HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1869 of 2024
Date of filing:	03.12.2024
Date of first hearing:	20.03.2025
Date of decision:	30.04.2026

Perumalla Venkata Bala Bhaskara Rao
S/o Perumalla Venkata Subbarao
R/o 26-361, Buttaipet Machilipatnam
Krishna, Andhra Pradesh-521001

....COMPLAINANT

VERSUS

Rise Projects Pvt. Ltd. through its Chairman/Managing Directors
Registered Office : 195 (Basement), Ram Vihar,
New Delhi- 110092

....RESPONDENT

Complaint no.:	1870 of 2024
Date of filing:	03.12.2024
Date of first hearing:	20.03.2025
Date of decision:	30.04.2026

Perumalla Venkata Bala Bhaskara Rao
S/o Perumalla Venkata Subbarao
R/o 26-361, Buttaipet Machilipatnam
Krishna, Andhra Pradesh-521001

....COMPLAINANT

VERSUS

Rise Projects Pvt. Ltd. through its Chairman/Managing Directors
Registered Office : 195 (Basement), Ram Vihar,
New Delhi- 110092

....RESPONDENT

Complaint no.:	1871 of 2024
Date of filing:	03.12.2024
Date of first hearing:	20.03.2025
Date of decision:	30.04.2026

Brahma Reddy Adapa
S/o Chinna Appi Reddy Adapa
R/o Bentoville Arkansas- 72712, U.S.A

....COMPLAINANT

VERSUS

Rise Projects Pvt. Ltd. through its Chairman/Managing Directors
Registered Office : 195 (Basement), Ram Vihar,
New Delhi- 110092

....RESPONDENT

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

Present: Adv. Sakshi Chahar, Counsel for complainants through VC.
None for the respondent

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Above captioned complaints are taken up together for hearing as these complaints involve similar issues and are related to the same project of the respondent. This final order is being passed by taking the Complaint No. 1869/2024 as the lead case.

2. Present complaint has been filed on 03.12.2024 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

3. The particulars of the unit booked by complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Clarks Residences Complex at Rise Sky Bungalows, MCF Land in Revenue Estate of Village Sarai Khawaja, Sector-41, Tehsil and District Faridabad, Haryana
2.	RERA registered/not registered	Registered, vide no. 267/2017 dated 09.10.2017
3.	Unit no.	F-602, Tower-F, 6th floor
4	Unit area	390 sq. ft (Super area)
5.	Date of Allotment Letter cum Agreement	21.01.2015
6.	Due date of possession (30 Months from flat buyer agreement/start of excavation- not revealed by respondent in its written statement, whichever is later)	21.07.2017 *POSSESSSION OF APARTMENT: Clause (i)- That the possession of apartment is proposed to be delivered by the developer to the allottee within 30 months of date of start of excavation or execution of this agreement (whichever is later) subject to force majeure or circumstances beyond the control of the developer, provided all amounts due and payable by the allotees as provided herein have been paid to the developer. It is, however, understood between the parties that various towers comprised in the Complex shall be ready and completed in phases and handed over, accordingly. The developer shall be entitled to a grace period of 180 days, after the expiry of 30 months for finishing construction work and applying for the occupation certificate in respect of the project from the concerned Authority.*

7.	Basic sales consideration	₹39,19,500/-
8.	Amount paid by Complainants	₹36,21,382/-
9.	Offer of possession	Not given.

B. FACTS AS STATED IN THE COMPLAINT

4. Facts of the present complaint are that the respondent, M/s Rise Projects Pvt. Ltd. (formerly known as B2C Buildwell Pvt. Ltd.), launched a project namely "Rise Sky Bungalows" with a component of studio apartments under the name "Clarks Residences" at Plot No. GH-02, Sector 41, Faridabad, Haryana, in the year 2014, with an assurance to complete the construction and hand over possession within a period of 30 months with an additional grace period of 180 days.

5. That lured by the representations and assurances made by the respondent and its authorized sales representatives regarding timely delivery and provision of world-class amenities, the complainant applied for booking of a studio apartment vide application dated 27.03.2014. Pursuant thereto, a loan of ₹24,00,000/- was sanctioned in favour of the complainant by DHFL Bank and a tripartite agreement was executed among the complainant, the respondent and the lending institution.

6. That thereafter, vide Allotment Letter-cum-Agreement dated 21.01.2015, the complainant was allotted a studio apartment bearing No. E-602 in "Clarks Residences" at the aforesaid project, for a total sale consideration of ₹39,19,500/-. As per the terms of the agreement, the respondent was bound to offer possession within 30 months along with a grace period of 180 days, i.e., on or before 21.01.2018.
7. That it is averred that the complainant has paid an amount of ₹36,21,382/-, which constitutes approximately 92.40% of the total sale consideration, in accordance with the demands raised by the respondent from time to time.
8. That it is further contended that the respondent had also assured monthly returns at the rate of 12% per annum under an investment return assurance scheme; however, the said assurance was allegedly honoured only for a few initial months and thereafter discontinued.
9. That despite receipt of substantial consideration, the respondent has failed to complete the construction of the project and hand over possession of the allotted unit within the stipulated period, and even as on date, the project remains incomplete, resulting in an inordinate delay of more than six years from the committed date of possession.
10. That it is also the case of the complainant that the respondent has charged interest @ 24% per annum compounded monthly on delayed payments made by the complainant, and therefore, on the principle of

parity and in terms of Section 2(z)(a) of the Real Estate (Regulation and Development) Act, 2016, the respondent is liable to pay interest at the same rate on the amount refundable to the complainant.

11. That the aforesaid acts and omissions on the part of the respondent are alleged to constitute a clear breach of contractual obligations, causing mental agony, harassment and financial loss to the complainant, who has repeatedly approached the respondent but has not received any satisfactory response.

12. That the project being situated in Faridabad, Haryana, the present complaint falls within the territorial as well as subject matter jurisdiction of this Authority under the provisions of the Real Estate (Regulation and Development) Act, 2016.

C. RELIEF SOUGHT

13. The complainants in their present complaint have sought following reliefs:-

    i. Direct respondent to refund the entire amount paid by the complainant along with interest as per the provisions of Section 18 of Real Estate (Regulation and Developmen) Act, 2016.

    ii. Direct the Respondent to make the required payment for refund of the whole (paid) amount at an interest @24% per annum compounded monthly with respect to the terms enumerated in

Agreement dated 21st January, 2015 (Payment Plan at Pg 4) considering the definition of interest as mentioned under Section 2(z)(a) of Real Estate (Regulation and Development) Act, 2016.

iii. Direct the Respondent to not to create any "Third Party Interest' over the Allotted Unit until the Complaint's whole (paid) amount is refunded to him along with the appropriate interest.

iv. Direct the Respondents to make an immediate Payments) to Complainant on account of Litigation Cost, actual loss against lapse of rental benefits, loss of Capital gain & escalated differential in circle rate due to non-handing over of timely physical possession of Apartment including compensation for physical, mental, litigation or even emotional suffering due to unreasonable & inordinate delay and inability to hand over timely physical possession of Apartment to Complainants.

v. Grant any other relief which this Ld. Authority may deem fit in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 18.02.2026 pleading therein:

14. That the Respondent, i.e., Rise Projects Pvt. Ltd. is engaged in the business of development and construction of real estate projects. The present reply is being filed through its authorised representative Mr. Rishabh Vashishtha in terms of Board Resolution dated 31.01.2020 authorising him to represent, sign and verify pleadings and defend proceedings on behalf of the Respondent. A copy of the Board Resolution is annexed as **Annexure R-1.**

15. At the outset, the Respondent denies all the averments made in the complaint except those specifically admitted herein. The complaint is misconceived, not maintainable and liable to be dismissed.

16. That the Complainant has suppressed material facts and has failed to disclose that an amount of ₹9,67,851/- (Rupees One Lakh Fifty-Two Thousand One Hundred only) has already been paid by the Respondent towards assured returns till September 2018. The ledger reflecting payment of assured returns is annexed as **Annexure R-2**. The payment was discontinued due to force majeure circumstances beyond the control of the Respondent, particularly non-completion of external development works by the Municipal Corporation, Faridabad.

17. That in the event refund along with interest is granted without adjusting the assured return already paid, the same would amount to double compensation for a singular alleged default. The Hon'ble Supreme Court in DLF Homes Panchkula Pvt. Ltd. v. D.S. Dhanda has

categorically held that compensation under multiple overlapping heads for the same default is impermissible. It has been observed that interest awarded for delay inherently compensates for deprivation of use of money and separate overlapping compensation cannot be sustained. Further, in Fortune Infrastructure v. Trevor D'Lima, the Hon'ble Supreme Court held that damages must remain compensatory in nature and should not result in unjust enrichment.

18. The principal grievance raised in the complaint pertains to payment and continuation of assured return under a separate "Agreement of Monthly Investment Return Assurance". The said agreement is independent and distinct from the Agreement for Sale and constitutes a standalone commercial arrangement. It does not form part of the statutory agreement contemplated under Section 13 of the Real Estate (Regulation and Development) Act, 2016.

19. That the Authority, being a creature of statute, derives its jurisdiction strictly from the provisions of the Act. Jurisdiction cannot be conferred by consent and must exist as a matter of statute. The Hon'ble Supreme Court in Jagmittar Sain Bhagat v. Director Health Services, Haryana has held that a statutory authority cannot assume jurisdiction beyond the statute creating it. Assured return schemes do not fall within the regulatory framework of the Act, which contemplates regulation of sale of immovable property and delivery of possession. The relationship

between the parties under the Agreement for Sale is that of promoter and allottee; however, the relationship under the Agreement of Monthly Investment Return Assurance is purely contractual and commercial in nature and does not fall within the scope of Sections 2(d) or 2(zk) of the Act. A similar view has been taken by the Uttar Pradesh Real Estate Appellate Tribunal in Meena Gupta v. One Place Infrastructure Pvt. Ltd., holding that assured return agreements are independent commercial arrangements beyond the scheme of the Act.

20. That after enactment of the Banning of Unregulated Deposit Schemes Act, 2019, continuation of assured return schemes without compliance of regulatory requirements may expose the Respondent to penal consequences. Any direction to continue payment of assured returns would amount to compelling violation of a central statute.

21. The complaint does not invoke or establish violation of Sections 12, 14, 18 or 19 of the Act. No allegation has been made regarding misrepresentation in advertisement, deviation from sanctioned plans, structural defect, or statutory breach as contemplated under the Act. The sole grievance pertains to enforcement of a separate assured return agreement. It is settled law that existence of jurisdictional facts is a sine qua non for exercise of jurisdiction. In Carona Ltd. v. Parvathy Swaminathan & Sons, the Hon'ble Supreme Court held that a tribunal

cannot assume jurisdiction by erroneously presuming existence of jurisdictional facts.

22. That delay in completion of the project, if any, occurred due to force majeure circumstances beyond the control of the Respondent, primarily non-completion of external and internal development works by the Municipal Corporation, Faridabad. Despite repeated representations and compliance with payment obligations towards land cost and other dues, essential infrastructure including road connectivity and services was not completed within the anticipated timelines.

23. That the project site was subjected to sealing by the Municipal Corporation on 31.12.2017, which was subsequently set aside by the Divisional Commissioner vide order dated 03.01.2018. The Respondent continued to pursue the authorities for completion of development works and deposited substantial amounts as per revised schedule under the Award dated 31.10.2014 passed by the Commissioner, MCF.

24. That time-to-time construction bans imposed by various authorities including the Hon'ble Supreme Court, National Green Tribunal and Pollution Control Authorities significantly impacted construction activities. Even short-term bans result in prolonged disruption as remobilisation of labour and material requires substantial additional time.

25. A detailed chart showing the periods of construction bans and the consequential time required for remobilization is reproduced hereinbelow:

S.No	Year	Order on construction ban	Order on construction restart	Days	No. of days to mobilise the resources and restart work
1	2016	08.11.2016	15.11.2016	8	30
2	2017	08.11.2017	17.11.2017	10	35
3	2018	31.10.2018	26.12.2018	56	76
4	2019	25.10.2019	14.02.2020	114	140
5	2021	15.11.2021	20.12.2021	36	30
TOTAL				224	310

26. It is evident from the above that the Respondent was prevented from carrying out construction activities for substantial periods due to circumstances beyond its control and is entitled to corresponding extension of time for completion of the project.

27. The construction activities were further severely affected by the Covid-19 pandemic and reverse migration of labourers, which brought the real estate sector to a standstill. This Hon'ble Authority vide office orders dated 26.05.2020 and 02.08.2021 declared the period from 25.03.2020 to 24.09.2020 and from 01.04.2021 to 30.06.2021 as force majeure period.

28. In view of the aforesaid force majeure circumstances including delay attributable to MCF, sealing of the site, construction bans and Covid-19

pandemic, the Respondent despite best efforts could not complete the project within the originally contemplated period. Granting refund with interest without considering these circumstances would cause grave prejudice and miscarriage of justice. In view of the above facts and settled legal position, the complaint insofar as it seeks enforcement of assured return or reliefs founded upon such separate commercial agreement is not maintainable before this Hon'ble Authority and is liable to be dismissed for want of jurisdiction.

E. REJOINDER TO THE REPLY FILED BY THE RESPONDENT

Learned counsel for the complainant filed rejoinder on 10.09.2025 to the reply filed by the respondent pleading therein:

29. That the respondent's reply is misleading, factually incorrect, and an attempt to evade statutory and contractual obligations. It is stated that the respondent has failed to address the core issue of delay and has instead taken vague and evasive pleas.

30. That an Agreement dated 21.01.2015 was executed for a studio apartment, for a total consideration of ₹39,19,500/-, out of which ₹36,21,382/- (about 92.4%) has already been paid. The possession was contractually due by 21.01.2018, however, the project is severely delayed with no offer of possession, no occupancy certificate, and no

revised timeline. On this basis, the complainant has exercised the right to withdraw under Section 18(1) of the RERA Act and seeks refund with interest.

31. It is emphasized that the respondent has not produced any documentary proof such as construction updates, progress reports, or communications indicating progress or expected delivery. This absence of evidence indicates prolonged delay and possible abandonment of the project.

32. The complainant contends that the delay is not a mere contractual breach but a fundamental failure to deliver possession and maintain transparency. Assurances given at the time of booking formed the basis of the transaction and cannot now be denied after receiving substantial consideration.

33. The rejoinder further highlights that the delay exceeds five years beyond the promised date, which has consistently been held to entitle allottees to refund with interest. It is pointed out that there is no default on the part of the complainant, nor any cancellation or refund proposal by the respondent.

34. The respondent's pleas of financial hardship or external factors are denied, as no valid force majeure was ever invoked. Moreover, events like COVID-19 cannot justify delay where the possession date had already expired much earlier.

35. On the objection regarding locus, it is clarified that the GPA holder is duly authorized through General Power of Attorney dated 13.12.2014 and 17.11.2024, which specifically empowers filing of complaints and legal proceedings under RERA. It is also pointed out that similar objections by the respondent have already been rejected by the Authority in a prior judgment.

36. With respect to the respondent's arguments on assured returns, it is stated that the same are irrelevant as no relief regarding assured returns has been claimed in the present complaint. The dispute is strictly confined to refund due to delay in possession.

37. Reliance is placed on a prior HRERA judgment (Complaint No. 891 of 2023), wherein similar pleas of delay due to NGT bans and COVID-19 were rejected, and refund with interest was granted. It is highlighted that minor interruptions cannot justify multi-year delays, and force majeure cannot be used retrospectively.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

38. During oral arguments, ld. counsel for the complainants reiterated the submissions as stated in the complaint. That complainant made payments as and when demanded by respondent, but respondent failed to grant the possession of the unit within stipulated time. Receipts of

payment have been attached in complaint file. Learned counsel for the respondent reiterated the averments made in the written reply and submitted that the delay in the project occurred due to reasons beyond its control, including non-completion of external development works by the Municipal Corporation, Faridabad. It was further submitted that payments towards assured returns had been made up to September 2018, and in support thereof, the respondent has placed on record the relevant ledger (Annexure R-2).

G. ISSUES FOR ADJUDICATION

39. (i) Whether the Authority has jurisdiction to entertain the present complaint?

(ii) Whether the Complainants are entitled to refund of the amount deposited by them along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

The Authority has considered the pleadings, documents placed on record, and the rival submissions advanced by both parties. The objections raised by the Respondent relate primarily to jurisdiction, maintainability, and delay. These are examined issue-wise.

I. Jurisdiction of the Authority- Promoter and Allottee Relationship

40. The Respondent has objected to the maintainability of the complaint on four grounds:

    (i) There is no promoter-allottee relationship as per the RERD Act, 2016. Hence RERD Act does not apply.

    (ii) The relationship under the assured return agreement is purely contractual and does not fall within the Real Estate (Regulation and Development) Act, 2016.

    (iii) The relief sought is in the nature of specific performance and therefore falls within the domain of the Specific Relief Act, 1963.

    (iv) The Complainant is an investor and not an allottee.

    These objections are examined in light of the statutory scheme.

41. The first objection of the respondent is that there is no promoter-allottee relationship as per the RERD Act, 2016. For this purpose, 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.

The Respondent is admittedly developing and selling residential units in the project "Clarks Residences" at GH-02, MCF Land, Sector-41, Faridabad. The Respondent, accepted the booking amount from the Complainant and executed the Allotment-cum-Agreement for Sale dated 21.01.2015 for Apartment No. F-602, Tower F, measuring 390 sq. ft. (super area). Therefore, in respect of this project and the said allotment, the Respondent squarely falls within the definition of "promoter" under Section 2(zk) as given above.

42. As per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, "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:

Section 2(d) defines "allottee" as a person to whom an apartment has been allotted or sold by the promoter. The Complainant was allotted Apartment No. P-408 for a total sale consideration of Rs. 39,19,500/-. The allotment is not disputed. Hence, the Complainant clearly falls within the definition of "allottee".

43. Further, as per Section 2(zj) & (zn) of the RERA Act, 2016. "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;

The present transaction pertains to sale of a residential apartment in a real estate project developed by the Respondent. ***A conjoint reading of these provisions establishes a statutory relationship of promoter and allottee between the parties. Therefore, this objection cannot sustain.***

44. The second objection is that the assured return given to the Complainant is a separate contract, independent of the BBA.

This issue is not relevant because the relief of 'assured returns' has not been pressed by the complainant. Hence there will not be any adjudication on the assured returns contract per se. However, the amounts paid by the respondent to the complainant, if any, will duly be considered during this adjudication, should the need arise.

45. The plea that the relief falls under the Specific Relief Act, 1963 is also unsustainable. The present dispute and the reliefs demanded arise from delay in delivery of possession. It squarely falls within the statutory framework of Sections 31 read with section 18 RERA.

II. Investor vs Allottee Objection

46. The Respondent has contended that the Complainant is an investor and therefore not entitled to protection under the Act. This issue has been considered by the Maharashtra Real Estate Appellate Tribunal in **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P) Ltd. and Anr.,** Appeal No. 0006000000010557 decided on 29.01.2019, wherein it was held that the concept of "investor" is not recognised under the Act and cannot be used to deny statutory protection. In view of the statutory definition and the above decision, the plea that the Complainant is merely an investor stands rejected. The complaint is maintainable.

III. Delay in Delivery of Possession

47. As per the Allotment Letter-cum-Agreement dated 21.01.2015, possession of the unit was to be delivered within a period of 30 months from the date of agreement. The said period expired on 21.07.2017. The agreement further provides a grace period of 180 days for obtaining the occupation certificate. In this regard, it is observed that the respondent has not placed on record any document to show that it had applied for grant of occupation certificate during the said grace period i.e. from 22.07.2017 to 21.01.2018. Therefore, the respondent is not entitled to the benefit of the grace period. The delay is entirely attributable to the respondent, and as per settled law, no party can take advantage of its own wrong. Accordingly, the deemed date of possession is taken as 21.07.2017.

IV. Payment by the Complainant

48. The Complainant has paid ₹36,21,382/- out of the total sale consideration of ₹39,19,500/-. The Respondent has not disputed this amount. No document has been produced to show that any valid demand beyond this amount was raised and remained unpaid. Moreover, it is an established fact as above that the delay was attributable to the respondent.

49. This Authority has considered the issue as to whether, in the face of admitted delay on the part of the promoter in completion of the project,

the allottee can nevertheless be compelled to adhere rigidly to the schedule of instalment payments under the Builder-Buyer Agreement. The answer is located in the *doctrine of reciprocity of obligations*, which is firmly embedded both in Section 51 of the Indian Contract Act, 1872 and in the scheme of the Real Estate (Regulation and Development) Act, 2016. Once the promoter is in breach of his fundamental obligation to deliver possession within the stipulated timeline, he cannot insist upon strict performance by the allottee without himself performing his corresponding obligations. The Hon'ble Supreme Court in Arifur Rahman Khan & Ors. v. DLF Southern Homes Pvt. Ltd. & Ors., (2020) 16 SCC 512, has categorically held that one-sided clauses in builder-buyer agreements, which seek to impose onerous obligations upon the allottee while the promoter remains in default, are liable to be disregarded as being manifestly unfair and unreasonable.

50. Further, in ***Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor, (2022) 12 SCC 1***, the Hon'ble Supreme Court reiterated that contractual stipulations cannot override the statutory protections afforded to an allottee, and that the promoter, being in delay, cannot enforce terms that operate oppressively against the allottee. The Court underscored that the allottee cannot be compelled to continue to bear the financial burden

of instalments in a situation where the promoter has failed to fulfil his corresponding obligation of timely delivery.

In the same vein, the Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan, (2019) 5 SCC 725,*** held that a builder cannot seek to enforce a wholly one-sided contractual arrangement, particularly where the allottee is left remediless against delay. It was observed that such clauses are ex facie unfair and cannot bind the allottee.

In view of the aforesaid settled position of law, a promoter who is himself in breach cannot compel the allottee to continue payments in terrorem, nor can he impose penal consequences for alleged default during the subsistence of such delay. Any such insistence would be contrary to both statutory intent and the equitable principles governing reciprocal promises.

The plea that delay is attributable to non-payment does not sustain.

V. Force Majeure Grounds

51. The Respondent has relied upon delay attributable to MCF, construction bans, and COVID-19 pandemic.

a) **Delay by MCF**: The obligation to construct and deliver possession flows from the Agreement for Sale. The consideration was received by the Respondent. Any dispute between the Respondent and MCF

cannot prejudice the allottee. No evidence has been placed to show that possession was ready within the stipulated time. This plea is rejected.

b) **Construction Bans**: Constructions bans did not happen all of a sudden. These have been a regular feature for decades, owing to pollution. The overarching presumption in law is that every adult is of sound mind and capable of understanding the consequences of their actions. Therefore, regular construction bans are bound to be taken into account while calculating the due date of possession. This is not a *force majeure* condition.

c) **COVID-19 Pandemic**: The extended possession date expired on 21.01.2018. The nationwide lockdown commenced in March 2020. A subsequent force majeure event cannot cure an existing breach. As observed by the Hon'ble Delhi High Court in the case of ***M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020*** dated 29.05.2020 has observed that:

"69. *The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since septemeber,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.*

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself. "

The ratio squarely applies. The Respondent was already in delay much prior to the pandemic. The force majeure plea is rejected.

52. It is, therefore, pertinent to note that the Respondent failed to deliver possession within the contractual period. The timeline expired on 21.07.2017. The Complainant has paid ₹36,21,382/-. No occupation certificate has been produced. No offer of possession has been issued. The delay is substantial and remains unexplained. In such circumstances, the Complainant is entitled to invoke Section 18 of the Act and seek refund with interest at the prescribed rate.

53. With respect to the rights of the allotee to seek refund from the Authority, Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others** " 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 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.

54. Keeping in view the aforesaid observations, the Authority considers it a fit case for grant of refund along with interest at the prescribed rate. Therefore, as per provisions of Section18 of the Act, relief of refund as sought by the complainants deserve to be granted.

55. 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;*

56. 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%.

57. 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".

58. Thus, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of Rs 36,21,382/- along with interest 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 date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.80% till the date of this order and total amount of interest works out to **₹43,67,881/-** as per detail given in the table below.

59. With regard to assured returns paid by the respondent, it is observed that in Lead Complaint No. 1869/2024, the ledger reflects an amount of ₹9,47,961/-. In Complaint No. 1870/2024 and Complaint No. 1871/2024, the corresponding amounts are ₹9,36,445/- and ₹9,26,753/-, respectively. The respondent has submitted that such payments were made up to September 2018 and, in Lead Complaint No. 1869/2024, has claimed an amount of ₹9,67,851/- in this regard in his pleadings, supported by the ledger (Annexure R-2). The ledger contains detailed

entries along with corresponding cheque numbers. Notably, the complainants have neither refuted nor challenged the contents of the said ledger. Accordingly, the amounts reflected in the respective ledgers, i.e., ₹9,47,961/- (Lead Complaint No. 1869/2024), ₹9,36,445/- (Complaint No. 1870/2024), and ₹9,26,753/- (Complaint No. 1871/2024), being duly substantiated on record, are accepted and shall be adjusted against the amounts payable to the complainants, as detailed in the tables below.

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 30.04.2026
1.	1,75,000	26.03.2014	2,28,819
2.	25,000	09.04.2014	32,585
3.	6,00,000	03.09.2014	7,55,941
4.	9,78,979	13.02.2015	11,86,201
5.	30,250	16.02.2015	36,626
6.	11,70,000	21.03.2015	14,05,192
7.	36,153	30.03.2015	43,324
8.	5,00,000	17.12.2015	5,60,416
9.	1,06,000	18.12.2015	1,18,777
10.	**Total=₹36,21,382/-**		**Total=₹43,67,881/-**
11.	**Total Payable to complainant**	36,21,382+43,67,881= **₹79,89,263/-**	
	Less (Asssured return paid)	₹9,47,961/-	
	Net Payable	**₹70,41,302/-**	
Respondent shall make the payment of refund after deduction of paid amount of assured return which comes out to be **₹70,41,302/-**.			

Complaint No. 1870/2024

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 30.04.2026
1.	2,00,000	17.03.2014	2,62,041
2.	5,50,000	04.09.2014	6,92,783
3.	50,000	03.09.2014	62,995
4.	9,78,979	13.02.2015	11,86,201
5.	30,250	16.02.2015	36,625
6.	11,70,000	11.03.2015	14,08,654
7.	36,154	30.03.2015	43,325
8.	500	03.02.2016	553
9.	1,00,000	08.02.2016	11,05,15
10.	2,00,000	09.02.2016	2,20,971
11.	2,05,500	15.02.2016	2,26,683
12.	1,00,000	12.02.2016	1,10,397
	Total=₹36,21,383/-		**Total=₹43,61,744/-**
	Total Payable to complainant	36,21,383+43,61,744 = **₹79,83,127/-**	
	Less (Asssured return paid)	₹9,36,445/-	
	Net Payable	**₹70,46,682/-**	

Respondent shall make the payment of refund after deduction of paid amount of assured return which comes out to be **₹70,46,682/-**.

Complaint No. 1871/2024

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 30.04.2026
1.	10,00,000	28.03.2014	13,06,948
2.	10,00,000	06.01.2015	12,22,915
3.	5,00,000	04.04.2015	5,98,438
4.	5,00,000	04.04.2015	5,98,438
5.	15,383	31.03.2015	18,430

6.	5,56,206	19.12.2015	6,23,085
7.	50,000	19.12.2015	56,012
13.	**Total=₹36,21,589/-**		**Total=₹44,24,266/-**
14.	**Total Payable to complainant**	36,21,589+₹44,24,266= **80,45,855/-**	
	Less (Asssured return paid)	₹9,26,753/-	
	Net Payable	**₹71,19,102/-**	
Respondent shall make the payment of refund after deduction of paid amount of assured return which comes out to be **₹9,26,753/-**			

60. Since the complainant is being granted refund along with delay interest under the provisions of the Act, allowing retention of assured returns by the complainant, in addition to such interest would result in double benefit for the same period. Accordingly, the amount already paid towards assured returns is to be deducted from the total refundable amount payable to the complainant.

61. Further, with regards to relief no. 4, the complainants have sought compensation on account of litigation cost and for physical, mental and emotional suffering due to unreasonable and inordinate delay in handing over timely physical possession of Apartment. In this regard it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as ***"M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors."*** has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18

and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaint in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.

62. For the foregoing reasons, the Authority does not grant reliefs 2 & 3 in the present complaint and complainant is at liberty to claim compensation/litigation charges before the Adjudicating Officer.

I. DIRECTIONS OF THE AUTHORITY

63. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERD, Act, 2016 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:

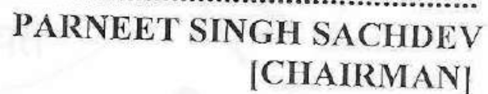
    (i) Respondent is directed to refund the amount to the respective complainants as calculated in tables mentioned in paragraph 59 of this order after deducting paid amount of assured return mentioned therein.

(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 be followed.

64. The complaints are, accordingly, **disposed of.**

Files be consigned to the record room after uploading of the order on the website of the Authority.

DR. GEETA RATHEE SINGH
[MEMBER]



PARNEET SINGH SACHDEV
[CHAIRMAN]