



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	359 of 2022
Date of filing:	28-02-2022
First date of hearing:	05-04-2022
Date of decision:	22-01-2026

Manju Bhatia W/o Sanjay Bhatia,
R/o H. No. A-155, New Friends Colony,
New Delhi- 110025

.....COMPLAINANT

Versus

- Astrum Value Homes Private Ltd through its Managing Director**
Registered office at Unit No. 405 A, 4th floor, Tower B, Unitech
Business Park, Sector-41, Gurugram, Haryana- 122001
- Stanza Developers and Infrastructure Private Limited through its
Managing Director**
Registered office at 189, Tarun Enclave, Pitampura, Delhi-110034
- Samakshi Bhatia W/o Late Atit Bhatia,
R/o H. No. E-35, Ranjit Avenue, Amritsar, Punjab- 143001
- Samarveer Bhatia (minor) through Samakshi Bhatia (mother)
S/o Late Atit Bhatia R/o H. No. E-35, Ranjit Avenue,
Amritsar, Punjab- 14300

.....RESPONDENTS

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CORAM: **Parneet S Sachdev** **Chairman**
Nadim Akhtar **Member**
Dr. Geeta Rathee Singh **Member**

Present: - Ms. Nectu Singh, Id counsel for the complainant through VC,
None for the respondents.

ORDER (PARNEET S SACHDEV- CHAIRMAN)

1. Present complaint has been filed on 28-02-2022 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 fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	I.a Regencia Phase-II
2.	Name of the promoter	Astrum Value Homes Private Limited and

		Stanza Developers and Infrastructure Private Limited
3.	RERA registered/not registered	Registered
4.	Unit no.	G-202,2nd floor, Tower Galleon in "La Regencia"
5.	Unit area	Super area of 1693 sq. feet (as per Apartment Buyer's Agreement)
6.	Date of allotment	31.05.2013
8.	Date of builder buyer agreement	12.08.2014
9.	Due date of offer of possession	12.02.2017 (30 months from execution of ABA)
10.	Possession clause in BBA	<i>clause 4.1: Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of said building/said apartment not later than 30 months from the date of execution of this Agreement unless there is delay or failure due to reasons mentioned in clause 3.4 and 3.5 or due to failure of the Allottee to pay in time the price of the Said Apartment along with all other charges and dues in accordance with Schedule of Payments or as per demands raised by the Company from time to time or any failure on the part of Allottee to abide by any of</i>

		<i>the terms and conditions of this Agreement.</i> ”
11.	Total sale consideration	₹54,17,600/- (as per BBA)
12.	Amount paid by complainant	₹48,86,663/- (as per ledger attached on page no. 24 of reply)
13.	Offer of possession (lit-out)	No

B. FACTS AS STATED BY THE COMPLAINANT

3. Facts of the case are that on 28.03.2017, the original allottee, Mr. Atit Bhatia, passed away leaving behind his wife (impleaded as pro-forma respondent no.1), his minor child (impleaded as pro-forma respondent no.2), and his mother, who is the complainant herein. The present complaint is being filed through the mother, who is a Class-I legal heir of the deceased in terms of sections 8 and 14 read with Schedule I of the Hindu Succession Act, 1956. The death certificate dated 31.03.2017 bearing registration no. MCDOLIR-0217-004870972 is annexed as **Annexure C-1**.
4. That the deceased son of the complainant was a resident of New Delhi and, relying upon the assurances and representations made by the respondents and their officials, invested his hard-earned money in the project floated by the respondents.
5. That on the representations that the project would be fully developed and possession would be offered within 2-3 years, the deceased son of the complainant booked an apartment bearing no. G-202, situated on

the 2nd floor of Tower Galleon in the project "La Regencia", Sector-19, Panipat, Haryana, on 01.11.2012. The allotment letter dated 31.05.2013 is annexed as **Annexure C-2**.

6. That despite receiving a sum of ₹16,75,000/- by the year 2014, amounting to approximately 31% of the total sale consideration, the respondents failed to execute the apartment buyer's agreement, and the same was executed only on 12.08.2014 after repeated follow-ups by the deceased allottee.
7. That as per the buyer's agreement dated 12.08.2014, the basic sale price of the apartment was fixed at ₹54,17,600/-, out of which an amount of ₹53,86,653/- had already been paid by the deceased son of the complainant. Copies of the buyer's agreement and ledger dated 25.06.2020 are annexed as **Annexure C-3** and **Annexure C-4** respectively.
8. That it is a matter of record that the deceased son of the complainant paid all instalments strictly in accordance with the demands raised by the respondents.
9. That the project remained stalled for a considerable period and construction commenced only after the intervention of this Hon'ble Authority, and due to the said reason no demand notices were raised by the respondents after 22.12.2015.



10. That the complainant has serious apprehension that the amounts collected from the deceased allottee were misappropriated by the respondents, resulting in inordinate delay in completion of the project.
11. That as per clause 4.1 of the buyer's agreement, possession of the apartment was to be offered within 30 months, which, without prejudice, even as per the executed agreement expired on 12.02.2017, and possession has not been offered till date.
12. That the buyer's agreement contains unilateral and arbitrary clauses whereby the respondents are entitled to charge interest at the rate of 18% on delayed payments by the allottee, whereas for their own delay they have limited their liability to a nominal compensation of ₹5 per sq. ft. per month.
13. That such one-sided clauses clearly demonstrate the unfair trade practice adopted by the respondents, who have failed to honour their contractual obligations and have caused undue harassment to the complainant.
14. That the respondents have acted in a pre-planned manner to collect monies from innocent allottees without any intention to deliver possession within the promised time.
15. That due to failure of the respondents to hand over possession within the stipulated period, the complainant is entitled to seek refund of the amount deposited along with interest under section 18 of the Real

Estate (Regulation and Development) Act, 2016. The cause of action is continuing as the respondents have failed to deliver possession of the developed apartment till date.

16. That the deceased son of the complainant invested his lifelong savings in the project based on assurances of the respondents, but the respondents have failed to utilise the funds for timely development of the project, thereby causing mental and financial hardship to the complainant.
17. That it has come to the knowledge of the complainant that the respondents floated the project without obtaining necessary statutory approvals, for which they are liable to face strict penal consequences under law. The respondents have miserably failed to complete the project in a time-bound manner, causing immense mental agony and financial loss to the complainant.
18. That the apartment was booked by the deceased allottee for his own residential use, and since possession was not offered during his lifetime, the very purpose of the investment stands defeated.
19. That due to the prolonged delay and changed circumstances, the complainant is no longer interested in taking possession of the apartment and seeks refund of the amount deposited along with interest, to be distributed amongst the legal heirs of the deceased in accordance with law.



20. That no other complaint or proceedings regarding the subject matter of the present case have been filed by the complainant before any other court or authority.

C. RELIEFS SOUGHT

21. Complainants in their complaint have sought the following reliefs :

- i. To refund the amount of Rs.53,86,653.00 along with prescribed rate of interest from the dates of respective deposits till the date of refund;
- ii. To place on record all the statutory permissions and proofs of statutory deposits like E.D.C/L.D.C etc. and proper utilization proof of the sale consideration received from the complainants/collected from the complainants and in case of any default, financial forensic audit may kindly be ordered against the respondents in terms of the powers vested in this Hon'ble Authority under Section 35, 36 and 37 of Real Estate (Regulation and Development) Act, 2016;
- iii. To grant relief of compensation of Rs.5,00,000.00 for causing immense harassment, mental agony and undue hardships suffered by the complainants or in alternative this Hon'ble authority may kindly refer the claim for compensation to the appropriate forum/authority in accordance with law;

- iv. Declare the terms and conditions of the Buyer's Agreement as null and void to the extent the same are in conflict with modal agreement for sale provided by the Haryana Real Estate (Regulation and Development) Rules, 2017;
- v. To pass any other order and/or relief in favour of Complainants as the Hon'ble Authority may deem fit and appropriate, in the interest of justice;
- vi. To grant liberty to amend, modify or claim alternative relief if so, required at a later stage.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 1&2

Earned counsel for the respondents filed reply on 19.01.2023 on behalf of respondent no.1 and 2 pleading therein:-

22. That the present complaint is frivolous, misconceived, and devoid of any merit and has been filed with the sole intention to harass the respondents, abuse the process of law, and seek unjust enrichment. All averments made in the complaint are specifically denied except those expressly admitted herein.
23. That the complainant has approached this Authority seeking refund along with interest and compensation, which clearly demonstrates that the complainant is not interested in taking possession of the apartment and is attempting to derive commercial gains under the garb of the present complaint.



24. That the respondents are reputed real estate developers and have successfully developed and delivered multiple projects across the country. Due to their consistent quality, work ethics, and timely delivery, the respondents enjoy a respectable standing in the real estate sector. It was owing to this reputation that the complainant voluntarily invested in the project "La Regencia", Sector-19, Panipat, Haryana.
25. That the present complaint is not maintainable before this Authority as the apartment buyer's agreement was executed on 12.08.2014, much prior to the enforcement of the Real Estate (Regulation and Development) Act, 2016. The provisions of the Act cannot be applied retrospectively to agreements executed prior to its commencement.
26. That without prejudice, even if this Authority assumes jurisdiction, the rights and obligations of the parties must be adjudicated strictly in accordance with the terms and conditions of the apartment buyer's agreement, which was entered into consciously, voluntarily, and with free consent.
27. That the complainant has not approached this Authority with clean hands and has deliberately concealed material facts, including repeated defaults in making timely payments as per the agreed payment plan. The complainant cannot be permitted to take advantage of his own defaults. The ledger account reflecting the defaults is annexed as **Annexure R-2**.



28. That the complainant remained silent during the alleged period of delay and chose to file the present complaint only after construction of the project was resumed and further demands were raised. Such conduct disentitles the complainant from seeking any equitable relief.
29. That the complainant is a speculative investor who, due to adverse market conditions, has failed to honour payment obligations and has now sought refund merely as an afterthought to evade contractual commitments. The complaint is not maintainable as multiple reliefs arising out of the same cause of action have been sought, which is impermissible under law. The prayers are contradictory and liable to be rejected. That this Authority, while adjudicating the complaint, must consider the interest of all allottees of the project. Granting refund to individual complainants would seriously jeopardise the interests of other allottees and the overall viability of the project.
30. That the complaint is barred by delay and laches. The complainant was fully aware that possession was to be offered within 30 months from the date of execution of the buyer's agreement, subject to timely payments and force majeure conditions, and having accepted the same, cannot now raise belated objections. That the complaint is further barred by the principle of acquiescence, as the complainant executed the buyer's agreement without any protest and is bound by its terms.

31. That the complainant has falsely alleged misappropriation of funds while suppressing the fact that this Authority, in a bunch of matters led by Complaint No. 88 of 2018 titled Suman Bansal & Ors. vs. Astrum Value Homes Pvt. Ltd., has categorically observed that funds were not siphoned away and that refund would adversely affect the interests of the majority of allottees.
32. That pursuant to the directions of this Authority, the respondents infused more than ₹25 crores into the project and opened an escrow account, as directed, resulting in substantial progress and completion of major portions of the project.
33. That the tower in which the complainant's apartment is located has been completed and the apartment is ready for delivery. The respondents attempted to initiate the pre-delivery inspection process, however, the legal representatives of the deceased allottee were required to furnish succession-related documents to complete formalities. A copy of the final demand letter is annexed as **Annexure R-3**.
34. That the respondents commenced construction of the project prior to the enactment of the RERA Act, which came into force on 01.05.2017, and the Haryana Rules on 28.07.2017. The Act operates prospectively, as settled by judicial precedents including CIT vs. Vatika Township (P) Ltd. and Neelkamal Realtors Suburban Pvt. Ltd. vs. Union of India. The



retrospective application of the Act would cause grave hardship and financial distress, not only to the respondents but also to the allottees whose interests are equally required to be safeguarded.

35. That the project suffered delays due to force majeure circumstances including COVID-19 disruptions, regulatory stoppages imposed by statutory authorities, severe market slowdown, and widespread defaults by allottees in making payments. Despite these constraints, the respondents ensured payment of all statutory dues including EDC, IDC, and other government levies and continued construction through their own resources and borrowings.
36. That the complainant has failed to place on record any cogent documentary evidence to substantiate the allegations levelled against the respondents and no cause of action survives in favour of the complainant.
37. That the present complaint is barred by limitation, is not maintainable under law, and this Authority lacks jurisdiction to entertain the principal relief of refund sought by the complainant.
38. That in view of the foregoing submissions, the present complaint deserves to be dismissed with costs as being frivolous, vexatious, and an abuse of the process of law.



**E. REJOINDER SUBMITTED ON BEHALF OF THE
COMPLAINANT**

Ld. counsel for the complainant has submitted the rejoinder to the reply filed by the respondents on 19.04.2023 pleading herein:-

39. That the present rejoinder is filed by the complainant, mother and legal heir of late Sh. Atit Bhatia, reiterating and reaffirming all averments made in the complaint. All statements, allegations, and submissions made by the respondents in their reply, save and except those expressly admitted, are categorically denied as false, misleading, and untenable.
40. That the respondents have admittedly failed to offer possession of the allotted apartment within the stipulated period under the apartment buyer's agreement dated 12.08.2014. The continued failure to hand over possession, even after expiry of the contractual timeline, has constrained the complainant to seek refund of the amount deposited along with statutory interest.
41. That the respondents have failed to place on record any valid occupation certificate or completion certificate for the project. In the absence of the occupation certificate till date, there exists no valid or lawful offer of possession, and therefore the complainant's right to seek refund under section 18 of the Real Estate (Regulation and Development) Act, 2016 remains absolute and enforceable.



42. That the objection of the respondents regarding non-applicability of the RERA Act is legally misconceived. It is a settled position of law that all ongoing projects for which occupation certificate had not been obtained as on the date of enforcement of the Act are governed by the provisions of RERA, irrespective of the date of execution of the buyer's agreement.
43. That the allegation that the complainant is a speculative investor or was never interested in possession is baseless and unsupported by any documentary evidence. The apartment was booked for residential purposes, and it is only due to inordinate delay of more than six years that the complainant has exercised her statutory right to seek refund.
44. That the respondents' plea of delay, laches, waiver, or acquiescence is wholly untenable, as the cause of action is continuous in nature owing to persistent failure of the respondents to deliver possession within the agreed timeline. Mere passage of time does not extinguish the statutory rights conferred upon an allottee under section 18 of the Act.
45. That the respondents cannot take shelter under force majeure circumstances such as COVID-19, as the due date of possession had already expired much prior thereto. Similarly, regulatory stoppages or market conditions cannot absolve the respondents of their contractual and statutory obligations.



46. That reliance placed by the respondents on selective portions of earlier orders of this Hon'ble Authority is misplaced. In the present case, the respondents themselves have admitted that the occupation certificate was applied for only in March 2021 and has not been obtained till date, thereby rendering the alleged readiness of the apartment illusory and legally unsustainable.
47. That the complainant has made all payments as per the demands raised by the respondents, which is evident from the ledger already placed on record. The delay in completion of the project is solely attributable to the respondents and not to the complainant.
48. That the Hon'ble Supreme Court in *M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. & Anr.* has categorically held that the right of an allottee to seek refund under section 18 of the Act is an unqualified and unconditional right once the promoter fails to deliver possession within the stipulated time.
49. That the respondents' contention that refund would adversely affect other allottees or project viability cannot override the statutory mandate of the Act, which prioritises protection of individual homebuyers against prolonged delays.
50. That the present complaint is well within limitation, the cause of action is continuing, and this Hon'ble Authority has complete jurisdiction to

entertain and decide the complaint as the project is situated in Sector-19, Panipat, Haryana.

51. That in view of the admitted delay, absence of occupation certificate, and settled legal position, the complainant is fully entitled to refund of the deposited amount along with interest at the prescribed rate, and the reply filed by the respondents deserves outright rejection.

F. REPLY SUBMITTED ON BEHALF OF PRO-FORMA RESPONDENT NO. 3 & 4

I.d. counsel for pro-forma respondent no. 3 & 4 has submitted reply to the complaint on 17.07.2025 pleading herein:-

52. The proforma respondent no. 3, Mrs. Samakshi Bhatia, is the wife of late Mr. Atit Bhatia, and proforma respondent no. 4, Master Samarveer Bhatia, is their minor son. The complainant is the mother of late Mr. Atit Bhatia and the grandmother of proforma respondent no. 4. During his lifetime, late Mr. Atit Bhatia, along with his wife, purchased flat no. G-202, situated on the 2nd floor of Tower Galleon in the project "La Regencia" at Sector-19, Panipat, Haryana, developed by the respondents. The husband and wife together paid an amount of ₹ 53,86,653/- out of the total sale consideration of ₹ 54,17,600/-, as recorded in the Buyer's Agreement dated 12.08.2014 and the ledger annexed with the complaint.

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53. The respondents failed to hand over possession of the said apartment within the stipulated period of 30 months, which expired on 12.02.2017. Despite almost complete payment, the construction of the project remained stalled for a considerable period and resumed only after the intervention of the Hon'ble Authority. After the demise of late Mr. Atit Bhatia on 28.03.2017, his mother, wife, and son became Class-I legal heirs in terms of Section 8 read with Schedule I of the Hindu Succession Act, 1956.
54. Since the respondents have failed to deliver possession even after lapse of several years, the proforma respondents no. 3 & 4 are no longer interested in taking possession of the apartment and support the prayer made by the complainant seeking refund of the entire amount deposited along with the prescribed rate of interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016.
55. It is further submitted that the refund amount, when ordered, may be distributed equally among the three legal heirs- mother, wife, and minor son of the deceased. However, as the minor son Samarveer Bhatia resides with his mother, his share may be released in favour of his mother, Mrs. Samakshi Bhatia, for his welfare and maintenance, whereas the complainant's share may be released directly to her. The proforma respondents, therefore, fully support the complaint and pray that the amount invested by late Mr. Atit Bhatia be refunded with due



interest since the respondents have defaulted in completing the project and failed to honour their contractual obligations.

G. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

56. During oral arguments in the previous hearings, learned counsel for the complainant reiterated the submissions as stated in the complaint. Today, no one appeared on behalf of the respondents but ld. counsel for the respondent no.1& 2 also reiterated the contentions during previous hearings, as stated in the reply filed in the Authority. Similarly, ld. counsel for proforma respondent no.3 & 4 reiterated the arguments as mentioned in the reply submitted on behalf of the proforma respondents.

H. OBSERVATIONS AND DECISION OF AUTHORITY

57. It is clarified that the present order is being passed against both Respondent No. 1 and Respondent No. 2, who are held jointly and severally liable towards the complainant in the present case. This conclusion is drawn in view of the fact that the reply dated 19.04.2023 has been filed on behalf of both Respondent No. 1 and Respondent No. 2, wherein the receipt of payments has been admitted collectively on their behalf. Furthermore, the Board Resolution authorising such representation, on behalf of both the respondents, has been duly



annexed with the said reply as Annexure R-1, thereby clearly establishing their joint participation and liability in the matter.

58. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that respondents have taken the following objections w.r.t maintainability of the complaint :

- i. Respondents have raised an objection that provisions of RERD Act, 2016 are applicable with prospective effect only and therefore same were not applicable as Apartment Buyer's Agreement entered in the year 2014 for apartment bearing no. G-202, in residential project of the company under the name "La Regencia" at sector-19, Panipat. Authority observes that regarding operation of RERD Act, 2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in *Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others.*

Relevant part is reproduced below for reference:-

"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 preexisting 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."

- ii. Furthermore, the respondents in their reply have contended that the complainant is "speculative buyer" who has invested in the project for monetary returns and taking undue advantage of RERD Act, 2016 as a weapon during the present down side conditions in the real estate market and therefore he is not entitled to the protection of the Act of 2016. In this regard, Authority observes that as per section-31 of the RERD Act, 2016



"any aggrieved person" can file a complaint against a promoter, if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainant is an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term "allottee" under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:

(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;

In view of the above-mentioned definition of "allottee" as well as upon careful perusal of Apartment Buyer's Agreement dated 12.08.2014, it is clear that complainant is an "allottee" as apartment no.G-202, in residential project named: "La Regencia" at sector-19, Panipat was allotted to her by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there are definitions of



“promoter” and “allottee” only. Further, the definition of “allottee” as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.* had also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of promoter that allottee being investor is not entitled to protection of this Act also stands rejected.

- iii. Respondents have taken a plea that complaint is time barred by Limitation Act, 1963. In this regard, it is observed that since the promoter till date has failed to fulfil its obligations to hand over the possession of the booked apartment in its project as per apartment buyer agreement, the cause of action is re-occurring and the ground that complaint is barred by limitation stands rejected. Further, the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** has held that the Limitation Act applies only to courts and not to the tribunals. Relevant para is reproduced herein:



"19. 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."

RERD is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963, thus, would not be applicable to the proceedings under the RERD Act, 2016 as the Authority established under the Act is a quasi-judicial body and not a Court.

In view of the aforesaid observations there remains no doubt that the complaint is maintainable as per provisions of RERD Act, 2016 and the Authority has complete jurisdiction and mandate to adjudicate the same on merits.

Admittedly, complainant had booked apartment in the project of respondents and thereafter apartment buyer agreement was executed between the parties on 12.08.2014 against the total sale consideration of ₹54,17,600/-. Out of which paid amount is ₹48,86,663/-, and last payment of ₹2,42,978/- was made to the respondent on 19.06.2020 whereas fact remains that no offer of possession of the booked apartment has been made till date. With respect to status of handing over of possession, no clear or categorical stand has been taken with regard to completion of the

project. The respondents have neither asserted that the project has been completed nor placed on record any documentary evidence such as a Completion Certificate or Occupation Certificate to substantiate completion. Hence, no definite date of offer of possession is known.

- iv. In regard to delay caused, respondents had taken plea that delay is caused due to circumstances beyond its control and other intervening factors. The respondents have taken the plea that the delay was not deliberate and has attempted to explain the same on general grounds, without admitting any wilful default. However, the respondents have failed to place on record any cogent material or documentary evidence to substantiate such explanations or to justify the prolonged delay in offering possession in accordance with the terms of the Apartment Buyer's Agreement. However, it is matter of record, as per customer ledger attached at page no.24 of reply (Annexure R-2) that complainant had paid total amount of ₹48,86,663/- to the respondents, as and when demanded. Authority observes that respondents are not able to prove or substantiate with proof that complainant had made default in payments. Therefore, this plea of respondents stand rejected.



v. Also, respondents had taken plea that project was not completed on time due to some force majeure conditions mainly Covid-19. Authority observes that deemed date of possession in present case as per clause 4.1 of buyer agreement is 12.02.2017. Therefore, question arises as to whether any situation or circumstances which could have happened prior to this date due to which the respondents could not carry out the construction activities in the project can be taken into consideration? Also, as to whether the said situation or circumstances were in fact beyond the control of the respondents or not? The obligation to deliver possession within a period of 30 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondents & the reason given by the respondents is ceasement of construction activities during the COVID-19 period. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since september, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same,

the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

Respondents were liable to complete the construction of the project and the possession of the said unit was to be handed over by February, 2017. Respondents are claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself. To conclude, Authority observes that mere averment of force majeure without any relevant proof of the same for causing delay in offering the possession is not sufficient to justify the delay caused.

- vi. Authority observes that the builder buyer agreement was executed between the parties on 12.08.2014 and as per clause 4.1, the possession was to be delivered upto 12.02.2017. Fact remains that possession has not been offered to complainant till date. In present situation, it is apparent that respondents failed to honour its contractual obligations without any reasonable justification. Facts also remains that complainant-allottee has duly paid the

demanded amount to the respondent to the tune of ₹48,86,663/- for the booked apartment. As per Section 18 of the RERA Act, 2016, if the promoter fails to complete or give possession of an apartment, plot or building in accordance with terms of agreement for sale or as the case may be, duly completed by the date specified therein, the allottee may demand the refund of amount paid and in case the allottee do not wish to withdraw from the project, then he shall be entitled to interest for every month of delay till handing over of possession. Perusal of the pleadings of the complainant and the reply filed by the pro-forma respondent no.1 & 2, it is clear that the complainant and the other legal-heirs of the allottee (Atit Bhatia) are interested to withdraw from the project and has clearly demanded refund.

59. Thus, the Authority finds it a fit case to allow refund along with prescribed rate of interest as possession has not been offered till date. Respondent has also expressed its inability to offer possession. Therefore, the Authority holds that as per section 18(1) the complainant-allottee is entitled to refund of the amount paid along with interest. Section 18(1) of the RERA Act of 2016 is reproduced below:

18. (1) 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.

60. As per Section 18 of the Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HIRERA 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 (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".

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. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 22.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.

61. 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;

62. Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant, the paid amount of ₹48,86,663/- with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and

Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2% which as on date works out to 10.80% (8.80% + 2.00%) from the date amounts were paid till the actual realization of the amount.

63. It is pertinent to note that during the course of oral arguments, a query was raised to the learned counsel for the complainant regarding the discrepancy between the dates and amounts reflected in the ledger annexed with the complaint and the ledger filed by the respondent at Annexure R/2 of the reply. It was observed that there was a slight variation in the dates and amounts mentioned in the two ledgers. Upon such query, the learned counsel for the complainant agreed to rely upon and consider the ledger annexed at Annexure R/2 of the reply for the purpose of calculations. Accordingly, all calculations in the present matter have been carried out on the basis of the ledger placed at Annexure R/2, page 24 of the reply.
64. Authority has got calculated the total amount along with interest calculated at the rate of 10.80% till the date of this order and said amount works out to ₹1,07,27,297/- as per details given in the tables below:



Sr. No.	Principal Amount	Date of payment	Interest Accrued till 22.01.2026
1.	4,00,000	11.12.2012	5,67,044
2.	5,00,000	03.08.2013	6,74,038
3.	2,75,000	16.12.2013	3,59,736
4.	10,59,000	08.05.2014	13,40,503
5.	5,49,786	23.01.2015	6,53,634
6.	5,49,774	24.03.2015	6,43,859
7.	7,48,726	10.08.2015	8,46,064
8.	5,61,399	11.01.2016	6,08,803
9.	2,42,978	19.06.2020	1,46,953
3.	Total= 48,86,663/-		Total= ₹/-58,40,634
	Total Payable to the complainant & legal heirs.	48,86,663+5840634	₹1,07,27,297/-

65. Moreover, the Authority places reliance upon paragraph 16 of the judgment dated 30.01.2025 passed by the learned Succession Court, as placed on record by the learned counsel for the complainant vide application dated 25.03.2025. Paragraph 16 of the said judgment, which has been duly perused, records as under:

"Perusal of legal heir report of deceased Ex.RW-1/1 shows that Smt. Manju Bhatia (petitioner, mother), Smt. Samakshi Bhatia (respondent no.2, wife) and Master Samarveer Bhatia (respondent no.3, son) are the only Class-I legal heirs of Late Sh. Atit Bhatia. Further, no one came forward to oppose issuance of succession certificate despite publication in newspaper."

66. In view of the above finding of the Succession Court, it stands conclusively established that the complainant, being the mother of the deceased allottee, Respondent No. 3, being the wife of the deceased allottee, and Master Samarveer Bhatia (respondent no.4), being the minor son of the deceased allottee, are the only Class-I legal heirs of Late Sh. Atit Bhatia. This clearly demonstrates that all the said legal heirs are entitled, in equal capacity, to the refund amount arising out of the present proceedings.
67. Further, the learned counsel for Respondent Nos. 3 and 4 has placed reliance upon the succession certificate, which has been issued in favour of the said legal heirs, wherein it is specifically recorded that *"succession certificate issued in favour of Smt. Manju Bhatia, Smt. Samakshi Bhatia and Master Samarveer Bhatia for 1/3 share each qua the debts and securities of Late Sh. Atit Bhatia...."*
68. Accordingly, the Authority observes that all the Class-I legal heirs of the deceased allottee are equal and rightful holders of the refund amount, each being entitled to an equal share therein, in accordance with law.
69. Relief under clause (ii) is not pleaded by the complainant in pleadings nor argued at the time of hearing. Therefore, plea regarding this relief is rejected.

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70. The complainant is seeking compensation vide relief clause (iii) on account of rent paid by the complainant from the date when the possession of unit got due, mental agony, undue hardship, cost of litigation and harassment caused for delay in possession. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are free to approach the Adjudicating Officer for seeking the relief of litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

71. 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) The Respondent No. 1 and Respondent No. 2 are hereby directed, being jointly and severally liable, to refund the entire amount paid by the deceased allottee towards the apartment in question, along with interest at the prescribed rate, to the complainant and the proforma respondents, who are the Class-I legal heirs of the deceased allottee, in equal shares. The refund amount and interest thereon shall be disbursed in accordance with the entitlement of each legal heir, as determined hereinabove. The calculation of the refundable amount and interest has been carried out in para 62 of this order. It is further clarified that Respondent No. 1 and Respondent No. 2 shall remain liable to pay interest on the refundable amount till the date of actual realization thereof.
- (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.

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



DR. GEETA RATHEE SINGH
[MEMBER]



NADIM AKHTAR
[MEMBER]



PARNEET S SACHDEV
[CHAIRMAN]

