive, rather have made the mode of allotment easy for the public at large whether it is in terms of payment of installments or application for obtaining the flat under the scheme. Further, it would be worthy to note here that the respondent authority has completed the construction of the flats under the project spending their own money and has only taken the token/earnest money from the applicants who applied for the purchase of the flats and has not taken any money over and above the earnest money till the time of the allotment/offer of possession.
- That the complainant has not made the present complaint in accordance with the provisions contained in RERA Act.
- That the present complaint is not maintainable due to the reason that complainant has never given the legal notice which is mandatory as per the provisions of Haryana Housing Board Act, 1971.
- 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 come into force from the date of publication in the official gazette.
- That due to the surrender of the flat by the complainant answering respondent would suffer a huge loss as they have already made the



payment to the contractor regarding the construction of the units over the land.

- That the complaint is liable to be dismissed on the ground of principle of estoppel. It is a matter of record that at the assurance of the complainant, respondent spent crores of rupees for raising construction of flats and at the time when the flats were ready to give the possession, the complainant backed out and requested the respondent for surrender of the flat booked by him. In this manner, answering respondent would suffer an irreparable loss and injury, as there was an assurance from the complainant to pay the actual cost of the construction of flat which was to be determined at the time of allotment of flat in view of the terms and conditions of the brochure. It was an agreed condition by the complainant that the flat will be allotted/possession handed over on the price which will be fixed by the Board as per the pricing list on the basis of actual expenses. In view of submissions made above in the reply, present complaint filed by the complainant is liable to be dismissed in the interest of justice.

5. WRITTEN SUBMISSIONS IN COMPLIANCE OF ORDER DATED
08.12.2025 - APPLICATION FILED BY RESPONDENT ON
16.12.2025-



- In this application, respondent reiterated the above mentioned facts which were mentioned in his reply.

6. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

During the course of hearing Ld counsel for the complainant reiterated the facts of the complaint and requested the Authority to grant the relief of refund of ₹1,99,000/- along with interest. Ld counsel for respondent reiterated the pleadings mentioned in the reply.

6. ISSUE FOR ADJUDICATION

Whether the complainant is entitled to refund of the amount deposited by his along with interest in terms of Section 18 of Act of 2016?

7. OBSERVATIONS OF THE AUTHORITY

After taking into consideration the facts and circumstances of the case and arguments put forth by both the parties and judgements referred by the complainant, Authority observes that following issues need to be decided by this Authority.

- (i) **Firstly, whether the present complaint is maintainable before the Authority or not?** In this regard the Authority observes, it needs to be examined whether respondent (Housing Board Haryana) falls under the definition of promoter provided in RERA Act, 2016 and whether there exists a relationship of allottee and promoter between



the complainant and respondent. For this purpose, the definition of "promoter" under section 2(zk) needs to be perused. Definition is provided 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 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.

Plain reading of the definition given under section 2(zk) makes it clear that any development authority in respect of allottee of building/apartment, as the case may be, constructed by such authority for sale is a promoter in respect of allottees of those buildings/apartments. Here, Housing Board Haryana is a Development Authority and has issued an allotment letter to complainant on 19.02.2018 and issued provisional registration number 64 and final registration number 64 at Barhi, Sonipat. Hence, Housing Board is covered under the definition of promoter under section 2(zk).

- (ii) The flat was allotted by the respondent to the complainant-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 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:

As per Section 2(zj) & (zn) of the RERA Act. "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 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 above sections shows that Housing Board Haryana is a promoter in respect of allottees of flats sold by it in its real estate project and therefore, 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. Furthermore, the preamble of RERA Act, 2016 provides as under.

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;

The RERA 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 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. Therefore, the Authority has jurisdiction to decide the present matter.

(iii) **Second issue arises with respect to jurisdiction of Authority being hit by 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 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"*

- (iv) Next objection raised by the respondent is 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 'on going 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 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

- (v) **Next objection is 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 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 the 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 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.

(vi) Next issue is whether the complainant is entitled for refund or not?

In this regard, it is an admitted fact that complainant had applied for allotment of flat under a scheme floated by respondent in 2010. Said scheme was aimed at providing houses to industrial workers. The price of the house in the advertisement given by the respondent was ₹7.90 lacs. A person applying under the scheme was required to pay 10% of the total price as booking amount. The complainant after adjudging her own financial position and capability to purchase house at the quoted price, had applied in response to respondent's advertisement. The respondent within a reasonable time of booking was expected to disclose the exact price of house to the complainant and also to complete all necessary steps for delivering possession of the purchased unit. After collecting money from the complainant, the respondent was not expected to prolong the completion of the project unreasonably or even to demand double the sale price of the house because such conduct on his part was bound to frustrate the very benevolent purpose with which the scheme was formulated for industrial workers. The government provides flats under such schemes at subsidized rates and also facilitates arrangement of loan at subsidized rate to allottees of such scheme. The



whole idea is to squeeze the sale price of flats to a level within the reach of industrial workers. How can the respondent then be allowed to render the allottees of such a scheme to face a situation where it becomes practically impossible for them to purchase the house at the rate double than for which they had agreed to purchase it.

- The respondent in present case has not completed the project within a reasonable time and has disclosed the exact price of the house to the complainant after 8 years of the launching of the project. The respondent has been utilizing an amount of ₹1,99,000/-, already paid by the complainant, for all these years without paying any interest. Such conduct of the respondent being unreasonable and unconscionable cannot be legally sustained.
- No doubt that there are bye laws of the respondent board which provides for deduction of 50% of the amount paid at the time of registration, in case an allottee wants to withdraw from the project/does not take possession within 30 days of offer of possession, but the principle so enshrined in bye laws, in considered opinion of the Authority, will be applicable only in those cases where there is no default on the part of respondent board in discharging its obligation towards allottees. The respondent Board cannot be allowed to take shelter of such bye laws for deduction of 50% of said amount in case of an allottee for whom the



respondent himself has created circumstances rendering him practically unable to bear the cost of the house. The present case falls in this category because the respondent due to his own negligent act has created such circumstances. So, the Authority finds it a fit case for refund of paid amount without any deduction.

- Further, Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*" in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

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



project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

The decision of the Hon'ble Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be a fit case for allowing refund in favour of complainant.


(vii) The definition of term 'interest' is defined under Section 2(z) 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;



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

"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%; Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".

(ix) Complainant in its complaint has sought refund of paid amount with interest @18%. It is pertinent to mention here that the legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

(x) It is pertinent to mention that complainant had paid an amount of ₹79,000/- on 19.03.2010 and ₹1,20,000/- on 28.08.2010, total amount comes to ₹1,99,000/-. Therefore, Authority deems it fit to adjudicate on amount of ₹1,99,000/- as claimed by complainant.



(xi) 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 12.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2%, i.e., 10.80.

(xii) From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainant is entitled for refund along with interest. Thus, respondent will be liable to pay the complainant, interest from date of payments till the actual realization of the amount. Authority has got calculated the total amount along with interest as per detail given in the table below:

Sr.no.	Principle amount	Date of payments	Date of order	Interest from date of payments till date of order
1.	₹79,000/-	19.03.2010	12.01.2026	₹1,35,086/-
2.	₹1,20,000/-	28.08.2010	12.01.2026	₹1,99,442/-
	Total= ₹1,99,000/-			Total= ₹3,34,528/-

Therefore, total amount to be refunded to the complainant =

₹1,99,000/- + ₹3,34,528/- = ₹5,33,528/-

(xiii) Further, the complainant is seeking compensation on account of mental harassment caused to the complainant and litigation expenses.

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.

8. DIRECTIONS OF THE AUTHORITY-

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

- (i.) Respondent is directed to refund the entire paid amount of ₹1,99,000/- deposited by the complainant along with interest of ₹3,34,528/- to the complainant as specified in the table (provided in page 41) of this



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

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

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



.....
NADIM AKHTAR
[MEMBER]