



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No:	1162 of 2024
Date of Filing:	27.09.2024
First Date of Hearing:	19.11.2024
Date of Decision:	27.02.2026

Smt. Kanta Malhotra
W/o Late Sh. Badri Nath Malhotra
R/O House No.58, Old Housing Board Colony
Rohtak, Haryana, 124001

....COMPLAINANT

VERSUS

1. Haryana Shehri Vikas Pradhikaran
through its Chief Administrator,
Plot no. C-3, Sector-6, Off Maheshpur Road,
Panchkula, Haryana-134109

....RESPONDENT NO.1

2. Estate Officer, HSVP, Faridabad,
HSVP Office, Sector -12,
Faridabad, Haryana, 121001

....RESPONDENT NO.2

Coram: Sh. Chander Shekhar Member

Hearing: 5th

Present: - Mr. Sushil Malhotra, Advocate, for the Complainant through VC.
Mr. Arvind Seth, Advocate, for the Respondents through VC.

ORDER:

The present complaint dated 27.09.2024 has been filed 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, details of sale consideration, amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the Project	HSVP, Sector-77 and 78, Faridabad
2.	Nature of the Project	Residential
3.	RERA Registered/not registered	Un-registered
4.	Details of the Unit	Plot No. 599, Sector-78, Urban Estate, Faridabad
5.	Date of Allotment	09.08.2016

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6.	Date of Builder Buyer Agreement	N/A
7.	Possession clause (Clause 7 of the allotment letter)	<i>The possession of the plot will be offered within a period of 3 years from the date of allotment after completion of development work in the area. In case possession of the plot is not offered within the prescribed period of 3 years from the date of allotment, HUDA will pay interest @ 9% (or as may be fixed by Authority from time to time) on the amount deposited by you after the expiry of 3 years till the date of offer of possession and you will not be required to pay the further installments. The payment of the balance installments will only start after the possession of the plot is offered to you"</i>
8.	Due Date of Possession	09.08.2019
9.	Basic Sale Consideration	₹52,25,850/-
10.	Amount paid by Complainant	₹64,24,879/- (₹53,00,473 + enhancement cost of ₹11,24,406)
11.	Offer of Possession	N/A

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of the complaint are that the respondent invited bids for allotment of residential plots. The complainant interested in having a residential plot applied for it. She was allotted Plot no. 599 in Sector-78, Urban Estate,

Faridabad, measuring 220.50 sq. mtr. As per the Allotment letter dated 09.08.2016, the price of the plot was fixed as ₹52,25,850/-. Thereafter the complainant complied with the terms and condition of the Allotment letter and made the entire payment for the plot in question to the respondent by 04.04.2020, for which a copy of the receipts are attached at Annexures C-7, Page nos. 89 to 105 of the complaint book.

4. The respondent issued the Allotment Letter dated 09.08.2016. Pursuant to the allotment, the complainant deposited the allotment amount of ₹7,83,863/- on 25.08.2016 and thereafter continued to make payments as demanded by the respondent from time to time, thereby duly complying with all the terms and conditions of the allotment without any default. Subsequently, the respondent raised an additional demand of ₹10,67,441/- on account of enhanced compensation arising out of land acquisition proceedings. The complainant, being bound by the terms of allotment and under protest, deposited part payments towards the enhanced compensation between July 2017 and January 2018 and also submitted representations dated 03.07.2017 and 21.11.2017 requesting withdrawal and review of the said enhanced compensation demand. However, the respondent failed to consider or decide the said representations and continued to retain the amount illegally.

5. It is pertinent to mention that the Hon'ble Supreme Court of India, vide its order dated 06.12.2017 passed in Civil Appeal No. 21014-21016 of

2017 titled Premvati vs. State of Haryana & Ors., set aside the enhancement award and remanded the matter to the Hon'ble Punjab and Haryana High Court for fresh adjudication. Despite the aforesaid order of the Hon'ble Supreme Court, the respondent neither withdrew the demand of enhanced compensation nor refunded or adjusted the amount deposited by the complainant and has illegally retained the same, which action of the respondent is arbitrary, unjust, illegal and against the settled principles of law. The respondent has failed to act in a fair and transparent manner and has violated the rights of the complainant, thereby causing financial loss and mental harassment to the complainant.

6. The aforesaid act and conduct of the respondent is illegal, arbitrary, and in violation of the provisions of the Real Estate (Regulation and Development) Act, 2016, as the respondent cannot unjustly enrich itself by retaining amounts which are not legally recoverable, especially when the very basis of enhanced compensation has been set aside and remanded for fresh adjudication.

7. As per clause 7 of the allotment letter, the offer of possession would be given to the complainant within 3 years from the date of letter of allotment. Accordingly the deemed date of offer of possession comes out to be 09.08.2019 but till date the project is far away from the completion and the possession is not offered by the respondent till now. It is submitted that the complainant has not received any letter by any mode, neither by post nor

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through email regarding the offer of possession. However, the complainant has downloaded the account statement from the web portal on 23.03.2024 in which the offer of possession date is mentioned as 20.06.2019 which is wrong and invalid as the valid offer of possession is not offered to the complainant. In the absence of an offer of possession by the due date i.e 09.08.2019, the complainant is entitled for the delay possession charges and respondents are liable to bear it.

8. The respondent is under a legal obligation to act fairly, reasonably, and in accordance with law and cannot retain the excess amount without lawful justification. The respondent has failed to discharge its statutory obligations and has acted in an unfair and deficient manner, which amounts to deficiency in service and unfair trade practice. The cause of action is continuous and recurring as the respondent has failed to refund or adjust the enhanced compensation amount despite repeated representations made by the complainant.

9. It is worth mentioning here that in case of delay in making the payment by the allottee, the respondent charges interest at the rate of 15% for the delayed period. There is clear deficiency in service and violation of terms and conditions of Allotment Letter issued by the respondent and also provisions of the Real Estate (Regulation & Development) Act, 2016 and the rules framed thereunder.

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C. RELIEF SOUGHT

10. In view of the facts mentioned above, the complainant prays for the following reliefs:-

- i. To direct the respondent to refund an amount of ₹11,24,406/- the enhanced component already received by respondent along with interest from date of payment @15 % per annum and compensation as per provision of the act.
- ii. To pass any appropriate order directing the respondent to issue offer of possession to complainant along with delay possession interest from the date it became due till the date of order on the deposited amount of ₹53,00,473/-, also monthly interest on delay possession till the valid offer of possession and thereafter additional interest on the decretal amount.
- iii. To pass an appropriate order for delay possession charges of every month till the valid offer of possession. Also direct respondent to pay arrears of delay possession till the decision of this authority.
- iv. To direct the respondent to issue a valid offer of possession with complete basic infrastructure.
- v. Award ₹1,50,000/- as the cost of Litigation.
- vi. Any other relief, which this Hon'ble Authority may deem fit, in the facts and circumstances of the case.

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D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

11. Upon receiving notice, the respondent filed a detailed reply on 07.04.2025 pleading therein that it is an agreed terms and conditions between the complainant and the HSVP that the compensation has to be deposited by the allottee as per clause 25 of the allotment letter. Clause 25 is reproduced below for ready reference:

“The payment of installments/enhanced compensation as provided as under clause 6 and 9 of the allotment letter on the due date is mandatory. In case the payment of installments/enhanced compensation is not made on due date, interest simple or compound as decided by the Authority from time to time shall be chargeable on the delayed payment of installments/enhanced compensation irrespective of the fact whether the possession has been offered or not. Presently interest on delayed payment of installments is 15% per annum and interest on delayed payment of enhanced compensation is 15%(simple).

In future, you shall have to pay the interest simple or compound on the delayed payment of installments, enhanced compensation as decided by the Authority from time to time. This is without prejudice to the rights of the Authority to take action under section 17 of the HUDA Act”

12. It is submitted that there is no delay in offering the possession of the plot to the complainant as it was specifically mentioned in the clause 7 of the allotment letter that the possession of the plot will be offered to you within 3 years from the allotment letter and the same was issued vide dated 20.06.2019. The copy of the offer of possession dated 20.06.2019 is annexed as Annexure R-2.

13. In view of the provisions of section 18 of the Haryana Urban Development and Regulations of Urban Areas Act, 1975 requirement of completion certificate is not required. Relevant part of section 18 is reproduced below:

"Nothing in this Act shall affect the power of the Government, improvement trusts, Housing Board, Haryana, 94 [or any local 94 inserted by Haryana Act No. 9 of 1977 The Haryana Development and Regulation of Urban Areas Act, 1975[32] authority or another authority constituted under any law for carrying out the development of Urban Area] to develop land or impose restrictions upon the use and development of any area under any other law for the time being in force 95] but such power except the power exercisable by the Government, shall be exercised on payment of such sum as may be decided by the Government from time to time.]"

14. The definition of "on going project" is described in section 2(o) of the HRERA Rules, 2017. These rules came into force on the date of their publication in the official gazette i.e. on 09.02.2018. Relevant part of section 2(o) is reproduced below for reference:

"on going project" means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and

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(ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.

In view of the definition of “on going project”, a Licence and completion certificate is not required by the respondent.

15. It is to bring to the kind notice of this Hon'ble Authority that the said Haryana Urban Development Authority Act, 1977 received the assent of the President of India on 30.04.1977, therefore, the jurisdiction to entertain the present complaint is barred under the provisions of the HRERA Act, 2016 which came into existence much later to the Haryana Urban Development Authority Act, 1977. The provisions of RERA Act, 2016 are not applicable in the cases where the land has been developed by way of acquisition under the Land Acquisition Act and thereafter it has been developed under the provisions of Haryana Urban Development Authority Act, 1977. The HUDA Act, 1977 has been enacted by the State Legislature vide Haryana Act No. 13 of 1977 with the aim and object to constitute a statutory authority in place of department of urban estate for ensuring the speedy and economic development of urban areas in the State of Haryana. The areas which have been developed under the provisions of HUDA Act, 1977 do not come under the purview of the HRERA Act, 2016. Therefore, the present complaint filed by the complainant is liable to be dismissed.

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16. That the development of Sector-78, Faridabad was started much prior to the enactment of HRERA Act, 2016, therefore, this Authority has no jurisdiction to entertain the present complaint in view of the Hon'ble Supreme Court of India judgment titled as "*M/s Newtech Promoters and Developers Pvt. Ltd Versus State of UP and others*" in Appeal Case Nos. 6745- 6749 of 2021 decided on 11 November, 2021.

E. REJOINDER FILED BY THE COMPLAINANT

17. The complainant has filed a rejoinder dated 23.07.2025 in which it is submitted that the respondent has violated the provisions of Sections 11, 12, 14, 18 and 19 of the Act, which mandate the promoter to complete the project within the prescribed timeline, obtain completion and occupancy certificates, and provide essential services before offering possession. The complainant has stated that due to delay in completion of development works and failure of the respondent to fulfill its statutory obligations, the complainant is entitled to delay possession compensation in accordance with the provisions of the Act. It is also contended that the respondent has illegally levied and recovered excess enhancement charges and the complainant is entitled to refund of the excess amount along with applicable interest.

18. The respondent has miserably failed to rebut the above factual position qua the rejection of handing over of the possession of plot in question due to non-development at site, which shows that till date the respondent has

not completed the development works and is not in a position to provide the physical possession of the plot in question despite the fact that the complainant made the entire payment of ₹64,24,879/- (₹53,00,473/- + enhancement cost of ₹11,24,406/-) which fact has been duly admitted by the respondent in its reply. Thus, the letter dated 20.06.2019 allegedly vide which the offer of possession was issued by the respondent is without any basis and lacks merit.

19. The contentions of the respondent that the areas developed under the HUDA Act, 1977 do not come under purview of the RERA Act, 2016 and that HUDA Act, 1977 prevails over the RERA Act, 2016 unless and until the former is repealed by the Parliament under Article 254 of the Constitution of India, are misconceived, incorrect and hence, denied. It is submitted that the Real Estate (Regulation and Development) Act, 2016 is a Central Act, enacted by the Parliament and came into force after assent was accorded by the President of India. Further Sections 88 and 89 of the RERA Act, 2016 read as under:

"Section 88. Application of other laws not barred.-The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Section 89. Act to have overriding effect.-The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force"

20. From above it is evident that the provisions of the RERA Act, 2016 shall be in addition to and not in derogation of the provisions of any other law

for the time being in force. Furthermore, Section 89 provides that the provisions of the RERA Act, 2016 shall have the effect, notwithstanding anything inconsistent therewith, contained in any other law for the time being in force. It is a settled law that if two enactments conflict and both contain a non-obstante clause, indicating its overriding effect, then the latter enactment prevails over the former enactment. The aims and objectives of HUDA Act, 1977 and RERA Act, 2016 are thus distinct and separate. Further, the Government of Haryana has never challenged applicability of RERA Act, 2016 and have rather framed Rules and Regulations under the RERA Act, 2016.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:

21. During the course of arguments, learned counsel for the complainant and the respondent reiterated the arguments as were submitted in the complaint, reply and rejoinder.

22. Further learned counsel for the complainant has placed on record the orders passed by the Authority in complaint no(s) 1700 of 2022, 2402 of 2023, 200 of 2023.

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G. WRITTEN ARGUMENTS SUBMITTED BY THE COMPLAINANT

23. The complainant has filed written arguments dated 04.02.2026 in which it is submitted that complaint arises out of firstly (i) illegal withholding of

enhancement charges amounting to ₹11,24,406/- as memo present at Page no. 61 as Annexure C-4 of complaint book is void ab initio due to setting aside the judgment of Hon'ble High Court on the basis of which this memo was generated. As there is no order of enhancement, the complainant deserves the right to get back the deposited amount along with interest. Here it would be relevant to mention that the complainant is not challenging the concept of enhancement as he abided by the enhancement memo and deposited the enhanced amount. But after the enhancement order was set aside on 06.12.2017 which was annexed as Annexure C-10 by Hon'ble Apex Court. Here the only submission is that the already deposited enhancement amount shall be refunded as that amount is excess money with the respondent. The complainant is simply requesting for a refund of the excess amount paid along with interest.

24. The respondent has taken a bad plea that the offer of possession was sent to the complainant by registered post as per annexure R-2 present at page no. 23 -24 of reply without the postal receipt or proof of delivery. The said contention is false, vague and unsupported by any documentary evidence like postal receipt, court receipt or email etc. Respondents have manufactured this letter after the filling of the complaint to escape from the liability of delay possession charges. Moreover, there is no proof of part completion certificate available on record. The complainant categorically states that no offer of possession was ever received, either by registered post, speed post, email or any

other mode. No possession letter has ever been delivered to the complainant. Significantly, the respondent has failed to place on record any postal receipt, tracking report, dispatch register entry acknowledgment due card or proof of delivery. In absence of the above, the claim of dispatch by registered post is nothing but a self-serving assertion. It is a settled principle of law that mere assertion of dispatch is not proof of service. The burden of proving service of the offer of possession lies entirely upon the promoter, particularly when service is specifically denied by the allottee. The respondent's failure to reply to multiple emails written by the complainant seeking clarification regarding offer of possession further strengthens the inference that no possession letter was ever dispatched. The copy of the said emails are attached as annexure C-14 page no. 189 and 190 of the complaint book. Accordingly, the respondent continues to remain in default and is liable to pay delay possession interest till the date of issuance of a valid offer of possession.

H. ISSUES FOR ADJUDICATION

25. Whether the complainant is entitled to possession of the booked plot along with delay interest in terms of Section 18 of Act of 2016?

26. Whether the complainant is entitled to a refund of ₹11,24,406/- paid by the complainant as enhancement amount?

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I. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT

I-1 Objection regarding jurisdiction of this Authority to entertain the present complaint:

27. One of the averments of respondents is that provisions of the RERA Act of 2016 will not apply to the projects of the respondents as the same was developed prior to coming into force of RERA Act, 2016 and there is no provision in any law where the HSVP (HUDA) has to take completion certificate or occupation certificate. In this regard, Authority observes that even if contention of the respondents in this regard is accepted then also the complainant in the present complaint is seeking possession of her booked plot along with delay interest i.e, a statutory relief under Section 18 of RERA Act, 2016. Authority observes that the provision to Section 18(1) of the Act relates to statutory obligation of the promoter towards allottee. Section 18 is reproduced herein below:

If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this

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behalf including compensation in the manner as provided under this Act:

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

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

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

28. Section 18(1) provides for remedy to "an allottee" if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or as the case may be. Meaning thereby, the remedy available under section 18(1) is not restricted to allottees of a registered/registrable project.

29. Further, plain reading of the Section 2(d), 2(zk), 2(zj) and 2(zn) of RERA Act, 2016, leaves no room for any ambiguity and makes it clear that HSVP is a promoter in respect of complainant/allottee of the plot allotted by it in its real estate project and there exists a relationship of an allottee and promoter between the parties. Since, the relationship of an allottee and promoter between complainant and respondent is established and the issues deals with real estate projects developed by respondent, hence, the provisions of RERA

Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter.

I-II Objection regarding applicability of provisions of RERA Act, 2016 where land has been developed under the provisions of HUDA, Act, 1977:

30. Learned counsel for the respondent contended that the provisions of RERA Act, 2016 are not applicable in the present case, where the land has been developed by the government developer (HUDA) under the provisions of HUDA Act, 1977 and RERA Act is applicable only in cases where the flats and plot-buyers have grievances against the private developers.

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

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

32. It is a settled principle of interpretation that the preamble is an introduction of a statute and states main aims and objects of enacting a statute. The preamble provides that it shall be the function of the Authority to ensure

sale of plot, apartment or building in an efficient and transparent manner and to protect the interest of consumers in the real estate sector by establishing a mechanism for speedy dispute redressal. The Real Estate (Regulation and Development) Act, 2016 basically regulates relationships between buyers (i.e. allottee) and seller (i.e. promoter) of real estate i.e. plot, apartment or building, as the case may be and matters incidental thereto. Hon'ble Bombay High Court in the case "*Neelkamal Realtors Suburban Pvt. Ltd. and Ors. v. Union of India and Ors.* 06.12.2017-BOMHC" observed as below:

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

33. The scope of this Act is limited to contracts between buyers and promoters and transfer to property. Both these items fall within the Concurrent List III: Entry-6 and Entry-7 read with Entry-46. This Act regulates the transactions relating to the sale of above-mentioned real estate products, for an orderly growth of real estate market, by protecting the interests of different stakeholders in a balanced manner and facilitating the consumer/buyer to make informed choices. Section 88 of the RERA, Act, 2016 clearly provides that the

provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Furthermore, Section 89 provides that the provisions of this Act shall have the effect, notwithstanding anything inconsistent therewith, contained in any other law for the time being in force. Thus, there remains no ambiguity with respect to the fact that the Authority while adjudicating the complaints filed u/s 31 of the Act are only deciding the rights and obligations of the parties i.e. the Builder/Promoter/Developer and the allottee inter-se as per the agreement for sale entered into between them for sale of a real estate project.

J. OBSERVATIONS AND DECISION OF THE AUTHORITY

34. After going through rival contentions of both the parties and perusing the documents placed on record, it is observed that in the year 2016, the respondent held a draw of lots of residential plots in Sector-78, Faridabad, being developed by the respondent. The complainant had applied for booking a residential plot in the said project and upon being successful applicant, the complainant vide allotment letter dated 09.08.2016 was allotted a residential plot no. 599, measuring 220 Sq Mtr in Sector-78, at Urban Estate, Faridabad. As per the allotment letter, the tentative price of the plot was fixed as ₹52,25,850/- against which the complainant had made a payment of ₹53,00,473/- as per receipts attached with the complaint book. As per Clause 7 of the allotment letter, the respondent was supposed to deliver the possession of the plot within a

period of 3 years from the date of allotment. However, the respondent failed to deliver the possession of the said plot within stipulated time. Thus, constraining the complainant to file the present complaint seeking valid possession of plot no. 599 along with interest for the delay caused in delivery of possession. The respondent in his reply has contended that an offer of possession was issued on 20.06.2019 thereby the respondent is not liable for any delay caused in delivery of possession and it is the complainant who did not come forward to take the possession to which the complainant contended by filing written arguments on 04.02.2026 in which she stated that the offer of possession issued by the respondent is false and illegal as it lacks proof of service, postal receipts, email receipts, tracking report and proof of delivery.

35. After hearing the rival contentions of the parties and perusing the material available on record, it is observed that the allotment letter dated 09.08.2016 clearly stipulates under Clause 7 that the possession of the allotted plot was to be delivered within a period of three years from the date of allotment. The said period expired on 09.08.2019. The respondent has taken the plea that an offer of possession was issued on 20.06.2019 and therefore, there is no delay attributable to him. However, on careful scrutiny of the record, it is evident that no documentary proof has been placed on record to establish that the alleged offer of possession was actually dispatched and served upon the complainant. There is no postal receipt, courier dispatch proof, tracking report,

email delivery confirmation, or acknowledgment of receipt produced by the respondent. It is a settled principle of law that the service of notice must be proved by the party asserting it. Mere assertion of issuance without proof of dispatch does not amount to deemed service. In the absence of evidence demonstrating that the offer dated 20.06.2019 was actually dispatched and delivered to the complainant, the same cannot be relied upon to establish compliance with the timeline for possession. Therefore, the alleged offer of possession, unsupported by dispatch or delivery proof, is not valid in the eyes of law and cannot absolve the respondent of liability for delay in delivery of possession.

36. On the basis of the facts, pleadings and terms of the allotment letter, the respondent has failed to handover the possession on the deemed date i.e., 09.08.2019. On failure to the contractual obligations by the respondent, the complainant will be entitled to the following two remedies u/s 18 of RERA Act, 2016 i.e.,

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- i. In the event, the allottee wishes to withdraw from the project, he/she shall be entitled without prejudice to refund of the amount paid along with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act;

ii. In the event, the allottee does not intend to withdraw from the project, he/she 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.

37. In the present case, the complainant wishes to continue with the project and insists upon the relief of handing over of the possession along with delayed interest. In these circumstances, the second remedy under section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked plot, the complainant is entitled to receive interest from the respondent on account of delay caused in delivery of possession for the entire period of delay till a valid offer of possession is issued to the complainant.

38. Now with regard to the period for which delay interest is admissible to the complainant, the Authority observed that as per clause 7 of the allotment letter, in case the possession of the plot is not delivered by the respondent within 3 years from the date of allotment, the respondent will be liable to pay the delayed interest on amount deposited by the complainant till the date of valid offer of possession or delivery of possession. Thus, as per clause 7 of the allotment letter the complainant is liable to receive delayed interest from the due date of possession i.e. 09.08.2019 till the date of actual handing over of possession.

39. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

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

Explanation.-For the purpose of this clause-

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

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

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

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

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

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40. Hence, the Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to be 10.80% (8.80% + 2.00%) from the due date of possession till the date of passing of the order.

41. With regard to refund of ₹11,24,406/- paid by the complainant as enhanced compensation, the Authority observes that so far as the relief sought regarding refund of the enhanced compensation amount is concerned, the said demand has arisen out of land acquisition proceedings and subsequent judicial adjudication pertaining to enhancement of compensation. The determination of the legality, sustainability, or refundability of such enhanced compensation is connected with proceedings under the land acquisition laws and the effect of orders passed by the competent constitutional courts. The present Authority, while exercising jurisdiction under the Real Estate (Regulation and Development) Act, 2016, is empowered to adjudicate issues relating to violation of obligations of the promoter concerning the real estate project, including delay in possession and statutory interest thereon. However, it does not possess jurisdiction to examine or re-determine matters arising from land acquisition awards or to interpret and give effect to orders passed by superior courts in such proceedings. Accordingly, the prayer seeking refund of the enhanced compensation amount is declined for want of jurisdiction with

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liberty to the complainant to seek appropriate remedy before the competent court/forum in accordance with law.

42. Considering the above facts, delay in handing over possession of the plot has been established. Therefore, the respondent is liable to pay interest to the complainant on account of delay in delivery of possession from the deemed date of possession i.e., 09.08.2019 till today along with future interest for every month of delay occurring thereafter till the actual handing over of the possession at the rate prescribed in Rule 15 of the HRERA Rules, 2017.

43. Authority has got calculated the interest on total paid amount from due date of possession or from the date of payments whichever is later till the date of offer of possession as mentioned in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 27.02.2026 (in ₹)@ 10.80% p.a rate of interest
1.	₹39,19,387/-	09.08.2019	₹27,77,503/-
2.	₹7,54,569/-	10.10.2019	₹5,20,888/-
3.	₹4,25,710/-	13.02.2020	₹2,78,001/-
4.	₹1,00,000/-	14.02.2020	₹65,273/-
5.	₹1,00,807/-	04.04.2020	₹64,309/-
Total	₹53,00,473/-		₹37,05,974/-
	Monthly Interest		₹48,619/-

44. With regard to relief no.5, the complainant is seeking compensation of ₹1,50,000/- for litigation expenses. In this regard 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." 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 complaint in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.

K. DIRECTIONS OF THE AUTHORITY

45. 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:

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- i. Respondent is directed to pay the complainant upfront amount of ₹37,05,974/- within 90 days from the date of uploading of this order. Respondent's liability for paying monthly interest of

₹48,619/- as shown in above table will commence w.e.f 27.03.2026 and it shall be paid on monthly basis till actual handing over of possession to complainant after completing the development works and taking appropriate approvals from the competent authorities.

ii. The complainant is also directed to approach the respondent to take possession and to execute conveyance deed.

iii. 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.

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

27.02.2026
Gaurav Saini
(Law Associate)


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(CHANDER SHEKHAR)
MEMBER