



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of Decision

23.02.2026

Name of the Builder		M/s Green Space Infraheights Private Limited		
Project Name		Shree Vardhman Green Space		
Sr. no.	Complaint no.	Title of the case	Appearance on behalf of complainant	Appearance on behalf respondent
1.	785 of 2024	Shakuntla Malik and Shiv Malik R/o House no. 91, Sector-9, Urban Estate HUDA, Ambala, Haryana. Vs. Green Space Infraheights Pvt. Ltd. 306, 3 rd Floor, Indraprakash Building, 21-Barakhamba Road, New Delhi-110001.	Adv. Hari Om Dhiman	Adv. Vishwajeet Kumar, through VC
2.	786 of 2024	Kamal Malik, D/o Sh. Ashwani Malik, R/o House no. 91, Sector-9, Urban Estate HUDA, Ambala,	Adv. Hari Om Dhiman	Adv. Vishwajeet Kumar, through VC

		Haryana. Vs. Green Space Infraheights Pvt. Ltd. 306, 3 rd Floor, Indraprakash Building, 21-Barakhamba Road, New Delhi- 110001.		
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ORDER (NADIM AKHTAR - MEMBER)

1. This order shall dispose off both the above captioned complaints filed by the complainants before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
2. The core issues emanating from the above captioned complaints are similar in nature. The complainants in the above referred complaints are allottees of the project namely; Shree Vardhman Green Space; being developed by the same respondent/ promoter, i.e., M/s Green Space Infraheights Private Limited in the revenue estate of Village Billah,



Sector-14, Panchkula Extension II, District Panchkula, Haryana governed in terms of the provisions of Affordable Group Housing Policy, 2013 issued by the Government of Haryana. The fulcrum of the issue involved in all the above captioned cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the unit in question and complainant(s) are now seeking possession alongwith delay interest.

3. The details of the above said complaints, unit no., date of allotment letter, date of builder buyer agreement, total sale consideration and amount paid by the complainant, offer of possession and relief sought are given in the table below:

Shree Vardhman Green Space

(Affordable Group Housing Policy, 2013)

Possession Clause 8(a) in Flat Buyer's Agreement:

"Subject to the force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within a period of 4 (four) years from the date of approval of building plan or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date")



Sr. no.	Complaint no./Title/Date of filing	Reply Status	Flat no. and area	Date of execution of flat buyer agreement	Basic sale consideration (BSC) and amount paid by the complainant (Paid amount)	Offer of possession given or not given	Relief sought
1.	785 of 2024 Shakuntla Malik and Shiv Malik Vs. Green Space Infraheights Pvt. Ltd 26.06.2024	Filed on 13.10.2025	0705, 7 th floor, Tower C with carpet area of 478 sq.ft. and balcony area of 100 sq.ft	09.05.2016	TSC: ₹19,62,000/- Paid amount: ₹17,88,976/-	Not given	Possession of flat alongwith delay interest.
2.	786 of 2024 Kamal Malik Vs. Green Space Infraheights Pvt. Ltd 26.04.2024	Filed on 13.10.2025	1204, 12 th floor, Tower D.	21.04.2016	TSC: ₹20,94,000/- Paid amount: ₹17,88,976/-	Not given	Possession of flat alongwith delay interest.

A.COMPLAINT NO. 785 OF 2024 IS TAKEN AS A LEAD CASE AND

BRIEF FACTS OF THIS COMPLAINT ARE AS UNDER:

4. Complainants had made the following submissions in their complaint:
- i. That complainants agreed to buy one flat in the Housing Scheme of the respondent and Flat no. 0705 in Tower C Floor no. 7th having carpet area of 478 sq ft was allotted to the complainants in the draw held on 29.02.2016 for a total sale consideration of ₹19,62,000/-. Complainants paid ₹1,01,656/- on 07.02.2016 towards registration amount. Thereafter

- the developer vide letter no. GSIPL/2015- 2016/333 dated 29.02.2016 had requested to remit an amount of ₹4,06,625/- on or before 15th March 2016. Complainants deposited ₹4,06,625/- towards confirmation/ acceptance amount for the above allotment on 29.02.2016. Copies of the receipt no. 1037 dated 08.02.2016 and receipt no. 1171 dated 14.03.2016 are annexed as Annexure P/4 and P/6 respectively.
- ii. That respondent had demanded and had already received ₹5,08,281/- from the complainants before the agreement was executed on 09.05.2016. Thereafter builder buyer agreement was executed between respondents and the complainants on 09.05.2016. Copy of the Flat Buyer's Agreement is annexed as Annexure P/7.
- iii. That respondent received an excess amount of ₹3,03,497/- before execution of agreement on 09.05.2016 which is against Section 13 of the RERA Act 2016 where only upto 10% of the cost of Flat could be received as advance payment/ application fee by the respondent before entering into written agreement of sale and balance amount was to be received only after execution of the Agreement. The total cost of the flat including taxes comes to ₹20,47,838/-. Thus a sum of $\text{₹}(1,01,656/- + 4,06,625/-) - 2,04,784) = \text{₹}3,03,497/-$ excess amount was got deposited on 05.03.2016 by the respondent before entering into the agreement on 09.05.2016 which is in contravention of section 13 of the RERA Act 2016.



- iv. That as per clause 8(a) of the Builder Buyer Agreement possession of the flat was to be given within 4 years from the date of approval of building plans or grant of environment clearance. It is pertinent to mention here that as per clause C of the agreement, the building plans were approved vide memo no. ZP-1014/AD(RA)/2014/27777 dated 09.12.2014 by Director General, Department to Town & Country Planning, Haryana, Chandigarh in the name of the Developer for construction and development of an affordable Group Housing Colony, as per Affordable Group Housing policy 2013 as amended vide notification dated 22.07.2015 on Project Land. However the respondent has miserably failed to complete the construction of flat/ unit and failed to give the complainants possession of the flat till now.
- v. That respondent was bound to handover the possession by July 25 2019, but despite the regular and timely payments made by the complainants amounting to ₹17,88,976/-, the respondent has miserably failed to complete the construction of Flat C-0705 and failed to give the possession till now. It is submitted that the co-complainant Shiv Malik on January 06.2020 had sent the e- mail to the developer regarding status of construction and had mentioned that he has not received any construction update or possession information from last one year and also let the complainants know the date when the complainants can get possession.



- vi. That the respondent vide mail dated 06.12.2023 addressed to the complainant Mrs. Shakuntla Malik sent the message that the work of Green Space has been started and assured that allotted flat/unit shall be handed over at the earliest with all the basic amenities. Respondent also shared project status through some latest photographs showing status of project at that time, i.e, on 06.12.2023 through e-mail. The photographs show that construction has not been completed as yet as the work was stopped after a few days and the work is lying abandoned and there is no body working at the site of work.
- vii. As far as the last installment of payment is concerned, the respondent has not sent the call notice till date regarding payment, it is because of the fact that the respondent has no intention to complete the construction of the Flat deliberately. The construction of the flat has not been completed even after a period of 4 year of the possession was due and as such the assurance given by the respondent vide his e-mail dated 06.12.2023 is an *expressio falsi* and thus on the part of respondent these are leaves without figs. Copy of e-mail dated 06.12.2023 and copies of photographs showing status of project at that time, i.e, on 06.12.2023 sent through e-mail are annexed as Annexure P/22 and P/23, P/24 respectively.

A handwritten signature in black ink, appearing to be 'L. J. M.' or similar, written in a cursive style.

B. RELIEFS SOUGHT

5. Complainants sought following reliefs :

1. That respondent be directed to handover the possession of the flat C-0705 in tower C in the revenue estate of village Billah, Sector-14, Panchkula Extension II, District Panchkula to the complainants complete in all respects alongwith 24% interest from the date of possession was due to the complainants due to non-delivery of possession of flat till the possession of the flat is given to the complainants alongwith cost of litigation of ₹1lakh.

2. In case the respondent is not in a position to give possession of flat no. 0705 in tower C, then the respondent may please be directed to return the entire paid amount by the complainants with 24% interest from the dates of payment made by the complainants till the dates of realization for not giving the possession of the flat to the complainants as per agreement alongwith cost of litigation ₹1lakh and cost of opportunity 15 lakh.

It is prayed that 24% interest per annum includes not only loss of interest but includes escalation in the cost of construction also.

3. Any other relief, which this Authority may deem fit to be given keeping in view the natural justice.

6. Vide order dated 28.04.2025, complainants were directed to clarify the reliefs. In consonance with this, complainants filed an application dated



28.07.2025 in the registry of the Authority wherein complainants clarified that complainants do not intend to withdraw from the project and prayed that the complainants may be paid interest by the respondent/promoter for every month's delay, till handing over possession at such rates as may be prescribed alongwith amount of arrear of interest due from the date of possession was due.

C. REPLY ON BEHALF OF THE RESPONDENT

7. Respondent has made the following submissions vide reply dated 13.10.2025:

- i. That the complainants had applied with the respondent for allotment of a residential flat in the project of the respondent. That at the time of application, the complainants were made aware of all the necessary particulars of the residential scheme, such as description of land, license and building plans granted/approved by DTCP, Haryana and also, salient terms and conditions on which the allotment was to be made. The complainants were also apprised of the payment plan in accordance to which the complainants were to make payment of the due instalments.
- ii. Complainants were informed by the respondent, vide letter dated 23.02.2016, about the schedule of the draw of lots and were accordingly invited to attend the same. The draw was duly conducted on the specified date, time, and venue in the presence of the requisite officials of the Government of Haryana. That complainants were one of the successful



applicants in the said draw. The respondent vide its letter dated 29.02.2016 intimated the complainants about the allotment of Flat No. C-705 on 7th Floor in Tower-C having carpet area of 478 square feet and balcony area of 100 square feet along with one open parking space for two-wheeler in the said scheme. Subsequently, a Flat Buyer Agreement dated 09.05.2016 was executed between the complainants and the respondent in regard to the said flat upon mutual agreement to the terms and conditions set forth therein. Copy of the Flat Buyer's Agreement dated 09.05.2016 is annexed as Annexure B.

- iii. That the Clause 8(a) of the agreement clearly indicated that the period of 4 years from the date of approval of building plans or grant of environment clearance as mentioned therein was only a tentative period within which the project was estimated to achieve completion. This agreement also clearly indicated that the possibility of delay in completion of the project was well within the contemplation of the parties at the time of entering into the said agreement and the agreement itself contain provision which were to come into play in the event of delay beyond the tentative period of 4 years which clearly indicate that the parties were aware that the period of 4 years was not sacrosanct and there was a possibility of delay also. Furthermore, the tentative period specified in the Clause 8(a) was also subject to certain conditions,



including force majeure, intervention of statutory authorities, and receipt of occupation certificate.

- iv. That the construction and development of the project was stalled on account of various unavoidable circumstances which were beyond control of the respondent company. The company, however, now seeking to make progress with the construction of the project, and has already formulated a scheme for revival of the project. It is highly anticipated that the project would be completed and that possession of the units shall be handed over to all eligible allottees, within a period of next 8 to 10 months. That a major part of the construction work has already been completed. The main structure, external work, and much of the internal work have been finished. The remaining work relates mostly to finishing of internal work. Therefore, only for completion of the project a limited amount of work remains to be done.
- v. That period of four years for offering of possession of the flat in question was a tentative period and the obligation of the respondent to offer possession within that period was subject to various force majeure circumstances and other circumstances impeding the progress of the project in question. Various such force majeure circumstances such as Covid 19 came into play during the course of the development of the project which had a catastrophic effect on the project's cash flow, resources, supply chains, planning etc, because of which the project was



- stuck. The said time period was also subject to timely payments by the allottees of the project, however, a large number of allottees including the complainant in the present case defaulted and /or delayed in making payment of the due instalments which also severely impacted the cash flows which was already under strain because of aforesaid circumstances.
- vi. The period of four years is to be counted from approval of the building plans or grant of environment clearance, whichever is later. In the present case though the building plans was approved on 09.12.2014, however, the environment clearance was granted on 15.03.2016. The said environment clearance required the respondent to obtain the consent to establish/operate from Haryana State Pollution Control Board, which permission was obtained on 12.04.2016. That the period of four years as mentioned in clause 8(a) started ticking on 12.04.2016. Copy of the Environment Clearance dated 15.03.2016 is annexed as Annexure C and a true copy of the consent to establish dated 12.04.2016 is annexed as Annexure D.
- vii. That from January 2020 onwards force majeure situation emerged that made the construction at site impossible for a considerable period of time. The unprecedented situation created by the Covid-19 pandemic resulted in halting all project related activities, including construction, processing of approval files etc. The Ministry of Home Affairs,



Government of India vide notification dated 24.03.2020 bearing no. 40-3/2020-DM-I(A), recognised that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 (twenty) days which started from 25.03.2020. By virtue of various subsequent notifications, the MHA, GOI further extended the lockdown from time to time. Even before the country could recover from the first wave of the pandemic, the second wave of the same struck very badly in the March/April 2021, disrupting all the activities again. Various state governments, including the Government of Haryana had also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, halting all commercial, construction activity. The pandemic created acute shortage of labour and material. The nation witnessed a massive and unprecedented exodus of migrant labourers from metropolitan cities to their native village. In the aforesaid facts and circumstances, it is clear that the respondent has neither indulged into any unfair trade practice nor committed any deficiency in service is committed to handover the possession of the said flat after completing the project expeditiously.

- viii. That complaint is liable to be dismissed for the non-joinder of the lending institution, which is a necessary party. As is evident from the Tripartite Agreement annexed by the complainants themselves, the



purchase of the flat was financed through a loan from Dewan Housing Finance Corporation Ltd. This agreement creates a single, indivisible transaction with interlinked rights and obligations among all three parties- the complainants, the respondent, and the financial institution. The lender's financial stake is directly tied to the performance of the underlying FBA. Therefore, any adjudication or order concerning a dispute from this integrated transaction, even if limited to interest, cannot be passed behind the back of the financial institution. The lender is a necessary party for a complete and final adjudication, and their absence renders the complaint defective and not maintainable.

- ix. That Section 18 of the RERA Act is not applicable in the facts of the present case and complaint deserves to be dismissed. That the operation of Section 18 is not retrospective in nature and the same cannot be applied to the transactions that were entered prior to the RERA Act came into force.
- x. In the present case also, the flat buyer agreement was executed prior to the date when the RERA Act came into force and as such Section 18 of the RERA Act cannot be made applicable to the present case. Any other interpretation of the RERA Act will not only be against the settled principles of law as to retrospective operation of laws but will also lead to an anomalous situation and would render the very purpose of the



RERA Act nugatory. The complaint as such cannot be adjudicated under the provisions of RERA Act.

- xi. That the present complaint includes a prayer where the complainants have sought a sum of ₹15 lacs towards "cost of opportunity", which is a claim for compensation, which is not maintainable before this Hon'ble Authority. It is a settled position of law that the jurisdiction to adjudicate and grant compensation under Sections 12, 14, 18, and 19 of the RERA Act vests exclusively with the Adjudicating Officer. This Hon'ble Authority does not have the jurisdiction to entertain the prayer for compensation. Therefore, the complaints are liable to be dismissed on this ground alone.
- xii. The reliefs sought by the complainants are in direct conflict with the terms and conditions of the flat buyer agreement and on this ground alone the complaint deserve to be dismissed. The complainants cannot be allowed to seek any relief which is in conflict with the said terms and conditions of the agreement. The complainants signed the agreement only after having read and understood the terms and conditions mentioned therein and without any duress, pressure or protest and as such the terms thereof are fully binding upon the complainants.
- xiii. The allegation that the respondent contravened Section 13 of the RERA Act, is legally untenable and misconceived. The said payments of ₹1,01,656/- and ₹4,06,625/-, as well as the execution of the FBA,



occurred well before the substantive provisions of the RERA Act, including Section 13, came into force.

- xiv. The possession due date alleged by the complainants is not correct and is contrary to the clear terms of Clause 8(a) of the FBA. The allegation that the respondent has no intention to complete the construction is strongly denied. The respondent is fully committed to completing the project and has a revival plan in place to offer possession at the earliest. The final call notice was not sent due to the project being stalled by the various circumstances beyond respondent's control, not due to any lack of intent to complete it.

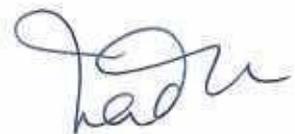
D. REJOINDER FILED BY THE COMPLAINANTS:

8. Complainants had made the following submissions in their rejoinder dated 08.01.2026:
- i. That it stands admitted by the respondent that apartments of predefined size are made available at predefined rates within a targeted time frame but the respondent miserably failed to complete the construction and handover the possession of the allotted flat even after a period of more than six and a half years of the possession was due.
 - ii. That the respondent has taken the absolutely wrong plea as respondent in accordance with clause 8(a) of the FBA was to offer possession of the said flat to the allottee within a period of 4(four) years from the date of approval of building plans or grant of environment clearance. As per



clause C of the agreement, building plans were approved vide memo no. ZP-1014/AD(RA)/2014/27777 dated 09-12-2014 by Director General, Department of Town Country Planning, Haryana Chandigarh in the name of the Developer for construction and development of an affordable Group Housing Colony, as per Affordable Group Housing Policy 2013 as amended vide notification dated 22-07-2015 on the Project Land. As the amended building plans were approved vide notification 22-07-2015, so the possession was to be given by 22-07-2019, i.e., much before the start of Covid-19 and the Covid-19 pandemic emerged from 24-03-2020 as the lock down was started from 24-03-2020, i.e. after about 8 months of the possession was due and there was no Covid-19 pandemic between 22-07-2015 to 22-07-2019.

- iii. The complainants never defaulted in making the payments, rather the complainants made payments regularly as and when call notice/intimation letter was sent by the respondent.
- iv. That the Respondent has miserably failed to complete the construction and to handover the possession of the flat and the respondent wants to take the benefit of his own wrongs which is not permissible as per law and as per terms and conditions of the agreement and the extension of the registration of the project had already been granted by the HRERA Panchkula upto 14-09-2021.



- v. That one of the Directors of Green Space Infraheights Pvt. Ltd. vide his letter no. GSIPL/2025- 26 dated 26-06-2025 Annexure RJ-1, has extended his sincere apologies for the delays and difficulties faced in the delivery of the flat and in the second para has admitted that construction and development of the project were stalled due to internal disputes among the Directors of Green Space Infraheights Pvt. Ltd. which proves that the respondent has given an absolute false and misleading reply before the Hon'ble Authority.
- vi. That the complaint stands submitted in the prescribed proforma as per HRERA Panchkula Notification dated 09-02-2018 and affidavits of verification attached on Page 16 & 17 of the complaint.
- vii. That the purchase of the Flat was financed through a loan from Dewan Housing Finance Corporation Ltd but the whole amount has already been repaid and in this regard "No objection Certificate" had already attached at Page 74, Annexure P/21 of the complaint. As such, the lender is not a party for a complete and final adjudication.
- viii. That the Parliament intended to bring within the fold of the statute the ongoing Real Estate Projects in its wide amplitude used the term "converting & existing building or a part thereof into apartments" including every kind of development activity either existing or upcoming in future under Section 3(1) of the Act. The intention of the legislature by necessary implication and without any ambiguity is to include those



- projects which were ongoing and in cases where completion certificate has not been issued within the fold of the Act. Hence the complaint is very well under all the provisions of the RERA Act.
- ix. That as per Para 1(b) of HRERA Panchkula notification no 333 RERA Panchkula /2018 dated 09.02.2018, *"These regulations are meant to establish procedures for filing and adjudication of complaints relating to real estate projects, and all matters connected therewith or incidental thereof. However separate application will be filed for the purpose of compensation before the Adjudating officer of the Hon"ble Authority."*
- x. That the respondent has miserably failed to comply with the terms & conditions of the F.B.A.
- xi. That respondent indulged in fraudulent practices as mentioned in Section 7(I) (c), Section 7 (I) A(iii), Section 7 (I) B and Section 7 (I) (d) of the RERA Act 2016.
- xii. That delays caused are not due to global force majeure event. Rather the inordinate delay is the result of deficiency, gross negligence and wilful default by the respondent.
- xiii. That in response to Co-Complainant Shiv Malik email dated 06-01-2020, Annexure P/20 Page-73 of the complaint, the respondent vide e-mail dated 06-12-2023, Annexure P/22 Page-75 of the complaint addressed to the complainant Mrs. Shakuntla Malik had sent the message that work of



Green Space has been started and assured that your allotted flat/unit shall be handed over at the earliest with all basic amenities.

9. Complainants had filed written arguments dated 08.01.2026, which are similar to their previously filed rejoinder; therefore, to avoid repetition, these arguments are not being reiterated here.

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT

10. During the course of hearing on 12.01.2026, Counsels argued as under:-

"1. Ld counsel for complainants stated that despite making timely payments respondent failed to deliver the possession of the flat. Therefore, complainants pray for possession of flat alongwith delay possession charges. Further, he stated that in present case, respondent has charged interest @15% p.a for delayed payment which is against the settled principles. That respondent has been enjoying the hard earned money of the complainants for so many years which is a disproportionate gain and unfair advantage on part of the respondent for the default of respondent itself.

2. On the other side, counsel for respondent requested for some time to prepare the written arguments as tripartite agreement is executed between the parties for financing of the unit. Authority directs the ld. counsel for respondent to file the written submissions in this regard on



or before 30.01.2026 so that the same are also taken into consideration by the Authority.

3. As per office record, complainants have filed rejoinder of the reply filed by the respondent and written arguments in the registry on 08.01.2026.”

11. As per office record, no documents have been filed by the respondent till 30.01.2026. Therefore, present complaint is being adjudicated on the basis of documents available on record.

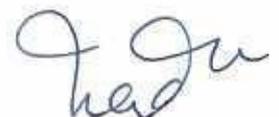
F. ISSUE FOR ADJUDICATION

12. Whether the complainants are entitled to get possession of booked unit alongwith delay interest in terms of Section 18 of RERA Act, 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

13. 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 the parties, Authority observes as follows:

14. Respondent has taken objection that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the case titled **M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra)**, wherein the Hon Apex Court has held as under:-
“41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory



construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case." "45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take



into its fold the pre-existing contract and rights executed between the parties in the larger public interest."

"53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection. 54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."



The provisions of the RERA Act of 2016 are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

15. Admittedly, complainants booked a flat in the real estate project, "Shree Vardhman Green Space" being developed by the promoter namely; Green Space Infraheights Pvt. Ltd and complainants were allotted flat no.0705, 5th floor, Tower C, in said project at sector-14, Panchkula Extension II, District Panchkula, Haryana. The builder buyer agreement was executed between the parties on 09.05.2016. Complainants had paid a total of ₹17,88,976/- against the basic sale price of ₹19,62,000/-. Fact remains that respondent allotted the unit in favour of complainants and as per clause 8 (a) of the agreement respondent was under an obligation to hand over possession to the complainants within 4 years from the date of approval of building plans or grant of environment clearance whichever is later. Relevant clause is reproduced as under :



“Clause 8 (a) “Subject to Force Majeure Circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of instalment of the other charges as per the payment plan, stamp duty and registration charges, the Developer proposes to offer possession of the said flat to the Allottee within a period four years from the date of approval of building plans or grant of environment clearance whichever is later (hereinafter referred to as the "Commencement Date")”

It is on record that respondent/ developer got the environment clearance on 15.03.2016. That means, as per possession clause, a period of 4 years is to be taken from 15.03.2016 and therefore, date of handing over of possession comes to 15.03.2020. Respondent has sought to contend that the deemed date for computation of possession ought to be reckoned from 12.04.2016 on the premise that, pursuant to the Environmental Clearance dated 15.03.2016, it was required to obtain Consent to Establish/Operate from the Haryana State Pollution Control Board, which was granted on 12.04.2016. In this regard, the rights and obligations of the parties are governed by the express terms and conditions of the Builder Buyer Agreement, which are binding upon them. The possession clause unequivocally stipulates that the period for delivery of possession shall be calculated from the date of grant of Environmental Clearance. The Agreement does not provide for extension of such period on account of subsequent statutory compliances or



approvals. Any additional permissions or formalities required from statutory authorities are within the exclusive domain and responsibility of the respondent/promoter. The allottee cannot be penalized or made to suffer for delays attributable to the respondent in securing such ancillary approvals. Therefore, said plea of the respondent is rejected.

16. Further, respondent had taken plea of force majeure conditions like lockdown due to Covid 19, labour shortage as entire labours migrated to their respective states, construction activities for not performing the obligations as per terms and conditions of the agreement. Now, the question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration. Looking at this aspect as to whether the said situation or circumstances was in fact beyond the control of the respondent or not? The obligation to deliver possession within a period of 4 years was not fulfilled by respondent. There is delay on the part of the respondent. The reason given by the respondent 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.”

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 15.03.2020. The respondent is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was 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.

17. Period of 4 years is a reasonable time to complete development works in the project and handover possession to the allottee. The project of the respondent is of an Affordable Group Housing Colony and allottees of such project are supposed to be mainly middle class or lower middle class persons. After paying their hand earned money, legitimate expectations of the complainants would be that possession of the unit will be delivered within a reasonable period of time. In present situation,



it is apparent that respondent failed to honour its contractual obligations without any reasonable justification. Facts also remains that complainants-allottees has duly paid the demanded amount to the respondent to the tune of ₹17 lacs for the booked unit. 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. As of today, complainant-allottee wants to stay with the project as evident from the documents on record and submitted during the course of hearing and respondent is duty bound to deliver possession of unit supported with occupation certificate.

18. Thus, the Authority finds, it a fit case to allow delayed possession charges from the deemed date, i.e., 15.03.2020 to the date on which a valid offer is sent to them after obtaining completion/occupation certificate as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under :-

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

.....



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

19. 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;

20. 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”.



21. Complainants in its complaint has sought interest @24%. 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. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 23.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.
22. Authority has got calculated the interest on total paid amount from the deemed date of possession i.e., 15.03.2020 till the date of this order, i.e., 23.02.2026 at the rate of 10.80% as per detail given in the tables below:

In complaint no. 785 of 2024

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 23.02.2026
1.	₹17,88,976/-	15.03.2020	₹11,49,728/-
2.	Monthly interest		₹15880/-



In complaint no. 786 of 2024

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 23.02.2026
1.	₹17,88,976/-	15.03.2020	₹11,49,728/-
2.	Monthly interest		₹15880/-

23. Accordingly, the respondent is liable to pay the upfront delay interest of ₹11,49,728/- to the complainants towards delay already caused in handing over the possession. Further, on the entire amount of ₹17,88,976/-, monthly interest of ₹15880/- shall be payable up to the date of actual handing over of the possession after obtaining completion certificate. The Authority orders that the complainants will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to them.

24. Complainant is seeking one lakh as cost of litigation. 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

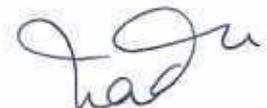


be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief for mental torture, agony, discomfort and undue hardship of litigation expenses.

E. DIRECTIONS OF THE AUTHORITY

25. 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:

- a. Respondent is directed to pay upfront delay interest of ₹11,49,728/- to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount of ₹17,88,976/- monthly interest of ₹15880/- shall be payable by the respondent to the complainants up to the date of actual handing over of the possession after obtaining occupation certificate in complaint no. 785 of 2024.
- b. Respondents is directed to pay upfront delay interest of ₹11,49,728/- to the complainant towards delay already caused in



handing over the possession within 90 days from the date of this order. Further, on the entire amount of ₹17,88,976/- monthly interest of ₹15880/- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate in complaint no. 786 of 2024.

- c. In both the complaints, complainants will remain liable to pay balance consideration amount to the respondent at the time of possession offered to them. Respondent shall not charge for anything more which is not part of the buyer's agreement.
- d. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate, i.e, 10.80% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottee.

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


.....
NADIM AKHTAR
[MEMBER]