

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no. : 1787 of 2023  
First date of hearing: 22.09.2023  
Date of decision : 31.10.2025

Brijesh Singh,  
R/o: -H.No. H-405, 4<sup>th</sup>/F, Block H,  
Pocket C, DDA LIG Flats, Molarbandh

**Complainant**

**Versus**

M/s Parkwood Infrastructures Private Limited  
**Regd. Office at:** 1001, Hemkunt Chambers  
89 Nehru Place

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Sh. Nitin Goel (Advocate)  
Sh. Venket Rao (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint dated 26.07.2024 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there

under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, 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 tabular form:

S.N.	Particulars	Details
1.	Name of the project	"Parkwood Westend", at Sector-92, Gurugram
2.	Nature of the project	Group Housing Colony
3.	Project area	14.125 acres
4.	DTCP license no.	53 of 2010 dated 10.07.2010
5.	RERA Registered/ not registered	Registered vide no. 16 of 2018 dated 19.01.2018 valid upto 31.12.2019
6.	Date of execution of Flat buyer's agreement	04.05.2012 (page no. 22 of complaint)
7.	Change of right to purchase from original allottee to M/s Libra India Pvt. Ltd.	09.05.2012 (page no. 67 of reply)
8.	Change of right to purchase from M/s Libra India Pvt. Ltd. to M/s Sonastar Electronics Pvt. Ltd.	13.03.2014 (page no. 68 of reply)
9.	<b>Agreement to sell b/w M/s Sonastar Electronics Pvt. Ltd. and the complainant</b>	<b>27.07.2015</b> <b>(page no. 79 of reply)</b>
10.	<b>Unit endorsed in favour of complainant</b>	<b>19.08.2015</b> <b>(Page no. 66 of complaint)</b>
11.	<b>Change of right to purchase from M/s Sonastar</b>	<b>07.09.2015</b> <b>(page no. 83 of reply)</b>

	<b>Electronics Pvt. Ltd. to complainant i.e., Brijesh Singh</b>	
12.	Tripartite agreement b/w builder, complainant and financial institution	20.08.2015 (Page no. 87 of complaint)
13.	Amount Sanctioned	Rs. 54,59,223/- (as per SOA on page no. 93 of complaint)
14.	Amount Disbursed	Rs. 51,96,169/- (as per SOA dated 30.06.2022 on page no. 93 of complaint)
15.	Unit no.	802, 8 <sup>th</sup> floor, Tower E (page no. 26 of complaint)
16.	Unit area admeasuring	1495 sq. ft. (Page no. 26 of complaint)
17.	Letter for increase in area	01.04.2015 (1495 sq. ft. to 1650 sq. ft.) (Page no. 75 of reply)
18.	Possession clause	<p><b>28. Possession</b></p> <p><b>a) Time of Handing over the possession</b></p> <p><i>That subject to terms of this clause and subject to the Flat Allottee (s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the Flat Allottee (s) under this agreement etc., as prescribed by the Developer, the</i></p>

		<i>Developer proposes to hand over the possession of the Flat <b>within a period of 36 months from the date of signing of this Agreement.</b></i>
19.	Due date of possession	04.05.2015 (calculated as per possession clause)
20.	Total Sale Consideration	₹37,60,625/- (as per payment plan on page no. 51 of complaint)  ₹46,46,250/- (as per revised payment plan at page 78 of reply)
21.	Total amount paid by the complainant	₹31,82,915/- paid by the 2 <sup>nd</sup> allottee (as per applicant ledger dated 07.09.2015 at page 71 of complaint)  ₹51,96,169/- paid by financial institution (as per SOA dated 30.06.2022 on page no. 93 of complaint)
22.	Occupation certificate	Not obtained
23.	Offer of possession	Not offered

### **B. Facts of the complaint**

3. The complainant has made the following submissions: -
  - I. That the complainant is a respectful citizen. The complainant booked an apartment bearing no. 608, unit type b, 2bhk, admeasuring 580.54 sq.ft. and balcony area 100 sq. ft. situated at 6th floor tower-4 in Affordable Group Housing Colony namely "Pyramid Fusion Homes, Gurugram" in revenue estate of village Palra, Sector 70A, Gurugram

Manesar, Urban Complex District, Gurugram along with one two-wheeler open parking site in project.

- II. That the complainant is a law-abiding citizen of the country having its deep roots in the society.
- III. That the respondent is a private limited company operating under the name and style of M/s Parkwood Infrastructure Pvt. Ltd. having its registered office at the abovementioned address.
- IV. That in 2015 our client was looking for a flat for the purpose of residing and for the same he posted his requirement on internet. Upon this our client was contacted by the officials of respondent who appraised our client about the aforesaid project of the respondent.
- V. That the officials of respondent showed our client a sample flat and further told that the possession would be given soon as the project is nearly at completion stage and thus the cost of the Apartment allotted to our client was more than the market value due to factor of early possession to our client.
- VI. That the complainant was informed that only few flats are available since the project is an excellent project and hence only flats on transfer basis can be allotted.
- VII. That complaint was told that one Mr. Navkumar Khanduri S/o Mr. Pitambar Datt Khanduri and Mrs. Vijaya Khanduri W/o Navkumar Khanduri had purchased a flat bearing no. E802, Eighth Floor, Block E, under Group Housing Complex, in the project of the respondent namely Parkwood Westend, area measuring 1495 Sq. Ft. vide Flat Buyer's Agreement dated 04th May, 2012 for a consideration of Rs.

37,60,625.00/- including one open car parking, Club Membership Registration Charges, Interest Free Maintenance Security and 3 KVA Power Back Up. The flat buyer agreement dated 04.05.2012 executed between the respondent and Mr. Navkumar Khanduri and Mrs. Vijaya Khanduri.

- VIII. That the complainant was further told that Mr. Nav Kumar Khanduri paid an amount of Rs. 8,97,082/- towards the sale price of unit in question in different slots, starting from 28.07.2010, 29.11.2010, 24.02.2011, and 19.07.2011 for an amount of Rs. 2,80,000/-, Rs. 3,03,050/-, Rs. 15,014/- and Rs. 2,99,032/- respectively.
- IX. That complainant was further told that thereafter Mr. Nav Kumar Khanduri and Mrs. Vijaya Khanduri made an endorsement with M/s Libra India Pvt. Ltd having its registered office at 1024, Hemkunt Chambers 89, Nehru Place, New Delhi-110019.
- X. That thereafter M/s Libra India Pvt. Ltd. endorsed the unit in question in favor of M/s Sonastar Electronics Pvt. Ltd. having its registered office at 1025, Hemkunt Chambers, 89, Nehru Place, New Delhi-110019.
- XI. That thereafter the officials of respondent introduced the complainant to officials of M/s Sonastar Electronics who agreed to sell/transfer its unit to the complainant.
- XII. That accordingly an agreement to sell dated 27.07.2015 was executed between M/s Sonastar Electronics Pvt. Ltd and the complainant.
- XIII. That as per the agreement to sell dated 27.07.2015, the Sale Price of the unit in question was to a tune of Rs. 69,30,000/- excluding other

charges such as EDC/IDC and IFMS, Club Membership, Parking etc. Also the other charges/demand of respondent were to be paid to respondent directly as and when demanded.

- XIV. Out of the said amount of Rs.66,00,000/- the complainant was to pay Rs. 9,60,000/- and late paying charges of Rs. 5,83,052/- to the respondent/developer herein.
- XV. That the balance to a tune of Rs. 50,56,573/- was to be paid by complainant to M/s Sonastar Electronics Pvt. Ltd.
- XVI. That in lieu of the said agreement the complainant paid a sum of Rs.10,00,000/- to M/s Sonastar Electronics Pvt. Ltd. The said sum was duly received and acknowledged by M/s Sonastar Electronics Pvt. Ltd. as mentioned in the Agreement to sale also.
- XVII. That as per the agreement, the complainant was deemed to have already paid an amount to a tune of Rs. 31,82,915/- to the respondent. Even in the endorsement the respondent has acknowledged that it has received the said sum from the complainant.
- XVIII. That thereafter for the amount of the flat in question, the respondent/developer introduced some of the employees of Diwan Housing Finance Ltd. to the complainant for the purpose loan of flat in question.
- XIX. That a letter dated 22.09.2015 granting permission to mortgage produced by the respondent to Dewan Housing Finance Ltd. (presently known as Piramal Capital & Housing Finance) was also generated by the respondent. That a Tripartite agreement dated 28.08.2015 was executed between the complainant, respondent and

Dewan Housing Finance Co. Ltd. That thereafter a housing loan was sanctioned for a sum of Rs. 54,59,223.00/- from Piramal Capital & Housing Finance.

- XX. That out of the aforesaid sanctioned said sum, a housing loan was disbursed by the said financing institution to the tune of Rs. 51,96,169.00/- in favour of the Developer directly in one shot without confirming the construction status of the unit in question.
- XXI. That even though it was a construction linked project and the payment were to be transferred by the bank/ financial institution to the respondent builder/ developer as per stages of construction, but the same was disbursed in single shot since the said bank/ financing institution was in collusion with the builder.
- XXII. That it was agreed between the complainant and the respondent herein that the builder will pay PRE-EMI under the Subvention payment plan till the possession is delivered from the date of disbursement of the loan, but the same has not taken place. Even though initially some EMI's were paid by the respondent but thereafter the respondent stopped making the same.
- XXIII. That it was agreed between the complainant and the respondent herein that the possession of the unit in question will be delivered shortly to the complainant as the construction of the said project of the respondent is going on in full swing and is nearly at completion stage.
- XXIV. That more than 72 months have elapsed and yet there is not sign of delivery/ possession of the unit in question. That the builder continues to remain evasive by giving false commitment and differing

the completion and delivery of the unit in question for the past 72 months.

XXV. That despite repeated requests and reminders to the complainant, the complainant has failed to handover the possession of the unit in question to the complainant. That due to personal reasons and financial difficulties the complainant was constrained to seek cancellation of the booking of unit in question.

XXVI. That for the same the complainant on 22.02.2023 sent a cancellation/surrender notice to the respondent and bank, however despite receipt of the notice the unit has not been cancelled and the refund has not been processed as a result the complainant is constrained to approach the Authority.

XXVII. That the respondent builder/ developer has committed cheating upon the complainant as well as the bank and there has been deficiency in services. Therefore, the complainant has suffered a lot, not only physically, but also mental agony and harassment. Therefore, the respondent is liable to compensate the complainant for its negligent act. Hence apart from criminal liability, the respondent is also under civil liability.

**C. Relief sought by the complainant**

4. The complainant has sought following relief(s).
  - a) Directing the respondent/ developer/ promoter to cancel the booking of the complainant in a flat bearing no. E802, Eighth Floor, Block E, Parkwood Westend located at Sector-92, Gurgaon, Haryana admeasuring super area 1650 Sq. Ft. in the abovementioned project of the respondent/ builder.

b) Directing the respondent/ developer/ builder to refund an amount of Rs. 31,82,915.00/- to the complainant as the credit amount received by the respondent from M/s Sonastar Electronics Pvt. Ltd. directly to the complainant along with an interest @24% per annum from the date when respondent failed to deliver the possession of the unit in question to the complainant.

c) Directing the respondent builder/ developer to refund an amount of Rs. 51,96,169.00/- along with all interest, penalties, charges, etc. to Piramal Capital & Housing Finance Ltd. having its branch office at Pitampura, New Delhi.

d) Directing the respondent builder/ developer to pay a sum of Rs. 2,00,000.00/- to the complainant on account of cost of litigation incurred due to the respondent's negligent, criminal and mala fide acts.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

- i. That the present complaint, filed by the complainant, is bundle of lies and hence is liable to be dismissed. Further the complaint is also not maintainable as it doesn't disclose any cause of action for filing the complaint against the respondent.
- ii. Instant complainant is the subsequent allottee in the present complaint -that the unit in question i.e., unit bearing no. e-802, having super area of 1495 sq. ft, situated at sector - 92, gurugram

in the project of respondent i.e., "parkwood westend", was originally allotted to one mr. nav kumar khandur & mrs. Vijaya Khanduri vide Allotment Letter dated 28.07.2010 for a basic sale price of Rs. 29,15,250/-.

- iii. That as per the payment plan opted by the original allottee against the basic sale consideration of Rs. 29,15,250/- , the original allottee has only paid Rs. 8,97,096/-
- iv. That it is submitted a flat buyer agreement dated 04.05.2012 was executed by and between the original allottee for unit bearing Flat No. E-802, located at Tower – E on 8th Floor admeasuring 1495 Sq. Ft for a sale consideration of Rs. 34,75,875/-
- v. That the original allottee vide change of right to purchase letter dated 07.05.2012, requested the respondent to substitute M/s Libra India Pvt Ltd as the purchaser for the Unit E-802 admeasuring 1495 Sq. Ft on the 8th Floor. It is an admitted position that the amount paid by original allottee to the tune of Rs. 8,97,096/- has been received by respondent from the original allottee till the date of endorsement/transfer and further the original allottee requested the respondent that sum of Rs. 8,97,096/- paid by them may be considered to the paid by M/s Libra India Pvt Ltd i.e., the second allottee.
- vi. That the vide change of right to purchase letter dated 07.03.2014, M/s Libra India Pvt Ltd requested the respondent to substitute M/s Sonastar Electronic Pvt Ltd, as the purchaser for the Unit E-802 admeasuring 1495 Sq. ft on the 8th floor. it is an admitted position that the amount paid by second allottee to the tune of Rs. 8,97,096/- has been received by respondent from the second allottee till the

date of endorsement/transfer and further the second allottee requested the respondent that sum of Rs. 8,97,096/- paid by them may be considered to be paid by M/s Sonastar Electronics Pvt Ltd i.e., the third allottee.

- vii. That it is submitted that post allotment of the unit in the name of M/s Sonastar Electronics Pvt Ltd, certain amounts were paid on different dates i.e., 14.03.2014, 25.07.2014, 06.02.2015 for Rs. 7,64,060/-, 13,71,491/-, 1,50,268/- vide cheque bearing no. 116473, 007295, 007327 to respondent, which aggregated to the total amounts paid by M/s Sonastar Electronic Pvt Ltd as Rs. 31,82,915/-.
- viii. That vide letter dated 01.04.2015 it was duly intimated to M/s Sonastar Electronic Private Limited about the revision in the area against the unit and accordingly all demands and payments will be applicable as per the revised area.
- ix. That post revision in the area against the above said unit from 1495 Sq. Ft to 1650 Sq. Ft, revised payment plan along with revised allotment letter dated 23.07.2015 in the name of M/s Sonastar Electronic Pvt Ltd duly issued.
- x. That M/s Sonastar Electronic Private Limited transferred the unit vide agreement to sell dated 27.07.2015, in the name of instant complainant as the purchaser for the unit Flat No. E-802, located at Tower - E on 8th Floor admeasuring 1650 Sq. Ft at the rate of 4200 per Sq. Ft for a sale consideration of Rs. 83,58,750/-.
- xi. That it is pertinent to mention that vide letter date 19.08.2015, the respondent duly informed the M/s Sonastar Electronics Pvt Ltd that the respondent do not have any objection for transfer of the unit

from them to the instant complainant subject to transferor and transferee agreeing to be bound by the terms and conditions of the flat buyer agreement of the apartment, clearance of any dues and subject to the payment of all applicable charges as well as transfer charges.

- xii. That the vide change of right to purchase Letter dated 07.09.2015, M/s Sonastar Electronic Pvt Ltd requested the respondent to substitute, Mr. Brijesh Singh as the purchaser for the Unit E-802 admeasuring 1650 Sq. Ft on the 8th Floor. It is an admitted position that the amount paid by M/s Sonastar Electronic Pvt Ltd to the tune of Rs. 31,82,915/- has been received by respondent from the M/s Sonastar Electronic Pvt Ltd till the date of endorsement/transfer and further the M/s Sonastar Electronic Pvt Ltd requested the Respondent that sum of Rs. Rs. 31,82,915/- paid by them may be considered to the paid by brijesh singh i.e., the instant complainant.
- xiii. That the complainant were facing insufficiency of funds which led to the search of financial institutions for funding their unit, thereby complainant voluntarily approached Dewan Housing Finance Corporation Limited, for financial assistance for the allocated unit. Accordingly, complainant preferred a loan application and submitted the documents as required by availing of loan.
- xiv. That the complainants were short in finances for the purchase of above said unit and applied for sanctioning of Loan from DHFCL. That after accepting the application of the complainants for the loan amounts a tri-partite agreement to this effect was executed on 28.08.2015.

- xv. That on 22.09.2015 the answering respondent had sent a letter for permission to mortgage the allocated unit to Dewan Housing Finance Corporation Limited upon the request of complainant.
- xvi. That Dewan Housing Finance Corporation Limited, disbursed an amount of Rs. 51,96,169/-, in favour of the complainant vide disbursement dated 30.08.2015.
- xvii. It is submitted that the respondent in obligations to the tri-partite agreement executed between the parties has already remitted Pre-Emi to the tune of Rs. 14,59,461/- to Dewan Housing Finance Corporation Limited and the same shall be considered and deducted while allowing the refund to the complainant.
- xviii. It is submitted that the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent and, in case the construction of the said residential unit was delayed due to such 'force majeure' conditions the respondent was entitled for extension of time period for completion.
- xix. That from the facts indicated above and documents appended, it is comprehensively established that a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period and before indicated above. In a similar case where such orders were brought before the Authority in the complaint no. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S

Venetian LDF Projects LLP" decided on 17.05.2022, the Authority was pleased to allow the grace period and hence, the benefit of the above affected 582 days need to be rightly given to the respondent builder.

- xx. It is pertinent to mention herein that since inception the respondent herein was committed to complete the project, however, the development was delayed due to the reasons beyond the control of the respondent and further due to timely payments by the allottee and the instant complainant against the unit. That due to the above reasons the project in question got delayed from its scheduled timeline.
- xxi. That it is pertinent to mention that the project could not be completed and developed due pending litigations before the different courts and authorities established by law and most prominently due to non-payments by the allottee's of the project as well as the instant complainant. Further the project was delayed due to various hindrance such as government notifications from time to time and force majeure conditions, breakdown of covid-19 pandemic and other such reasons stated above in the preliminary submissions, which miserably affected the construction and development of the above said project as per the proposed plans which were unavoidable and beyond the control of the respondent.
- xxii. That the respondent upon incapable to complete the construction of the said project as per schedule time verbally requested the complainant from time to time, for granting the amounts paid against the unit b-503, admeasuring 1488 Sq. Ft in its project.

However, the complainant did not paid any heed to such proposals of the respondent.

- xxiii. That as per Section 18(1)(b) of The Real Act, 2016, which speaks that if the promoter fails to complete or is unable to give the possession of an apartment, plot or building due to discontinuance of his business as a developer or on account of suspension or revocation of the registration under this Act or for any other reasons he shall be liable without prejudice to any other remedy available, to return the amount received by promoter in respect of that apartment, plot, building, as the case may be with interest at such rate as may be prescribed in this behalf under the Act.
- xxiv. That it is pertinent to mention that even the model buyer agreement states that in the event it becomes impossible for the promoter to implement the project due to force majeure circumstances, court orders, litigations, government policy, guidelines or decisions affecting the regular development of the real estate project, then the allotment shall stand terminated and the promoter shall be duty bound to refund to the allottee, the entire amounts as received against the unit.
- xxv. That the intention of the respondent is bonafide and the above said proposal to refund the amount paid by the complainant in the project is in the interest of the complainant as the project could not be delivered due to various reasons beyond the control of the respondent as stated above and are not repeated herein for the sake of brevity and convenience.
- xxvi. Since the unit was endorsed in favour of the instant complainant on 07.09.2015, reliance may be place on the judgment of the Hon'ble

Apex Court in the matter of "M/s Laureate Buildwell Pvt. Ltd. vs Charanjeet Singh". In the said matter the subsequent allottee claimed a refund along with the interest from the respective dates when the instalments were paid to the laureate, which included the instalments paid by the original allottee. That the Hon'ble Apex Court after hearing the contention of the both the parties directed refund of principal amount with interest from the date when the builder acquired the knowledge or acknowledged the transfer of the unit to the subsequent allottee.

xxvii. Accordingly, applying the same ratio in the present matter it may be said that the unit was to be delivered to the complainants within 36 months from the date of endorsement of the unit, which was further subject to force majeure situations. Thus, the unit was to be delivered to the complainants on or before 07.09.2018.

xxviii. That the various contentions and claims as raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and misled this Authority, for the reasons stated above. That it is further submitted that none of the reliefs as prayed for by the complainant are sustainable before this Authority and in the eyes of law as well as due to the reasons as state above in the preliminary submissions/objections. Hence, the complaint on such misrepresented facts is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the Authority. That the present complaint is an utter abuse of the process of law and hence deserves to be dismissed.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint

can be decided on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II Subject-matter jurisdiction**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

***Section 11.....***

***(4) The promoter shall-***

***(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;***

***Section 34-Functions of the Authority:***

***34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.***

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the relief sought by the complainant.**

**F.I** Directing the respondent/ developer/ promoter to cancel the booking of the complainant in a flat bearing no. E802, Eighth Floor, Block E, Parkwood Westend located at Sector-92, Gurgaon, Haryana admeasuring super area 1650 Sq. Ft. in the abovementioned project of the respondent/ builder.

**F.II** Directing the respondent/ developer/ builder to refund an amount of Rs. 31,82,915.00/- to the complainant as the credit amount received by the respondent from M/s Sonastar Electronics Pvt. Ltd. directly to the complainant along with an interest @24% per annum from the date when respondent failed to deliver the possession of the unit in question to the complainant.

**F.III** Directing the respondent builder/ developer to refund an amount of Rs. 51,96,169.00/- along with all interest, penalties, charges, etc. to Piramal Capital & Housing Finance Ltd. having its branch office at Pitampura, New Delhi.

**F.IV** Directing the respondent builder/ developer to pay a sum of Rs. 2,00,000.00/- to the complainant on account of cost of litigation incurred due to the respondent's negligent, criminal and mala fide acts.

11. On the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs.

12. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

**"Section 18: Return of amount and compensation**

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

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

**he shall be liable on demand to the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed." (Emphasis supplied)

13. Clause 28(a) of the buyer's agreement provides for handing over of possession and is reproduced below:

**28. Possession:**

**a) Time of handing over the Possession**

"That subject to terms of this clause and subject to the FLAT ALLOTTEE (S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed documentation, payment of all amount due and payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc. as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the FLAT within a period of thirty six (36) months from the date of signing of this Agreement. If however, understood between the parties that the possession of various Block Towers comprised in the complex as also the various common facilities planned therein shall be ready & complete in phases and will be handed over to the Allottee of different Block/Towers as and when completed."

14. **Due date of handing over possession:** As per clause 28 (a) of the buyer's agreement dated 04.05.2012., the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36

months from the date of signing of the agreement. Accordingly, the due date of possession comes out to be 04.05.2015.

15. Admissibility of refund along with prescribed rate of interest: The complainants are seeking refund the amount paid by them at the prescribed rate of interest. However, the allottees intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced 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.*

16. The legislature in its wisdom in the subordinate legislation under the provision 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.
17. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 31.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
18. On consideration of documents available on record as well as submissions made by the parties, the authority is satisfied that in terms of the buyer's agreement executed between the parties on 04.05.2012, the possession of the subject flat was to be delivered

within a period of 36 months from the date of execution of buyer's agreement. Therefore, the due date of handing over of possession was 04.05.2015. Now the complainant after lapse of due date of possession has filed the present complaint seeking refund of the paid-up amount along with interest.

19. It is pertinent to mention over here that even after a passage of more than 8 years neither the occupation certificate is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that till date the respondent has not obtained occupation certificate/part occupation certificate from the competent authority. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
20. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019**, decided on 11.01.2021.

"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be

made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....

21. Further, the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.** (supra) reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022. observed as under:

*"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."*

22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

23. The complainant in the aforesaid relief is seeking relief w.r.t compensation. **Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

#### **G. Directions of the authority**

24. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondent-promoter is directed to refund the paid-up amount along with interest at the rate of 10.85 % per annum, as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, the date of each payment till the actual realization of the amount after adjusting the amount already paid up by the respondent.
- ii. Out of the total amount so assessed, the amount paid by the bank/financial institution will be refunded first in the bank and

the balance amount along with interest if any will be refunded to the complainant.

iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

25. Complaint as well as applications, if any, stand disposed of accordingly.

26. Files be consigned to registry.

**Dated: 31.10.2025**



Arun Kumar  
**(Chairman)**

Haryana Real Estate Regulatory  
Authority, Gurugram