



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>40 of 2023</b>
<b>Date of filing:</b>	<b>08.02.2023</b>
<b>First date of hearing:</b>	<b>21.03.2023</b>
<b>Date of decision:</b>	<b>16.03.2026</b>

**Omkar Pandey**

S/o Sh. Ramnaresh Pandey,  
R/o 1008/59, Sanjay Colony,  
Sector 23, Faridabad, Haryana

.....COMPLAINANT

Versus

**1. Housing Board Haryana**

C-15, Awas Bhawan,  
Sector-6, Panchkula, Harayana,  
Through its Chief Administrator

**2. Estate Manager Housing Board Haryana**

C-15, Awas Bhawan,  
Sector-6, Panchkula, Harayana

...RESPONDENT(S)

**Present:** - None for the complainant.

Adv. Arvind Seth, counsel for the respondents through VC.

**ORDER (NADIM AKHTAR-MEMBER)**

Present complaint is filed by the complainant on 08.02.2023 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.

**A. UNIT AND PROJECT RELATED DETAILS:-**

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

S.No.	Particulars	Details
1.	Name of the project	Multi storeyed flats for serving/Ex-Defence and Para Military Personnel of Haryana up to the rank of JCOs and equivalent and their widows and orphans on Hire Purchase Basis at Sec-56 and 56A, Faridabad.
2.	Name of the promoter	Housing Board Haryana
3.	RERA registered/not registered	Unregistered
4.	Unit no.	Final Reg. No. 33



S.No.	Particulars	Details
5.	Date of builder buyer agreement	Not executed
6.	Due date of offer of possession	Not available
7.	Possession clause in BBA	Not available
8.	Amount paid by complainant	₹5,35,000/-
9.	Offer of possession given on	Not Given till date.

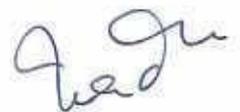
**B. FACTS OF THE PRESENT COMPLAINT**

- i. That the complainant is a resident of the State of Haryana and the respondents have its registered office at C-15, Awas Bhawan, Sector-6, Panchkula-134109, and respondents are engaged in constructing and selling residential flats/plots and buildings.
- ii. That the respondents have floated a housing scheme in the year of 2014 for allotment of multi-storeyed flats for serving/ Ex-Defence and Para Military Personnel of Haryana up to the rank of JCOs and equivalent on Hire Purchase Basis at various locations.
- iii. That applications were invited by the respondents and the period of registration was from 17.02.2014 to 28.03.2014. Accordingly, the complainant applied in the said scheme along with a Demand Draft of



- ₹2,14,000/-. The receipt of the said amount duly acknowledged by the respondents is annexed as Annexure C-1.
- iv. That the complainant was declared successful in the said scheme and vide memo dated 06.02.2015 issued by respondent no.1, the complainant was directed to deposit the remaining amount of ₹3,21,000/-, i.e. 15% of the advertised cost. A copy of the allotment letter dated 06.02.2015 is annexed as Annexure C-2. Accordingly, the complainant deposited the said amount vide Demand Draft No. 5231 dated 02.03.2015 drawn on Oriental Bank of Commerce, Ballabgarh Branch. Copy of the DD is annexed as Annexure C-3.
- v. That as per the demand raised by the respondents, complainant had paid a total amount of ₹5,35,000/- to the respondents till date.
- vi. That the complainant visited the office of the respondents on several occasions and enquired about the date of delivery of possession. However, the respondents, on one pretext or the other, did not provide any relevant information regarding the date of possession and stated that if the complainant was in a hurry, he could withdraw his money, as it was a HUDA Project and there were many purchasers.
- vii. That thereafter, due to the delay in the project and considering his old age and financial condition, the complainant did not deposit the remaining amount to respondent no. 2. Accordingly, complainant intimated respondent no. 2 that his allotment may be cancelled and his

- deposited amount be returned. The complainant also made a request for cancellation of the allotment and refund of the amount deposited by him.
- viii. Consequently, complainant visited the office of respondent no. 2 several times personally, however, no satisfactory response was received by the complainant from the respondent. Thereafter, the complainant also submitted a representation dated 04.04.2018 seeking withdrawal of his amount, which was duly received by respondent no. 2. A copy of the same is annexed as Annexure C-4 with the complaint.
- ix. That despite the written representation and personal requests of the complainant, no action was taken by respondent no. 2 and the complainant was constrained to issue a legal notice dated 23.08.2018 to the respondents. A copy of legal notice dated 23.08.2018 is annexed as Annexure C-5 with the complaint.
- x. That due to the acts and conduct of the respondents, the complainant has been mentally harassed and tortured. From the above-mentioned facts and record, it is clear that the respondents have been negligent and deficient in providing their services and are liable for unfair trade practice by not refunding the amount deposited by the complainant along with interest. Thus, the respondents are liable to pay ₹5,00,000/- on account of harassment and mental torture suffered by the complainant due to the negligent acts of the respondent.



- xi. That the cause of action arose when the respondents failed to refund the deposited amount along with interest, and the cause of action is still continuing.
- xii. That the complainant filed Complaint No. 2142 of 2019 before HRERA, Panchkula, which was disposed of as withdrawn vide order dated 30.10.2019 passed by the then Adjudicating Officer, with liberty to file the same before the competent authority, i.e., HRERA Authority, Panchkula. A copy of the order dated 30.10.2019 is annexed as Annexure C-6 with the complaint.
- xiii. Therefore, the complainant filed a complaint before this Hon'ble Authority. However, the same was dismissed in default for non-prosecution with liberty to file a fresh complaint vide order dated 28.06.2022. A copy of the order dated 28.06.2022 is annexed as Annexure C-7 with the complaint.

**C. APPLICATION DATED 13.02.2026 FILED BY THE COMPLAINANT-**

Complainant has filed written arguments vide application dated 13.02.2026, wherein it is pleaded as under -

- That the respondents released the refund amount only on 18.12.2023 during the pendency of the present complaint vide RTGS No. 3805, and the same has been admitted by the respondents in their written statement dated 08.08.2025. However, the respondents have illegally and arbitrarily



deducted 10% of the earnest money amounting to ₹21,400/- from the refunded amount and have failed to pay any interest whatsoever on the amount retained by them from 2015 to 2023.

- That the deduction of 10% earnest money by the respondents is wholly illegal, arbitrary, unjustified and contrary to law. The complainant did not surrender or cancel the allotment voluntarily. It was the complete failure of the respondents to deliver possession or provide any timeline for possession even after eight years of allotment that compelled the complainant to seek refund. When the respondents themselves were unable to fulfill their contractual and statutory obligation of delivering possession, they cannot be permitted to forfeit any amount from the complainant's deposit. The retention and forfeiture of earnest money is a penalty that can only be imposed when the allottee commits a breach of contract, not when the developer/authority fails to perform its obligations.
- That in the present case, respondents have committed breach of contract by failing to deliver possession within reasonable time despite receiving full advance payment. Complainant has done nothing wrong and has fulfilled all his obligations. Therefore, the deduction of ₹21,400/- as earnest money is completely illegal and the same must be refunded to the complainant along with interest.
- That the respondents have retained and utilized the complainant's money of ₹5,35,000/- from March 2015 to December 2023, i.e., for a period of

approximately 8 years and 9 months, without providing any service or delivering any possession in return. Respondents have unjustly enriched themselves by using the complainant's funds for such a prolonged period.

- That the Hon'ble High Court of Punjab and Haryana in the case of *Raj Pal Singh Gahlaut vs. Housing Board Haryana and another bearing Case No. CWP 19124 of 2021*, vide judgment dated 30.05.2022, has categorically held that allottees seeking refund are entitled to receive refund along with mean savings bank interest of State Bank of India running from the date of closing of registration for the scheme. The Hon'ble High Court has further made it explicitly clear that non-implementation of these orders would invite action against the Board officials under the Contempt of Court Act.
- That in view of the aforesaid judgment of the Hon'ble High Court, the respondents are legally bound to pay interest to the complainant from the date of closing of registration of the scheme (i.e., 28.03.2014) till the date of actual refund (18.12.2023). However, the Respondents have brazenly violated the directions of the Hon'ble High Court and have failed to pay even a single rupee as interest to the Complainant.
- That the conduct of the respondents amounts to gross deficiency in service and unfair trade practice. Respondents took nearly 9 years to refund the money despite knowing fully well that they were unable to deliver possession. Even after the complaint was filed in December 2022,



the refund was made only in December 2023, that too without interest and with illegal deduction of earnest money.

- That the Complainant is a senior citizen aged about 70 years who has been running from pillar to post seeking his legitimate refund. The respondents' apathetic attitude and deliberate delay has caused immense mental agony, harassment, and financial hardship to the elderly complainant. Complainant has been deprived of his hard-earned money for nearly a decade, which he could have utilized for his medical expenses and other necessities in his old age.
- That the respondents have admitted their failure to deliver possession till date, which constitutes a clear default under Section 18 of the RERA Act. Therefore, the Complainant is statutorily entitled to receive the entire refund amount along with interest as prescribed under RERA, in addition to compensation for the harassment and mental agony suffered.

**D. RELIEFS SOUGHT -**

It is pertinent to note that vide application dated 13.02.2026, complainant amended the relief clause. The amended reliefs sought by the complainant are reproduced hereunder-

- i. Direct the respondents to refund the illegally deducted earnest money of ₹21,400/- to the complainant;



- ii. Direct the respondents to pay interest on the entire deposited amount of ₹5,35,000/- from the date of closing of registration of the scheme (28.03.2014) till the date of actual refund (18.12.2023).
- iii. Direct the respondents to pay compensation of ₹2,00,000/- to the complainant for the mental agony, harassment, physical hardship and financial loss suffered by him due to the deficiency in service and unfair trade practice of the Respondents;
- iv. Direct the respondents to pay litigation costs and expenses of ₹50,000/- to the complainant;
- v. Pass any other order or direction as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the case in the interest of justice.

**E. REPLY SUBMITTED ON BEHALF OF RESPONDENTS-**

Respondents filed the reply on 11.08.2025, wherein it is pleaded as under-

- That the respondents deny each and every contention, statement, allegation and/or averment made, which is in any manner contrary to or inconsistent with any submission made in the present reply on behalf of the respondents.
- That the complainant has filed the present complaint under Section 31 read with Section 71 of the RERA Act, 2016. The complainant has not specified which provision of the Act has allegedly been violated by the respondent.



- That the complaint under Section 31 is maintainable only upon establishment of violation of the provisions of the RERA Act, 2016. In the absence of specific pleadings regarding such violation, the present complaint is not maintainable.
- That Rule 29 of the HRERA Rules, 2017 prescribes the procedure for filing an application before the Adjudicating Officer for adjudication of compensation where violation by the promoter has been established by the Authority in an inquiry under Section 35.
- As per Rule 28(m) read with prescribed Form CAO, a complaint before an Adjudicating Officer for compensation is admissible only after conclusion of inquiry by the Authority holding that the promoter has contravened provisions of the Act, Rules and Regulations, and the complaint must disclose such established violation.
- In the present case, the complainant has neither demonstrated nor placed on record any finding of violation recorded by the Authority under Section 35, nor complied with the procedural requirements prescribed under Rule 28 and Rule 29. Therefore, the complaint is not maintainable for non-compliance with the mandatory procedural framework.
- That the Housing Board Haryana has been constituted under the Haryana Housing Board Act, 1971. The aim and object of the Haryana Housing Board Act is to ease the housing problem by constructing more houses. The Haryana Housing Board Act received the assent of the President of

India on 14.05.1971 and was published in Haryana Government Gazette on 18.05.1971. The Housing Scheme is defined in Section 2(h) of Haryana Housing Board Act, 1971.

- That Chapter III of the Haryana Housing Board Act, 1971 prescribes the Housing Scheme. Section 20 casts a duty on the Board to undertake housing schemes. Therefore, it is clear that the Appellant Board has to execute the housing scheme as may be entrusted to it by the State Government.
- That the annual housing programme, budget and establishment schedule is prepared under Section 23 of the Housing Board Act, 1971. That Section 24 empowers the state government to sanction programme/ budget and established schedule and section 25 provides publication of sanctioned programmes. That Section 28 provides for the sanctioned housing scheme to be executed. That Section 29 provides that the Housing Scheme has to be published in the Official Gazette.
- That while exercising powers under Section 74 of the Haryana Housing Board Act, 1971, the State of Haryana framed Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulation, 1972.
- That definition of an allottee is prescribed in Section 2(b) of Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulation, 1972.



- That it is clear from the application submitted by the complainant and the scheme that the flats were to be allotted on Hire Purchase Basis. The Hire Purchase is defined in Section 2(g) of the Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulations, 1972. From the perusal of the definition of hire purchase, it is clear that the participants under the scheme can become the Allottee/ owner only after payment of all dues. Until all the installments are paid, he remains the tenant. As the complainant did not accept the terms and conditions of the allotment letter, therefore, the complaint filed by the complainant who is not the allottee is not maintainable before RERA.
- That the allotment of tenements is provided in Regulation 3 of Housing Board Haryana (allotment, management and sale of tenements), Regulation, 1972. It prescribes that allotment has to be made as soon as the building is ready for occupation.
- That Regulation 4 of the Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulation, 1972 prescribes procedure of issuing notice for inviting applications and power of board to allot tenement (Houses).
- That the allotment of tenements (houses) is provided in Regulation 8 of Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulation, 1972. Said Regulation 8 provides allotment of



tenements as per the terms of allotment and as per the provisions of these Regulations.

- That the allotment letter, condition of allotments are provided under Regulation 10 of the Housing Board Haryana (Allotment, Management and Sale of tenements), Regulation, 1972. From the perusal of Regulation 10, it is clear that the possession has to be given after the allotment is finalised by the Estate Manager. Therefore, unless and until the allotment is not issued, an applicant cannot be termed as an allottee. Hence, the complainant is not the allottee as per the definition of Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulation, 1972.
- That the complaint is liable to be dismissed on the ground that the complainant is not an allottee as per the definition of HRERA Act, 2016, which prescribes that an allottee does not include a person whom such plot, apartment or building, as the case may be given on rent.
- That as per the salient features of the said scheme, the respondent invited the applications for the allotment of built up multi storey flats to Serving/ex-Defence and Para Military Personnel of Haryana up to the rank of JCOs and equivalent and their widows and orphans on Hire Purchase Basis at various locations. Present case is of Type-A, Sec 56 & 56A, District Faridabad.



- That the registration for submitting the applications started from 17.02.2014 and the closing date was 30.06.2014. In the present case, complainant submitted the application for the allotment of the flat and the tentative price of the flat was ₹21.40 lacs. Complainant deposited the amount of ₹2,14,000/- (10% of the total cost of the flat) as the registration money.
- That the draw of lots was held on 24.12.2014 and the respondent vide letter dated 06.02.2015 informed the complainant that his application has been considered for the allotment of the flat against Final registration no.33 subject to eligibility of the Serving/ex-Defence and Para Military Personnel of Haryana up to the rank of JCOs and equivalent and their widows and orphans and the complainant was asked to deposit the sum of ₹3,21,000/- ( i.e., 15% of the tentative total cost of the flat).
- That the complainant deposited the said amount of ₹3,21,000/- on 19.03.2015.
- That as per the terms and conditions of the brochure which has been accepted by the complainant, cost of the said flat was rough cost, and it was specifically mentioned in the brochure that the price is tentative and after completion of the construction of the flats, the price will be worked out with the pricing of the board on the basis of the actual expenditure and flats will be allotted/will be given the possession at the revised/actual price.



- That the complainant duly accepted the terms and conditions as mentioned in the brochure and while submitting the application form, he undertook to adhere to all the terms and conditions of the brochure. This fact is clear from the perusal of the application submitted by the complainant, whereby the complainant acknowledges the acceptance of the terms and conditions put on the application form.
- That as per the general conditions, respondent reserves the right to make modifications in the design, scope of work and specification of the price of the flat. It is further prescribed in the general conditions that any change in the price shall be binding on the applicant.
- That as per the terms and conditions of the brochure, the possession will be handed over to the allottee only after he/she has completed all the formalities, paid all dues and furnished/executed all the documents as required/prescribed.
- Thereafter, the complainant sent a letter dated 05.04.2018 to the respondent, whereby he requested to surrender the flat and also sought refund of the amount of ₹5,35,000/-. A copy of the said letter dated 05.04.2018 sent by the complainant is annexed as Annexure R-1.
- That in the present case, complainant had surrendered the flat vide application dated 05.04.2018 due to financial problem. Therefore, the statutory provisions as prescribed in Regulation 12 of the Housing Board Haryana (Allotment, Management and Sale of Tenements) Regulations,

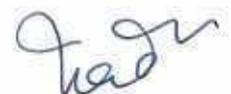
1972, prescribes that any applicant who surrender the allotment, his/her 10% deposited amount of the earnest money which was deposited as registration money will be forfeited. Hence, the balance amount of ₹5,13,600/- was refunded to the complainant vide RTGS No. 3805 dated 18.12.2023 which was duly accepted by the complainant.

- That the parties are bound to comply with the terms and conditions of the agreement executed between them. Complainant was well aware of the fact that the present cost of the flat was tentative and the cost can be increased subject to actual expenditure on the construction on the basis of revised cost estimates.
- That as per the statutory provisions of Housing Board Haryana (Allotment, Management and Sale of Tenements) Regulations, 1972, no interest is payable on the amount of refund if any applicant surrendered or did not deposit the amount within a period of 30 days from the date of issue of the allotment letter.
- That the complainant has breached the conditions of the brochure. The complainant had surrendered the flat on 05.04.2018, therefore, he is not entitled for any interest, thereby being guilty of not honouring the terms and conditions either of brochure or allotment letter.
- That the jurisdiction of RERA is barred as the complainant is not the allottee but he is the applicant as per regulation 2(d) of the Housing



Board Haryana (Allotment, Management and Sale of tenements) Regulations, 1972.

- That the respondent has no profit motive, rather have made the mode of allotment easy for the public at large whether it is in terms of payment of installments or application for obtaining the flat under the scheme. Further, it would be worthy to note here that the respondent has completed the construction of the flats under the project spending their own money and has only taken the token/earnest money from the applicants who applied for the purchase of the flats and has not taken any money over and above the earnest money till the time of the allotment/offer of possession.
- That the complainant has not made the present complaint in accordance with the provisions contained in RERA Act.
- That the present complaint is not maintainable due to the reason that complainant has never given the legal notice which is mandatory as per the provisions of Haryana Housing Board Act, 1971.
- That the complaint is not maintainable under RERA Act because above said project was advertised in the year 2010. The RERA Act 2016 comes into effect from 25.03.2016. The Haryana Real Estate (Regulations and Development) Rules 2017 comes into the effect from 28.07.2017. It is clearly mentioned in the rule that they shall come into force from the date of publication in the official gazette.



- That the jurisdiction of RERA is barred as the Haryana Housing Board Act, 1971 is constituted by the Act of State Legislature which has received the assent of President of India. Article 254 of the Constitution provides that the Legislations passed by the State Legislature which has received the assent of the President of India has to prevail until and unless the State Legislature is repealed by the Parliament.
- That the complainant has portrayed the respondent as a Developer of Real Estate whereas Housing Board Haryana (hereinafter the Board) is an establishment of Government of Haryana under the Haryana Housing Board Act, 1971 (Haryana Act No. 20 of 1971). Hence, the answering respondent is a statutory body and not a mere Real Estate Developer.
- That since in the present case, the complainant had already surrendered the flat, therefore, the refund of ₹5,13,600/- dated 18.12.2023 vide RTGS NO. 3805 without interest has been made to the complainant by the respondent as per Regulation 12 of the Housing Board Haryana (Allotment, Management and Sale of Tenements) Regulations, 1972 after deducting 10% of the amount deposited by complainant with the application at the time of registration as per policy.
- That due to the surrender of the flat by the complainant, respondent would suffer a huge loss as they have already made the payment to the contractor regarding the construction of the units over the land.

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

**F. DETAILS OF ADDITIONAL DOCUMENTS FILED BY RESPONDENTS-**

- i. In compliance of the order dated 27.10.2025 passed by the Authority, respondents on 19.01.2026 have placed on record affidavit along with bank statement showing proof of the refunded amount, i.e., ₹5,13,600/- to the complainant by the respondent.



- ii. In compliance of order dated 02.02.2026, respondents have filed written submissions vide application dated 10.03.2026. In this application respondents have reiterated the pleadings mentioned in its reply.

**G. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS-**

During the course of hearing Ld. counsels for the complainant and the respondent reiterated their pleadings mentioned in their written statements.

**H. ISSUE FOR ADJUDICATION-**

- i. Whether the complainant is entitled to get refund of the amount deposited by him along with interest in terms of Section 18 of Act of 2016?

**I. OBSERVATIONS OF THE AUTHORITY**

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

- i. **Firstly, whether the present complaint is maintainable before the Authority or not?** The respondents have raised objections touching upon the maintainability of the complaint with reference to the provisions governing adjudication of compensation. At the outset, it is clarified that the present proceedings are under Section 31 of the Act before this

Authority for adjudication of alleged contraventions of the provisions of the Act and the Rules framed thereunder. It is a settled position under the Act that the power to adjudge and quantify the compensation under Sections 12, 14, 18 and 19 vests exclusively with the Adjudicating Officer appointed under Section 71 of the Act. Authority does not determine or quantify compensation in exercise of its jurisdiction under Section 31. Accordingly, the objection regarding non-maintainability on the ground of non-compliance with the procedural framework is rejected.

- ii. **Secondly, findings on the objection raised by the respondent with respect to respondent not being a promoter and complainant not being an allottee.** Respondent has taken another objection that it is a statutory body and not mere a Real Estate developer/promoter and the complainant is not an allottee of the project of the respondent. In this regard the Authority observes, it needs to be examined whether respondent falls under the definition of promoter provided in RERA Act, 2016 and whether there exists a relationship of allottee and promoter between the complainant and respondent. For this purpose, the definition of “promoter” under section 2(zk) needs to be perused. Definition is provided below:

*(zk) “promoter” means,—*

*(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or*



*converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

*(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*

*(iii) any **development authority** or any other public body in respect of allottees of—*

*(a) **buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or***

*(b) plots owned by such authority or body or placed at their disposal by the Government,*

***for the purpose of selling all or some of the apartments or plots;**  
or*

*(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*

*(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or*

*(vi) such other person who constructs any building or apartment for sale to the general public.*

- Plain reading of the definition given under section 2(zk) makes it clear that any development authority in respect of allottees of building/apartment, as the case may be, constructed by such authority for sale is a promoter in respect of allottees of those buildings/apartments. Here, Housing Board Haryana is a Development Authority and has issued

an allotment letter to complainant on 06.02.2015 and issued provisional registration number 127/FBD56/T-A/UBI and final registration number 33 at Multi-storeyed flats for serving/ Ex-Defence and Para Military Personnel of Haryana up to the rank of JCOs and equivalent on Hire Purchase Basis at Faridabad Sec-56 and 56A is covered under the definition of promoter under section 2(zk).

- The flat was allotted by the respondent to the complainant-allottee. As per Section 2(d) of the RERA Act, "allottee" is defined as follows:

*(d) "allottee" in relation to a real estate project, means the person to whom a plot apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given. on rent:*

- As per Section 2(zj) & (zn) of the RERA Act. "project" & "real estate project" are defined respectively as follows:

*(zj) "project" means the real estate project as defined in clause (zn):*

*(zn) "real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works. all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;*

- A conjoint reading of the above sections shows that Housing Board Haryana is a promoter in respect of allottees of flats sold by it in its real estate project and therefore, there exists a relationship of an allottee and

promoter between the parties. Since, 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, provisions of RERA Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter. Furthermore, the preamble of RERA Act, 2016 provides as under.

*An Act to establish the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions, directions or orders of the real estate regulatory authority and the adjudicating officer and for matters connected therewith or incidental thereto;*

- The RERA Act, 2016 basically regulates relationship between buyer (i.e., allottee) and seller (i.e., promoter) of real estate, i.e., plot, apartment or building, as the case may be and matters incidental thereto. Hon'ble Bombay High Court in the case **Neelkamal Realtors Suburban Pvt. Ltd. and Ors. v. Union of India and Ors.** 06.12.2017 - BOMHC, observed: *"In my opinion RERA does not fall under Entry 42 in List III-Concurrent List of the Seventh Schedule, namely, Acquisition and requisitioning of property. RERA fall under Entry 6, namely, Transfer of property other than agricultural land; registration of deeds and documents, Entry 7-contracts, including partnership, agency, contracts of*

*carriage and other special forms of contracts, but not including contracts relating to agricultural land and Entry 46, namely, jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in List III-Concurrent list of the Seventh Schedule".*

- The scope of this Act is limited to contracts between buyers and promoters and transfer to property. Both these items fall within the concurrent list III: Entry-6 and Entry-7 read with Entry-46. This Act regulates the transactions relating to the sale of above-mentioned real estate products, for an orderly growth of real estate market, by protecting the interests of different stake holders in a balanced manner and facilitating the consumer/buyer to make informed choice. Therefore, the Authority has jurisdiction to decide the present matter.

iii. **Third issue arises with respect to jurisdiction of Authority being hit by the Article 254 of the Constitution of India.** Authority observes that the Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e., allottee) and seller (i.e., promoter) of real estate, i.e., plot, apartment or building, as the case may be and matters incidental thereto. The scope of this Act is limited to contracts between buyers and promoters and transfer to property. Both these items fall within the concurrent list III: Entry-6 and Entry-7 read with Entry-46. This Act regulates the transactions relating to the sale of



above-mentioned real estate products, for an orderly growth of real estate market, by protecting the interests of different stake holders in a balanced manner and facilitating the consumer/buyer to make informed choice. In support of the same, Hon'ble Bombay High Court in the case **Neelkamal Realtors Suburban Pvt. Ltd. and Ors. v. Union of India and Ors.** 06.12.2017 - BOMHC, observed: *"In my opinion RERA does not fall under Entry 42 in List III- Concurrent List of the Seventh Schedule, namely, Acquisition and requisitioning of property. RERA fall under Entry 6, namely, Transfer of property other than agricultural land; registration of deeds and documents, Entry 7- contracts, including partnership, agency, contracts of carriage and other special forms of contracts, but not including contracts relating to agricultural land and Entry 46, namely, jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in List III-Concurrent list of the Seventh Schedule"*

iv. **Next issue is whether the complainant is entitled for refund along with interest or not?** In this regard, it is an admitted fact that complainant had applied for allotment of flat under a scheme floated by respondent in 2014. Said scheme was aimed at providing houses to Serving/Ex-Defence and Para-Military Personnel of Haryana up to the rank of JCO & equivalent and their widows or orphans on Hire Purchase Basis at Sec-56 and 56A, Faridabad. The complainant after adjudging his

own financial position and capability to purchase a house had applied in response to respondent's advertisement. The respondent within a reasonable time of booking was expected to complete all necessary steps for delivering possession of the purchased unit. After collecting money from the complainant, the respondent was not expected to prolong the completion of the project unreasonably because such conduct on his part was bound to frustrate the very benevolent purpose with which the scheme was formulated.

- The respondent in the present case has not completed the project within a reasonable time and has been utilizing an amount of ₹5,35,000/-, already paid by the complainant, for all these years without paying any interest. Such conduct of the respondent being unreasonable and unconscionable cannot be legally sustained.
- No doubt that there are bye laws of the respondent Board which provides for deduction of 10% of the amount paid at the time of registration, in case an allottee wants to surrender the flat/ withdraw from the project, but the principle so enshrined in bye laws, in considered opinion of the Authority, will be applicable only in those cases where there is no default on the part of respondent Board in discharging its obligation towards allottees. The respondent Board cannot be allowed to take shelter of such bye laws for deduction of 10% of said amount in case of an allottee for whom the respondent himself has created circumstances rendering him

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

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

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

The decision of the Hon'ble Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed



delivery of possession. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be a fit case for allowing refund in favour of complainant.

- It is not disputed that the complainant had deposited an amount of ₹2,14,000/- dated 02.06.2014 and ₹3,21,000/- dated 02.03.2015 towards the allotment of the flat under the aforesaid scheme. Respondents have been utilizing an amount of ₹5,35,000/-, already paid by the complainant for all these years without paying any interest and the complainant was never offered the possession of the allotted unit. In such circumstances, where the allottee has deposited the considerate amount, the allottee becomes entitled to get refund of the amount. However, it is also an admitted fact that the respondent has refunded an amount of ₹5,13,600/- dated 18.12.2023 after deducting 10% of the amount deposited by the complainant with the application at time of registration. From the material evident on record, it is evident that the possession of the unit was not delivered to the complainant within a reasonable period. In such circumstances, when the delay in offering of possession is attributable to the respondents, deduction of earnest money from the deposited amount cannot be justified. The said deduction is therefore held to be illegal and arbitrary. Consequently, the respondents become liable to refund the deducted amount of ₹21,400/- to the complainant.



- It is an admitted position on record that the respondents refunded an amount of ₹5,13,600/- to the complainant on 18.12.2023 after deducting ₹21,400/- towards 10% earnest money. It is also evident from the record that the complainant had been seeking refund since the year 2018, however, the respondents refunded the amount only in December, 2023. The complainant, vide amended relief, has prayed for grant of interest in terms of the judgment of the Hon'ble Punjab and Haryana High Court directing payment of mean savings bank interest of the State Bank of India from the date of closing of registration of the scheme. Perusal of the said judgment reveals that the Hon'ble High Court had specifically referred to only two schemes, namely "Defence Scheme Type-A Sampla" and "Employees Scheme, Jind Road, Rohtak", which were stated to have been scrapped. The directions issued by the Hon'ble High Court for refund of the deposited amount along with mean savings bank interest of the State Bank of India were in the context of those schemes and the petitioners before the Hon'ble Court. Relevant part of the said judgment is reproduced below-

*"...That being so, and with there being no challenge to the regulation itself in these petitions, they are disposed of with a direction to the respondents to refund, in the case of each petitioner, the entire amount of money deposited by him/her in the year 2013/2014 (as the case may be), along with the mean savings bank interest of the State Bank of India, running from the date of the closing of the registration in respect of each scheme, by 30.06.2022 in the case of the Defence Scheme Type-A Sampla, and till*



*31.10.2022 in the case of the Employees Scheme, Jind Road, Rohtak."*

- In the present case, the complainant had applied under the scheme meant for “Serving/Ex-Defence and Para-Military Personnel of Haryana up to the rank of JCO & equivalent and their widows or orphans on Hire Purchase Basis at Sector-56 and 56A, Faridabad”. The said scheme is distinct from the schemes specifically referred to in the aforesaid judgment of the Hon’ble High Court. In view of the above, this Authority is of the considered opinion that the judgment relied upon by the complainant pertains to specific schemes and cannot automatically be extended to govern the present complaint. Therefore, the relief claimed by the complainant on the basis of said judgment cannot be granted in the present case. Nevertheless, the complainant is entitled to interest on the deposited amount in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 and the rules framed thereunder.
- 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. 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".*

- 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 16.03.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% , i.e., 10.80.
- From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and

the complainant is entitled for refund along with interest. Thus, respondent will be liable to pay the complainant, interest from date of payments till the date of refund, i.e., 18.12.2023. Further, as respondent had already refunded an amount of ₹5,13,600/- to the complainant on 18.12.2023, thus, respondent is liable to refund the balance principal amount of ₹21,400/- and interest w.r.t said amount from date of refund till the actual realization of the amount. Authority has got calculated the total amount along with interest as per detail given in the table below:

Sr.no.	Principal amount	Date of payments	Date of refund	Interest from date of payments till date of refund
1.	₹2,14,000/-	02.06.2014	18.12.2023	₹2,20,799/-
2.	₹3,21,000/-	02.03.2015	18.12.2023	₹3,05,268/-
	Total= ₹5,35,000/-			Total= ₹5,26,067/-

Sr.no	Deducted Amount	Date of refund	Date of order	Interest from date of refund till date of order
1.	₹21,400/-	18.12.2023	16.03.2026	₹5,192/-

Total amount to be refunded to the complainant =

$$(\text{₹}5,26,067/-) + (\text{₹}21,400/-) + (\text{₹}5,192/-) = \text{₹}5,52,659/-$$

- Further, the complainant is seeking compensation on account of mental harassment caused to the complainant and litigation expenses. It is

observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

#### **J. DIRECTIONS OF THE AUTHORITY-**

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

- (i) Respondent is directed to pay interest of ₹5,26,067/- on paid amount of ₹5,35,000/- as per calculations given on page no. 34 of this order. As respondent had already refunded an amount of ₹5,13,600/- to the complainant on 18.12.2023, thus, respondent is



liable to refund the balance principal amount of ₹21,400/- alongwith interest from date of refund till the actual realization of the amount. However, for the purpose of calculation, interest of ₹5,192/- has been calculated by the Authority on balance amount of ₹21,400/- from 18.12.2023 till the date of this order. Therefore, the respondent is directed to refund the total amount of ₹5,52,659/- to the complainant. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

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

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



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**NADIM AKHTAR**  
**[MEMBER]**