



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no.:</b>	129 of 2022
<b>Date of filing:</b>	01.02.2022
<b>Date of first hearing:</b>	15.03.2022
<b>Date of decision:</b>	30.04.2026

Manish Kumar, S/o Sh. Rajinder Kumar,  
R/o House no. 938, Sector 7,  
Urban Estate, Ambala City,  
Haryana 144004

....COMPLAINANT

VERSUS

1. M/s Vatika Ltd.,  
7<sup>th</sup> floor, Vatika Triangle, Sushant lok,  
Phase-I, Gurugram, Haryana  
through its Managing Director  
2. Vatika City Central, Ambala,  
A subsidiary of Vatika Limited,  
Sector 23, Opposite Sector-10,  
Rajiv Gandhi Sports Centre, through its Manager

....RESPONDENTS

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

**Present:** Adv. Brijender Kaushik, counsel for the complainant, through VC.  
 Adv. Charu Dhingra, counsel for the respondent, through VC.

**ORDER (PARNEET S SACHDEV- CHAIRMAN)**

1. Present complaint was filed on 01.02.2022 by 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 unit booked by complainants, the details of sale consideration, the amount paid by them and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Vatika City Central

2.	Plot no.	12, Street no. C4, Block C, Sector 23
3.	Area	762.75 sq. yds.
4.	RERA registered/ not registered	Registered (lapsed project)
5.	Date of Flat/ Apartment Buyer Agreement	05.02.2016
6.	Deemed date of possession as provided in apartment buyer's agreement (48 months as per addendum to BBA dated 05.02.2016)	05.02.2020
7.	Basic sale price	59,62,417/-
8.	Amount paid by complainant	22,52,016/-
9.	Offer of possession	Not offered

**B. FACTS OF CASE AS STATED IN COMPLAINT:**

3. The facts of the present case are that the respondent company had advertised for the sale of plots in a residential plotted colony under the name "Vatika City Central," situated in Sectors 21, 22, 23, and 25, Ambala.

4. That the complainant entered into an agreement with the respondent on 05.02.2016 for plot no. 6, street no. D4, Block D, Sector 23 measuring 180.45 sq. yards in the respondent's project "Vatika City Central".
5. As per the said agreement, the basic sale price of the plot was fixed at ₹17,29,974.15/-, calculated at the rate of ₹587/- per square yards. In terms of Clause 10 of the agreement, possession of the plot was to be delivered within a period of three years from the date of execution of the agreement. The complainant paid a sum of ₹1,40,400/- towards earnest money in respect of the said plot.
6. Thereafter, complainant executed an addendum to agreement dated 05.02.2016. As per said addendum the plot offered was subject to change, alteration, modification, revision, addition, deletion or substitution at the sole discretion of the company as per approvals.
7. As per clause 3 of the agreement the payment schedule was time linked payment plan and after receiving offer of possession in writing, the complainant was to pay 60% of the balance amount at the time of handing over of the plot.

8. In furtherance of the said agreement the complainant paid an amount of ₹5,63,004/- till 01.02.2017 and soon thereafter a communication was received by the complainant stating that the already offered plot cannot be delivered and in lieu of the said plot another plot no. 12, street no. C4, Block C, sector 23 measuring 762.75 sq. yards was allotted to him on the same terms and conditions. Further basic sales price was increased to ₹59,62,417/- out of which complainant had paid an amount of ₹22,52,016/-.
9. That it is alleged by the complainant that he kept on approaching the respondent for the possession of his plot but respondent developer kept on telling him that the same will be delivered as and when the development is complete and necessary permissions are received.
10. That on 22.12.2020 complainant received a notice dated 09.12.2020 stating therein that complainant to deposit an amount of ₹73,74,048/- within 7 days failing which agreement dated 05.02.2016 shall be cancelled. Thereafter, complainant on 28.12.2020 sent a cheque amounting to ₹5,00,000/- along with a letter to enquire the basis of demand of ₹73,74,048.57/- when an amount of ₹22,52,016/- already stands paid for the basic sales price of ₹59,62,417.70/-.



11. That respondent chose not to reply to the aforementioned letter dated 28.12.2020 and rather cancelled the complainant's allotment vide letter dated 16.02.2021 and also demanded an amount of ₹12,90,757/- from the complainant on account of charges etc.
12. In light of the foregoing facts, the complainant has filed the present complaint before this Hon'ble Authority seeking the reliefs as prayed for herein.

**C. RELIEF SOUGHT:**

13. In view of the facts mentioned above, the complainants pray for the following relief(s):-
  - a) It is respectfully prayed that the letter dated 16.02.2021, whereby allotment of plot no. 12, C-4 Street, Sector 23 has been cancelled be declared as illegal, null and void and set aside and the allotment be restored in favour of the complainant;
  - b) Respondent be directed to pay interest @ 24% per annum from the date of payment till offer of possession as the possession was not delivered well within time;
  - c) Respondent be directed to withdraw the illegal demand of ₹73,74,048.57/- demanded vide letter dated 09.02.2020, as the same is illegal and unlawful.



- d) Respondent be directed to pay an amount of ₹500,000/- on account of damages;
- e) Complainant be awarded an amount of ₹100,000/- on account of litigation and other miscellaneous charges;
- f) Any other relief, which this hon'ble authority may deem fit under the facts and circumstances of the present case be awarded/granted to the complainant.

**D. WRITTEN SUBMISSION FILED BY THE RESPONDENT**

Ld. counsel for the respondent filed a detailed reply on 17.05.2022 pleading therein as under: -

- 14. That the complainants have neither any cause of action nor any locus standi to maintain the present complaint against respondent, especially when the complainant is actually seeking the relief, which amounts to amendment/ modification/ re-writing of the terms of the concluded and binding inter-se agreements entered into between the complainant and respondent which was executed prior to commencement of the Act. This is evident from the averments as well as the prayers sought in the complaint. hence, the present complaint filed by the complainant is not maintainable.
- 15. That the present complaint has been filed with a mala fide intention solely to extract money from the answering respondent. Brief facts of the case are that

vide Agreement dated 05.02.2016, the plot in question was allotted to the complainant. It is stated by the respondent that they had duly explained all the terms and conditions of the allotment to the complainant. The complainant, after fully analyzing the feasibility of the investment and keeping in mind the anticipated commercial benefits/returns, entered into the agreement as an investor. The complainant executed the agreement out of his/her own free will and after duly understanding the terms and conditions contained therein. Therefore, the present complaint is not maintainable before this Hon'ble Authority.

16. It is submitted by the respondent that the Agreement in this case was executed prior to the commencement of RERAs such parties to agreements are bound by terms, and the answering respondent has acted on terms of agreement, followed by rule of natural justice. Hence, no cause of action arises to file the present complaint. Therefore, the complainant is not entitled for any relief under either the law or equity from this the Hon'ble Tribunal.
17. Further, it is stated that the complainant did not adhere to the payment schedule/plan, despite notice and reminder. It shall be not in dispute that complainant failed to make payments as per agreed scheduled plan. Further did not come forward to take possession. Therefore, the said plot was cancelled/allotment terminated as per terms.

18. That the learned Authority had no jurisdiction to entertain the complaint moved by the complainant for grant of compensation and interest. There is no provision in the Act to give up the claim of compensation to bring it within the jurisdiction of the Authority. The Adjudicating Officer who could have entertained the complaint filed by the complainant in view of section 71 of the Act.
19. Additionally, the parties are bound by the terms and conditions mentioned in the said Agreement which was executed between the parties prior to commencement of HRERA. The said Agreement was duly signed and executed by the complainant after properly understanding each and every clause contained in the Agreement and the same has been acted upon true to its intent. That the Complainant was neither forced nor was influenced by Respondent to sign the Said Agreement. Therefore, in the absence of lack of jurisdiction by this Hon'ble Authority, to entertain the present complaint, the complaint is liable to be dismissed.
20. That Respondent has acted as per the terms and conditions of Agreement. the complainants were aware about terms of agreement and consequences thereof.

21. That the allotment of plot has been terminated in accordance with clause 17 of the agreement and it is stated that despite notice complainant failed to make payments as per agreed terms of agreement.
22. Reliance has been placed by the respondent in the case of "**Bhatti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704**" observed that that a person who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract; it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the signed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.
23. Further, he has placed reliance on the case of "**Bihar State Electricity Board, Patna and Ors. Vs. Green Rubber Industries and Ors, AIR (1990) SC 699**" held that the contract, which frequently contains many conditions, is presented for acceptance and is not open to discussion. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect.

24. That the respondent has also referred to clause 9 of the builder buyer agreement which states that it shall not be obligatory on the part of the company to send demand notices as per the schedule of payments or obligations to be performed by the allottee and in case of default in payments the allotment shall be liable to be cancelled and the entire earnest money deposited by the allottee shall be forfeited by the company and recover simple interest @ 18% p.a. on the unpaid amount.
25. That it is submitted that plot was allotted to complainant on his request. Therefore, the respondent issued notices on dated 29.08.20018, 19.01.2019 to complainant, However, the complainant failed to make payments despite notice, consequence thereof lead to termination of plot, vide notice dated 09.12.2020.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:**

26. The Authority heard the learned counsel for both the complainant and the respondent at length on 02.04.2026, wherein both parties reiterated the submissions already advanced in their respective pleadings and supporting documents. The said arguments stand duly recorded in the order dated 02.04.2026.

**F. ISSUE FOR ADJUDICATION:**

27. Whether complainants are entitled to relief of possession along-with delay interest for delay in handing over the possession in terms of Section 18 of Act of 2016?

**G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY**

**Findings on the objections raised by the respondent.**

**Objection raised by the respondent with respect to agreement executed prior to coming into force of the Act.**

The respondent has raised an objection that the complainant is seeking reliefs which would amount to modification or re-writing of the binding agreement executed between the parties prior to the commencement of the Real Estate (Regulation and Development) Act, 2016.

In this regard, the Authority is of the considered view that the RERA Act neither expressly provides nor can it be construed to imply that all pre-existing agreements are to be re-written upon the coming into force of the Act. Rather, the provisions of the Act, the Rules framed thereunder, and the terms of the agreement are required to be interpreted harmoniously. However, in situations where the Act or the Rules specifically provide for regulating a particular aspect, such matters shall be governed in accordance with the provisions of the

Act and the Rules from the date of their enforcement. The said contention has been upheld in the landmark judgement of *Neelkamal Realtors Suburban Pvt. Ltd. vs. UOI and others (W.P 2737 of 2017)* decided on 06.12.2017 which provides as under:

*“119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. **The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.***

*122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports.”*

Thus, while agreements between the parties are sacrosanct, they remain subject to the provisions of the Act to the extent the same have been modified or overridden by statute; Additionally, in *M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Ors., Civil Appeal No(s). 6745–6749 of 2021* the Hon’ble Supreme Court held (particularly in paras 41 and 54) that the provisions of the Act are retroactive in character. The Court clarified that though the statute is not retrospective in the strict sense, it operates upon pre-

existing contractual relationships in future and, therefore, the mere fact that an agreement for sale was executed prior to the Act does not exclude the applicability of the provisions of the Act and the Rules thereunder.

In the present case, the complainant is seeking possession of the allotted unit along with delay interest. Section 18 of the RERA Act, 2016 clearly provides that where the allottee does not intend to withdraw from the project, the promoter is liable to pay interest for every month of delay till the handing over of possession. Accordingly, the objection raised by the respondent is devoid of merit and does not sustain.

**Objection raised by the respondent with respect to complainant executing the agreement out of free will and therefore terms of the agreement become binding on the complainant.**

The next objection taken by the respondent is that the complainant is bound by the terms of the agreement, as the same was executed by the complainant out of free will and after due understanding of its contents. In support of this contention, reliance has been placed upon Clause 17 of the agreement, which provides for events of default and consequences thereof, including the unilateral right of the developer to cancel the agreement and forfeit amount paid by the allottee. The primary contention of the respondent is that since the

complainant had agreed to the said clause voluntarily, the same is binding upon the complainant and cannot now be challenged.

Respondent has referred to clause 17 of the agreement. In this context, clause 17, i.e, events of defaults and consequences is being reproduced below-

***“EVENTS OF DEFAULTS AND CONSEQUENCES***

*All defaults, breaches and/ or non-compliance of any of the terms and conditions of this Agreement by the Allottee shall be deemed to be events of defaults liable for consequences stipulated herein. Some of the indicative/ illustrative events of defaults are mentioned below:*

*i) Failure to make payments within the time as stipulated in the Schedule of Payments as given in Annexure-II and failure to pay the stamp duty, legal, registration any incidental charges, any increases in EDC/IDC/idc or any statutory dues or in security deposits including but not limited to Interest Free Maintenance Security Deposit (IFMSD) as demanded by the Developer, any other charges, deposits for bulk supply, of electrical energy, taxes etc. as may be notified by the Developer to the Allottee under the terms of this Agreement and all other defaults of similar nature.*

*ii) Failure to perform and observe any or all of the Allottee's obligations as set forth in this Agreement or if the Allottee fails to execute any other deed/ document/ undertakings/ indemnities etc. or to perform any other obligation, if any set forth in any other Agreement with the Developer in relation to the said Residential Plot.*

*iii) Failure to take over the said Residential Plot for possession and use within the time stipulated by the Developer in its notice.*

*iv) Failure to execute the conveyance deed within the time stipulated by the Developer in its notice.*

*v) Failure to execute Maintenance Agreement and/or to pay on or before its due date the maintenance charges, maintenance security deposits or any increases in respect thereof, as demanded by the Developer or its nominee or Maintenance Company/ Agency.*

vi) Failure, pursuant to a request by the Developer, to become a member of the Association of Owners of the said residential Colony or to pay subscription charges etc, as may be required by the Developer or the said Association, as the case may be.

vii) Assignment of this Agreement or any part of this Agreement without prior written consent of the Developer.

viii) Dishonor of any cheque(s), given by Allottee for any reason whatsoever.

ix) Sale/ transfer/ disposal of/dealing with, in any manner, the parking space, if allotted, independent of the Residential Plot.

x) Any other acts, deeds or things which the Allottee may commit, omit or fail to perform in terms of this Agreement, any other undertaking, affidavit / agreement / indemnity etc. or as demanded by the Developer which in the opinion of the Developer amounts to an event of default and the Allottee agrees and confirms that the decision of the Developer in this regard shall be final and binding on the Allottee.

Upon the occurrence of any one or more of event(s) of default under this Agreement including but not limited to those specified above, the Developer may, at its sole discretion decide, by notice to the Allottee, to cancel this Agreement. If the Developer elects to cancel this Agreement, the Allottee shall have fifteen (15) days from the date of issue of notice of cancellation by the Developer to rectify the default as specified in that notice. The Allottee agrees that if the default is not rectified within such 15 (15) days, this Agreement shall be automatically cancelled without any further notice and the Developer shall have the right to retain, as and for liquidated damages, the entire earnest money as specified in this Agreement along with other non-refundable amounts e.g. the interest on delayed payments, any brokerage paid/ due to payable, service tax, any other tax/ cess paid to statutory authorities etc. The Allottee agrees that upon such cancellation of this Agreement, the developer will be released and discharged of all liabilities and obligations under this Agreement and the Allottee hereby authorizes the Developer that the said Residential Plot may be sold to any other party by the Developer or dealt in any other manner as the Developer may in its sole discretion deem fit as if this Agreement had never been executed and without accounting to the Allottee for any of the proceeds of such sale. In the event of the Developer electing to cancel this Agreement



*any amount which shall prove to be refundable to the Allottee over and above the amounts retained as liquidated damages such as the earnest money, interest on delayed payments, any brokerage paid, due or payable, any other amount of non-refundable nature, shall be refunded by the Developer without any interest or compensation of whatsoever nature and upon such cancellation and refund by the Developer by registered post, the Allottee shall be left with no right, title, interest or lien over the said Residential Plot in any manner whatsoever and he shall have to return his/her copy of this Agreement back to the Developer within 15 days of such cancellation."*

On perusal of Clause 17 of the agreement, it clearly reveals that the terms are one-sided and heavily tilted in favour of the promoter. At the heart of Indian contract jurisprudence lies the doctrine that consent must not only be free, but also fair in substance when examined against the realities of bargaining power. The *doctrine of unconscionable contracts*, though not expressly codified, has been firmly embedded within Sections 16 and 23 of the Indian Contract Act, 1872. It postulates that where a term is so one-sided that it shocks the conscience of the Court, and is imposed by a party wielding overwhelming bargaining power, such a term cannot be permitted to masquerade as a valid contractual stipulation. In such situations, Courts typically look for procedural unconscionability (inequality of bargaining power/lack of choice) and substantive unconscionability (overly harsh, one-sided terms). Further, the 199th Law Commission Report also explained procedural and substantive



unfairness in Proposed Bill and laid down guidelines to find if a contract is procedurally or substantially unfair.

Under the international law, The U.S. Court of Appeals for the District of Columbia Circuit gave a landmark judgment in *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965). The court described unconscionability as absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party. The Supreme Court of New Jersey also held a particular clause of the contract invalid because it was the against the public good, there was unequal bargaining power between the parties and the clause was hidden from the attention of the buyer. These judgments laid the foundation of the aforementioned doctrine. In India, The Hon'ble Supreme Court, in *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly* (1986) 3 SCC 156, authoritatively held that a clause which is "unfair and unreasonable, and unconscionable, having been entered into between parties who are not equal in bargaining power," is opposed to public policy and therefore void under Section 23 of the Indian Contract Act, 1872. Although, this judgment is on the issue an unconscionable employment contract, however, the principle elucidated by the Hon'ble Apex Court applies across the domain of contract law.



When the present clause is tested on that anvil, its infirmities become manifest. It declares that any act or omission subjectively determined by the developer shall constitute a default, with the developer's decision being "final and binding." It further confers upon the developer an unbridled right to cancel the agreement, forfeit substantial sums including earnest money and other payments, and thereafter resell the property without any obligation to account for the proceeds to the allottee. Such a clause not only lacks reciprocity but extinguishes, in one stroke, all substantive rights of the allottee while insulating the developer from any corresponding liability.

The Hon'ble Supreme Court has in its subsequent decisions, consistently frowned upon such one-sided builder-buyer stipulations. In *Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan (2019) 5 SCC 725*, the Court struck down similar clauses in a builder-buyer agreement, holding that terms which are "wholly one-sided, unfair and unreasonable" cannot bind the allottee, particularly where the agreement is a standard-form contract drafted by the developer. The Court emphasised that a homebuyer, faced with a take-it-or-leave-it contract, cannot be said to have exercised real freedom of choice. The apex court observed that clauses in builder-buyer agreements which are wholly one-sided and disproportionately favour the developer constitute an unfair trade practice and cannot be enforced against the allottee. Given that the

definition of “unfair trade practice” under the RERA Act is *pari materia*, the same principle is equally applicable in the present context.

Earlier, in *LIC of India v. Consumer Education and Research Centre (1995) 5 SCC 482*, it was reiterated that contractual clauses which are arbitrary, unfair, and unreasonable are violative of public policy and cannot be enforced.

In that view of the matter, a clause such as the present one cannot be accorded judicial imprimatur. Such a stipulation is hit by the *doctrine of unconscionability*. The law does not countenance a contract where one party is clothed with absolute dominion and the other reduced to a position of complete subservience.

Additionally, to adjudicate this issue, reference is made to para 122 of judgement of *Neelkamal Realtors Suburban Pvt. Ltd. vs. UOI and others (W.P 2737 of 2017)* reproduced above. In light of the said judgment, it is well settled that a law can be enacted to affect subsisting or existing contractual rights between parties in the larger public interest. The Real Estate (Regulation and Development) Act, 2016 provides specific statutory remedies, particularly under Section 18, in cases where the promoter fails to hand over possession within the stipulated time. Such statutory provisions override the contractual terms to the extent of inconsistency. Thus, while agreements are generally

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sacrosanct, they remain subject to statutory intervention where the Act expressly provides otherwise.

Further, it is observed that builder-buyer agreements are typically drafted in a manner that leaves little or no scope for negotiation by the allottee. The allottee is in most cases compelled to sign on pre-drafted, standard-form agreements without any meaningful opportunity to alter or negotiate the terms. Therefore, such agreements cannot be said to be executed on an equal footing or as a result of true free consent in the strict sense. It is evident that the present case involves a misuse of dominant position by the developer, who occupies a controlling and commanding position. The Hon'ble Apex Court in its various judgments has categorically concluded that when the terms of the agreement authored by the developer don't maintain a level platform between the developer and the allottee and the stringent terms imposed on the allottee are not in consonance with the obligation of the developer to meet the timelines for construction and handing over the possession, the same does not constitute a fair bargain.

Similar observation was made by the Competition Commission of India in *Belaire Owner's Association vs. DLF Limited* (12.08.2011) stating therein that imposition of unfair and one-sided terms by a developer amount to abuse of

dominant position. Accordingly, in light of the observations made hereinabove, the objection raised by the respondent is devoid of merit and is hereby rejected.

**Objection of the respondent with respect to no jurisdiction of the Authority to entertain the complaint for grant of compensation and interest.**

Another objection which has been taken by the respondent is that Authority has no jurisdiction to entertain the complaint filed by the complainant for grant of compensation and interest. To adjudicate the same reference is made to para 86 the judgement of Hon'ble Apex Court in *M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.* has laid down as under:-

*“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”*

It has been categorically held that if there is question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the Adjudicating Officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. The Adjudicating Officer is competent to adjudge the compensation and interest under Sections 12, 14, 18 and 19 of the Act. There remains no doubt that the power of granting compensation and interest lies with the Adjudicating officer only and Authority will not adjudicate upon the issue of compensation and interest in the present case as well.

28. Now proceeding on the merits of the case, Authority observes that it is not disputed by the parties that an agreement dated 05.02.2016 was executed between the parties for plot no. 6, street no. D4, Block D, sector 23 in the respondent's project "Vatika City Central". Basic price of the said plot was ₹17,29,974.15/-. It has also not denied by the parties that said plot was reallocated and now the plot which was allotted to the complainant was plot no. 12, street no. C4, Block C, sector 23 measuring 762.75 sq. yards and the basic sales price of the said plot was increased to ₹59,62,417/-.
29. The main grouse of the complainant is with respect to notice dated 09.12.2020 wherein the respondent has demanded an amount of

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₹73,74,048/- within 7 days and cancellation letter dated 16.02.2021. Complainant's averment is that he was not provided the basis of demand of ₹73,74,048/- and rather than providing for the basis of such demand respondent proceeded with the cancellation letter dated 16.02.2021. Respondent's averment in this regard is that notice dated 29.08.2018 and 19.01.2019(notices not annexed) were sent to the complainant for payment of demands. Complainant failed to make payment of said demand and thereafter notice for termination dated 09.12.2020 was sent to the complainant.

30. Perusal of the file reveals that that demand letters dated 29.08.2018 and 19.01.2019 and proof of service of these demand letters have not been annexed by the respondent promoter therefore it cannot be ascertained that whether these demand letters have been served by the respondent. Since, respondent has not annexed proof of delivery of such demand letters to the complainant and has failed to prove that said letters were served upon the complainant therefore complainant was not bound to make payment for said demands. Further complainant has only annexed notice dated 09.12.2020 and cancellation notice dated 16.02.2021, it can be presumed that these notices were delivered to the complainant. However, Authority has no hesitation in holding that the demand letters issued by the

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respondent were unjustified as the same was illegal in terms of provisions of RERA Act, 2016 for the reasons given in the preceding paragraphs of this order. Further cancellation letter dated 16.02.2021 is also unjustified as the basis of demand of ₹73,74,048.57/- was never communicated to the complainant.

31. The Authority further observes that no cogent evidence has been placed on record to substantiate any alleged default on the part of the complainants in payment of instalments, and the respondent has merely made bald averments in this regard. It is pertinent to note that an amount of ₹22,52,016/- had already been paid by the complainants as on 04.09.2018. However, no demand letters or supporting documents have been furnished by the respondent to establish that any instalments had fallen due and remained unpaid within the stipulated time. In the absence of such material evidence, the plea of default raised by the respondent cannot be sustained.
32. Further, as per clause 10 of the addendum to Builder Buyer Agreement dated 05.02.2016, possession of the unit was to be delivered within a period of forty eight (48) months from the date of execution of agreement, unless there shall be delay of there shall be failure due to reasons mentioned in other clauses therein or due to failure of allottee to pay in time the price of the residential unit. Date of execution of agreement in the present case is

05.02.2016; therefore, respondent was liable to deliver possession of said flat by **05.02.2020** (i.e. *48 months from the date of execution of agreement*).

33. Complainant in the present case does not wish to withdraw from the project and is rather interested in getting the possession of his plot. In these circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, allottee is entitled to interest for the entire period of delay caused, at the rates prescribed. It is observed that respondent in this case has not made any offer of possession to the complainant till date and has not stated anything with respect to occupation certificate. Authority concludes that complainant is entitled for the plot booked and unilateral cancellation done by the respondent should be set aside. Additionally, he is entitled for delay interest from the deemed date i.e. 05.02.2020 to the date on which a valid offer is sent to him after receipt of occupation certificate. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(z a) 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..”*

34. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 30.04.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.

35. Hence, Authority directs respondent to pay delay interest to the complainants 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 10.80% (8.80% + 2.00%) from the due date of possession i.e. 05.02.2020 till the date of a valid offer of possession.

36. Authority has got calculated the interest on total paid amount from due date of possession i.e. 05.02.2020 till the date of this order i.e. 30.04.2026 which works out to ₹15,17,279/- and further monthly interest of ₹19,990/- as per detail given in the table below:-

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 30.04.2026 (in ₹)
1.	22,52,016/-	05.02.2020	15,17,279/-
<b>Total:</b>			<b>15,17,279/-</b>
<b>Monthly interest:</b>			<b>19,990/-</b>

37. Accordingly, the respondent is liable to pay the upfront delay interest of ₹15,17,279/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of ₹22,52,016/-, monthly interest of ₹19,990/- shall be payable up to the date of actual handing over of the possession after obtaining completion certificate. The Authority orders

that the complainant will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to him.

38. Further, the complainant is seeking compensation of ₹5,00,000/- and cost of litigation of Rs. 1,00,000/-. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

#### **H. DIRECTIONS OF THE AUTHORITY**

39. Hence, Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the

promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) That the respondent is directed to set aside the cancellation letter dated 16.02.2021 whereby the allotment of the plot was cancelled, and to restore the said allotment in favour of the complainant.;
- (ii) Respondent is directed to pay upfront delay interest of ₹15,17,279/- (till date of order i.e. 30.04.2026) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount of ₹22,52,016/- monthly interest of ₹19,990/- shall be payable by the respondent to the complainants up to the date of actual handing over of the possession after obtaining occupation certificate.
- (iii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession offered to him.
- (iv) The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e,

10.80% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottee.

- (v) The respondent shall not charge anything from the complainant which is not part of the builder buyer's agreement.

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



.....  
DR. GEETA RATHEE SINGH  
[MEMBER]



.....  
PARNEET S SACHDEV  
[CHAIRMAN]

