HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**122 of 2024**
Date of filing.:	**19.01.2024**
First date of hearing.:	**21.05.2024**
Date of decision.:	**26.05.2026**

1.Neel Kamal s/o Sh. Hukum Singh

R/o H. No 1413, Sector-9, Urban Estate

Karnal

2. Dhiraj Kumar S/o Sh. Rajbir Singh

R/o Village Kharkali. P.O

Madhuban, Karnal ....COMPLAINANTS

VERSUS

M/s Alpha Corp Development Private Limited'

Regd Office: 806, Meghdoot, 94,

Nehru Place, New Delhi 110019 ....RESPONDENT

Present: - Adv. Manoj Kumar Taya, Learned Counsel for the Complainants through VC.

Adv. Vikas Verma, Learned counsel for the Respondent through VC

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed by complainants under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with relevant rules of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project.	Alpha International City, Phase II", Sector 29, Karnal, Haryana
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Unregistered
4	Date of allotment	23.06.2011
5.	Date of plot buyer agreement	27.10.2011

6.	Details of the unit.	Plot no. 756, Sector 29, Alpha International City, Karnal.
7.	Total sale consideration	Rs. 89,25,000/-
8.	Amount paid by complainant	Rs. 38,97,500/-
9.	Date of offer of possession	None

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. That in the year 2011, the complainants had applied for booking of a plot in the project being developed by the respondent namely Alpha International City, Phase II Sector 29 Karnal by making a payment to the tune of ₹11,47,0500/- on 06.06.2011. The copy of receipt issued by the respondent is annexed as Annexure C-1. The respondent had issued the allotment letter dated 23.06.2011 vide which plot no. 756 admeasuring 500 sq. yards located in Sector 29 in said project in phase-II, Karnal was allotted to the complainants. The copy of the allotment letter is annexed as Annexure C-2.

4. A plot buyer agreement in respect of the unit in question was executed between the parties on 27.10.2011. The agreed total consideration of the said plot was ₹ 89,25,000/- towards including EDC, IDC, IFMS, PLC, CMC, Maintenance Charges etc. excluding any other statutory / allied charges. Against the said plot the complainants have paid an amount of ₹ 38,97,500 i.e.

nearly 50% of payment out of total consideration by 31.10.2012. The copy of the plot buyer agreement is annexed as Annexure C-3.

5. As per clause 10.1 of the plot buyer agreement the respondent had committed to complete the development works within 28 months from the commencement of development works and apply for necessary approvals. Thereafter, the respondent was to offer possession only after obtaining necessary approvals. However, the respondent miserably failed to complete the project in a reasonable period of time and deliver possession of the booked plot.

6. The respondent had issued an offer of possession to the complainants on 16.05.2016. Said offer of possession was not valid offer of possession and the complainants could not have been forced to accept the same. In the instant case, the part completion certificate was obtained on 19.04.2018, thus, the alleged offer of possession prior to that date, is illegal and has no legal sanctity in the eyes of law. The copy of the offer of possession has been annexed as Annexure C-7 and copy of part completion certificate as Annexure C-8.

7. Aggrieved by the conduct of the respondent, the complainants had approached this Authority by way of Complaint no. 336 of 2018 wherein the respondent company filed reply stating that the plot in question already stands cancelled vide termination letter dated 31.05.2018. The copy of the termination letter is annexed as Annexure C-6. The said complaint was withdrawn while giving liberty to the complainants to file a fresh complaint vide order dated

20.12.2023. It is submitted that instead of completing the project and handing over a valid possession, the respondent rather issued a termination letter dated 31.05.2018 to the complainants. This letter of termination is wholly arbitrary and unjustified as the respondent company had failed to obtain the necessary approvals, sanctions and permissions within stipulated time and there was utter violation of procedure in obtaining the same. The licence for setting up the colony was obtained on 05.04.2011 and it was valid for 4 years i.e. upto 04.04.2015. However, the respondent failed to get the renewal of licence and kept on selling the plots and further kept on demanding the money even after the expiry of licence. The respondent company could get the licence renewed till 21.06.2017. Meaning thereby, during the interregnum period, the builder was not having any valid licence to carry out development work or to sell the same. The respondent Company was legally bound to renew the licence prior to its date of expiry in order to have the legal authority to continue the work in accordance with law. However, the licence was renewed by the DTCP, Haryana on 21.06.2017 as the respondent Company has not fulfilled stipulated terms and conditions before that. Meaning thereby, the respondent Company had not carried any kind of development work on the project during the period 04.04.2015 till 21.06.2017.

8. It is pertinent to mention here that the respondent had miserably failed to obtain environment clearance in time and only obtained the same on 26.11.2014 after almost passing 3 years of booking in 2011. Further the

respondent obtained the Part Completion Certificate on 19.04.2018 and without obtaining the same has been shown to be offered the possession in 2016. The said offer of possession is illegal as the same does not disclose that how the respondent are entitled to claim any amount or get the conveyance deed registered in favor of the complainant without obtaining completion certificate and the amount the respondent is liable to pay to the complainant as delay possession charges and compensation for delaying the possession of the plot to the complainant.

9. That furthermore, the respondent failed to fulfill its commitments. It also came to the knowledge of the complainants that the respondent have acquired the land for the project in an illegal manner i.e. the respondent have illegally encroached on the land of others i.e. land which never belongs to the respondent. However, respondent has specifically mentioned in PBA as Para 1 they are the owner in possession and recorded owner of the land of the project. On further inquiry, it was revealed that the respondent had been ordered to be evicted by Ld. Civil Court. The complainants were shocked to see the orders of Ld. Civil Court wherein a decree for permanent injunction restraining the respondent from encroaching upon illegally the land measuring 167 Kanals 4 Marlas situated in Village Baldi, Tehsil and District Karnal, has been passed against the respondent and further the Khasra No. 144 and 168 were ordered to be restored to the decree holders (Plaintiffs in that case). The copy of judgment and decree is annexed as Annexure C-10.

10. That, there is another vital lacuna in the projections/commitments made by the respondent. The respondent through their brochure/ lay out maps/site map etc., had represented that they will provide direct connectivity of the project from National Highway No. 1 through 45, mtr wide road but the respondent has failed to provide any such road due to land/ownership dispute. The respondent has built a new way to connect the Project from National Highway 1, however, this road has not been properly laid down. The respondent deliberately misrepresented the connectivity from the NH in order to fetch higher prices for their plots. The complainants have been duped of their hard earned money due to the false claims made by the respondent. The complainants apart from claiming delayed possession charges is at liberty to file to claim for compensation from the respondents. A copy of the layout plan is annexed as Annexure C-12.

11. That furthermore, the respondent has proposed 18 mtr. road to provide connectivity to the future bye-pass which the respondent has shown in the layout plan at the time execution of the agreement but the same has also not been provided, furthermore, the development work has not been completed till date.That the respondent has not stopped in their misdeeds and to give wings to their malafide intentions and to cheat the concerned Govt. authorities and buyers, in general, the respondent has build 18 meter Road adjacent to the Alpha Community Centre while they got approval of 45 meter in actual lay out plan sanctioned by Department of Town and Country Planning, Haryana.

Further-more, the respondent has shown and projected only 45 meter road in their site maps, lay out plans etc., at the time of booking and selling of the project, which is suffice to establish their malafide and intent to cheat the buyers as well as competent govt. Authorities. The photographs of the actual site as in May 2018 have been annexed as Annexure C-15 & 16.

12. That the respondent has further indulged in the act of cheating and misrepresentation by way of allotting various plots to buyers within the 100 meter circumference of the 132 K.V Electric Lines, which is passing through the project. Such an act is prohibited under the statute and the respondent has violated the law.That respondent has constructed a Road of 12 Meter adjacent to plot no. 194 and 198 near Alpha Club. Such a road has been built beneath the 132 KVA Heavy Electric Line, which is utterly in violation of law. As per the Haryana Building Rules and Electricity Act, any infrastructure company i.e respondent, may utilize the land beneath the Heavy Electric Line just for the purpose of park or green belt within 27 meter of the prohibited area of such Electric zone. However, the respondent has built the road adjacent to such 132 KVA Electric Line. The copy of the reply of the application filed under RTI Act reveals such information which is annexed herewith as annexure C-18.

13. That it is pertinent to mention that FIR No. 1188 of year 2016 in Police Station Karnal has been lodged against the respondent for the alleged offences of cheating, fabrication of documents, misrepresentation, concealment of facts

etc. The content of F.I.R are corroborating the grievance of the complainants. The copy of such F.I.R is annexed herewith Annexure C-19.

14. That the complainant inquired about the status of construction and other development work to be carried out by the respondents but they never share any such information which is gross violation of Sec. 19(2) of RERA, Act, 2016. That the respondents has not registered the said project under Sec. 3 of RERA, Act, 2016.

C. RELIEF SOUGHT

15. In view of the facts mentioned in paragraphs above, the complainant prays for the following relief(s):

i. To quash/ set aside the termination letter dated 31.05.2018 whereby the booking of the plot (allotment) has been terminated,

ii. To give necessary directions to the respondents to deliver the possession of plot along with the compensation for the delay in giving possession from the due date of offer of possession, as per the provisions of the RERA Act.

iii. To impose penalty upon the respondent as per the provisions of Section 60 of RERA Act for willful default committed by them.

iv. To impose penalty upon the respondent as per the provisions of Section 61 of RERA Act for contravention of Sec.12, Sec.14, Sec. 15 and Sec. 16 of RERA Act.

v. To direct the respondent to pay penalty upto 10% of project cost to the complainant under Sec. 59 of RERA, Act, 2016.

vi. To direct the respondent to not to collect the amount from the complainant in lieu of interest, penalty for delayed payments under Rule 21(3)(c) of HRER Rules, 2017.

vii. To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RERA Act, 2016 to be read with HRER Rules, 2017.

viii. To appoint local commissioner or to conduct inquiry in relation to the affairs of the respondent company/promoter as the whole project is suffering from various grave illegality and irregularity, under the provision of Sec. 35 of RERA Act, 2016.

ix. To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.

x. To issue direction to pay the cost of litigation.

xi. To issue direction to pay the compensation to complainant for compensation delay in offer of possession, for his mental agony, pain and harassment.

xii. Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint.

16. During the course of arguments, learned counsel for the complainant argued that delivery of a valid possession in the instant case has been inordinately delayed. The offer of possession dated 16.05.2016 issued by the respondent was not a valid offer of possession as the respondent had failed to complete the project and obtain necessary approvals. As per record the project itself had received part completion certificate on 19.04.2018. Further, the alleged letter of termination dated 31.05.2018 was never served upon the complainant. Learned counsel highlighted that the registered address of the complainant for purpose of communication is H.no. 1413, Sector 9 Urban Estate, Karnal as reflected in the Plot Buyer Agreement and various receipts. However, the address in the letter of termination has been mentioned as H.no 913, Sector-9 Urban Estate, Karnal. The complainants were made aware of this letter of termination dated 31.05.2018 only when the respondent company placed it on record through its reply during the previous round of litigation in Complaint no. 336 of 2018. This letter of termination is wholly inconsistent and without any merits and hence be quashed

17. Learned counsel for the complainants further submitted that till date neither a valid offer of possession has been issued to the complainants nor the amount has been refunded after the alleged cancellation and that as per his information, no third party rights have been created in respect of the plot in question. He

prayed that direction be issued to the respondent to deliver possession of the unit along with payment of delayed possession charges.

18. During proceedings it was further observed that the complainants in the present case have claimed to have paid an amount of ₹ 38,97,500/- , however, the complainants have only annexed receipt to the tune of ₹ 31,47,500/-. For the remaining amount of ₹ 7,50,000/- no receipts have been placed on record. The complainants had filed an affidavit dated 09.08.2024 providing date of payments however no proof of payment was attached.

In this regard,today, learned counsel for the complainants prayed for an opportunity to file proof of payment for the same. It is noted that during the course of the day, learned counsel for the complainants had filed a demand letter dated 14.11.2012 issued by the respondent in which the respondent has admitted to having received an amount of ₹ 27,50,000/- in addition to the booking amount of ₹ 11,47,500/- (on 06.06.2011), thus totalling upto ₹ 38,97,500/-. Since, the proof of payment is only clarificatory in nature and the respondent has also admitted to having received the said amount of ₹ 38,97,500/-, thus the same is taken on record.

D. APPLICATION ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed an application dated 09.09.2024 pleading therein:

19. That the project, where the Plot No. 756 in question is located has been developed after obtaining Licence No. 29 of 2011 dated 05.04.2011 for an area measuring 85.569 acres of Land falling in the Revenue estate of Village Badli, Uchanna, Kailash and Tikri, which now form part of Sectors 28A and Sector 29 of Karnal. The Layout cum Demarcation Plan and the Zoning Plan were approved by the Director Town and Country Planning and forwarded by Letter Memo dated 21.06.2012. Thereafter, service plans and Estimates for Internal Development Work were approved by the Directorate of Town and Country Planning, Haryana vide Letter dated 13.02.2013. It was thereafter, all the development work including Water Supply, Drainage, Sewer Lines, Electricity Lines, Rainwater Harvesting System and Roads were completed much before the expiry of the 28 months, as per approved standard in the Licensed area and Part-Completion was applied for on 23.01.2014 by the Answering Respondent. The Director General, Town and Country Planning Department, Haryana vide its Letter dated 02.04.2014 pointed out following anomaly based on Report from Chief Engineers Office.

"That the Firm has submitted fresh set of Service Plan. The copy of already approved layout Plan of the Colony showing the Public Health Services has not been supplied."

20. The License, in the meantime, expired and its Renewal was also applied for vide Letter dated 16.03.2015 in Form LC-III and the same was renewed w.e.f. 05.04.2015 vide Letter dated 21.06.2017, with validity up to

04.04.2019, a copy of which is annexed herewith as Annexure A-4. The License is not renewed upto 04.04.2024 vide Letter dated 15.11.2021 The Renewal of license is a continuous process marred by procedural delays and has fallout upon actual grant of requisite approvals which has nothing to do with existence of development facilities on the spot in a plotted colony. The formal Part-Completion Certificated dated 19.04.2018 has now also been granted in pursuance to Letter dated 11.04.2017. It may be pointed out that Site Reports were called for vide Memo dated 23.06.2017 and it was verified by District Town Planner, Karnal vide Report dated 10.08.2017 and Senior Town Planner, Panchkula vide Report Dated 18.08.2017. It was also confirmed by chief Engineer, HSVP, Panchkula vide Certificate date 30.08.2017. Afterwards, the Part Completion Certificate was issued by the Director General, Department of Town and Country Planning, Haryana on 19.04.2018. The provisions of Real Estate (Regulation and Development) Act, 2016 came into operation on 01.05.2017 vide Central Government Notification No. SO-1266-E dated 19.04.2017. Thus, the project over which the plot in question was carved out and developed is thus not governed by the provisions of 2016 RERA Act.

21. The project over which the plot in question was carved out and developed is not an ongoing project in the light of Rule 2 (1) (o) of The Haryana Real Estate (Regulation and Development) Rules, 2017 and

therefore, the jurisdiction of this ld. Authority is ousted as per the established law.

22. The project was complete for all intents and purposes in January 2014 and fortified with the issuance of Part Completion Certificate by the Statutory Authority competent in law governing the project in question, granted by the Director General, Town and Country Planning, which is an authority constituted under the Haryana Development and Regulation of Urban Areas Act, 1975 and therefore, Compliant is not amenable to jurisdiction of Real Estate Regulatory Authority as has also been clarified by the Hon'ble Supreme Court in case titled "Newtech Promoters and Developers Pvt. Ltd. v. State of UP" reported as 2022 (1) RCR civil 357 wherein it has been held to the following effect:

> Para 54. *From the Scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the Projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.*

23. That the close reading of the Complaint does not bring it within the scope and ambit of any of the conditions precedent specified in various provisions of the Real Estate Regulatory Authority Act, 2016, such as Sections 12, 13,18 or 19

so as to invest this Ld. Authority with any jurisdiction, and Answering Respondent, therefore, beseech the indulgence of this Ld. Authority to nip this complaint in the bud, as it fails to come within the four concerns of its jurisdiction

24. That admittedly in the instant case, the project in question stands completed pursuant to Licenses granted by the Director General, Town and Country Planning, which is an authority constituted under the Haryana Development and Regulation of Urban Areas Act, 1975. This law relating to colonization, is referable to Entry 18, List II of the Seventh Schedule to the Constitution of india. Further, the Haryana Building Code, 2017 is also a State law, as opposed to being the Parliamentary legislation. Accordingly, this HRERA, Panchkula does not possess jurisdiction under the Real Estate (Regulation and Development) Act, 2016 and exercise of the same in the absence thereof, would be giving deference to the approvals granted under State laws of Haryana, and accordingly, the project having been ready for possession in the year 2014, assumption of jurisdiction over the Respondents by way of the instant complaint would constitute a retrospective application of the Real Estate (Regulation and Development) Act, 2016, aside of being an encroachment into the exclusive domain of the Director General, Town and Country Planning, Haryana. That, the Applicant-Respondent is filing the present application without prejudice to its right to file a detailed reply if this Ld. HRERA comes to the conclusion that it does possess jurisdiction and

proceeds further with the complaint despite objections qua jurisdiction of this Ld. HRERAas is being canvassed by the Applicant Respondent.

25. As per record, no further submissions/documents have been placed on record by the respondent in the present case despite availing multiple opportunities.

E. ISSUES FOR ADJUDICATION

26. Whether the complainants are entitled to relief of possession of the booked plot and quashing/cancelling/setting aside of the termination letter dated 31.05.2018?

27. Whether the complainants are entitled to relief of imposition of penalty upon the respondent?

F. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT WITH RESPECT TO MAINTAINABILITY OF COMPLAINT.

F.I Objection raised by the respondent that since the project in question is not an ongoing project, therefore, provisions of RERA Act, 2016 are not applicable to the project.

In this regard, reference is made to the first proviso to section 3(1) of the RERA Act, 2016 which provides that the projects which were 'ongoing' on the date of commencement of the Act and for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act.

The position further becomes clear from Section 3(2)(b) of the Act which states that the registration of the real estate project shall not be required where the promoter had received the 'completion certificate' for the said project prior to the commencement of the Act. Thus, if we read Section 3 of the Act, it is evident that only that project shall be excluded from the purview of the 'on going project' which had received the completion certificate prior to the commencement of the Act and such project will not require registration. All 'ongoing projects', i.e., those that commenced prior to the Act coming into force, and in respect of which no completion certificate is yet issued, are covered under the Act. It is apparent that the legislative intent was to make the Act applicable to not only to the projects which were to commence after the Act became operational but also to ongoing projects. Only those projects which had got the completion certificate before the commencement of the Act will not require registration and will certainly fall beyond the purview of the 'ongoing project'.

Further, this issue has also been dealt with and settled by the Hon'ble Supreme court in Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021 herein reproduced:

> " *37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all*

> *"ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority."*

Wherein Hon'ble Apex held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, complainant in the present complaint is seeking possession along with interest i.e, a statutory relief under Section 18 of RERA Act, 2016. Authority observes that Section 18 of the Act relates to obligation of promoter regarding return of amount and compensation. Section 18 is reproduced herein below:

> *"If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to*

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

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

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

This provision nowhere states that the remedies provided hereunder will be available only to the allottees of a registered project or registrable project. Therefore, even if the project is not registered with the Authority, same does not extinct the remedy available to an allottee of a real estate project.

G. OBSERVATIONS OF THE AUTHORITY

28. Factual matrix of the present case is that, the complainants had applied for booking of a residential plot in the project of the respondent in the year 2011 by paying an amount of ₹11,47,0500/- on 06.06.2011. Vide allotment letter dated 23.06.2011, the complainants were allotted plot no. 756 admeasuring 500 sq. yards, Sector 29, Alpha International City, Karnal for a total sale consideration of ₹ 89,25,000/-. A plot buyer agreement in respect of the unit in question was executed between the parties on 27.10.2011. As per clause 10.1 of the plot buyer agreement the respondent had committed to complete the development works within 28 months from the commencement of development works and apply for necessary approvals. Thereafter the respondent was to offer possession only after obtaining necessary approvals. It is the contention of the complainants that the respondent has failed to timely complete the project and deliver possession. The complainants have submitted that after relentlessly pursuing the respondent seeking possession of the plot in question the complainants were constrained to file Complaint bearing no. 336 of 2018 before the Authority in respect of the plot in question in July 2018. However, the respondent instead of delivering possession of the plot to the complainants rather surreptitiously cancelled the allotment of the complainants qua the said plot vide termination letter dated 31.05.2018. It has been contended by the complainants that this letter was sent to a wrong address and never actually served upon the

complainants. The complainants were made aware of this alleged cancellation through the reply filed by the respondent in erstwhile Complaint no. 336 of 2018 was then withdrawn with liberty to file a fresh complaint on 20.12.2023. Now, the complainants have filed the present complaint seeking quashing of the said termination letter and possession of the plot in question after payment of outstanding dues.

29. As per record, during the course of hearing dated 27.01.2026, learned counsel for the respondent made an oral submission that the complainant himself had requested for change of address, pursuant to which all notices were duly served at the changed address i.e. House No. 913, Sector-9, Urban Estate, Karnal. However, no proof corroborating the said fact has been placed on record by the respondent. No further submissions were put forth by the learned counsel for the respondent.

30. The facts appear to be, by and large, incontrovertible. As per clause 10.1 of the plot buyer agreement executed between the parties, possession of the plot in question was to be delivered within 28 months from the date of commencement of development works. With regard to the timeline for delivery of possession, it is apparent that the drafting of this clause is vague, arbitrary and heavily loaded in favour of the respondent promoter. There is no specific date of commencement of development works and neither the same has been clearly communicated by the respondent to the complainants. The respondent cannot be allowed to establish terms as per its own whims. Thus, for the purpose of

calculation of the due date of possession, the period of 28 months is being taken from the date of execution of the plot buyer agreement. Accordingly, possession of the plot in question should have been delivered by 27.02.2014.

31. Admittedly, respondent had failed to deliver possession of the plot in question within stipulated time. During the course of proceedings respondent has failed to put forth sufficient grounds to explain as to why the delivery of possession of the plot in question has been delayed. The complainants have placed on record a copy of offer of possession dated 16.05.2016. Said offer of possession has been refuted by the complainants on grounds that at the time of said offer, the project was incomplete and the respondent did not have the necessary approvals to issue the same. In this regard it is observed that the alleged offer of possession dated 16.05.2016 had been issued by the respondent without receipt of any part/completion certificate. It is an admitted fact that the project in question had received part completion certificate only on 19.04.2018, i.e after a gap of two years from the alleged offer of possession dated 16.05.2016. In light of this fact it is observed that the said offer was not a valid offer of possession and the complainant could not have been forced to accept the same.

32. It is the primary contention of the complainants that despite a lapse of more than 10 years from the due date of possession the respondent has failed to develop the project and deliver a valid possession of the plot. On the other hand it has been argued by the respondent that the complainants in this case have grossly defaulted in making payment of sale consideration towards the plot in question

due to which the allotment of the complainants has been terminated vide letter of termination dated 31.05.2018.

This termination letter has been refuted by the complainants on grounds that the same has been sent to a wrong address and was never served upon them. It was only during the adjudication of Complaint no. 336 of 2018 that the complainants came to know of the alleged termination of allotment in the reply filed by the respondent therein. On the other hand it is the oral submission of the respondent that the complainants themselves had requested the respondent company to change their registered address from H.no. 1413, Sector 9 Urban Estate, Karnal(as reflected in the Plot Buyer Agreement and various receipts) to H.no 913, Sector-9 Urban Estate, Karnal(as mentioned in the letter of termination dated 31.05.2018). However, no documentary proof has been placed on record by the respondent in support of its argument. In the absence of any documentary proof, this Authority is constrained to give benefit of doubt to the complainants and observe that the letter of termination dated 31.05.2018 was never served upon them and nevertheless, during the pendency of erstwhile complaint, the complainants were made aware of the same when the respondent filed its reply on 25.01.2019.

33. The complainants have further challenged the termination of their allotment in respect of the plot in question on grounds that the respondent had miserably delayed the construction of the project and had not carried any kind of

development work on the project during the period 04.04.2015 till 21.06.2017(when the license of the respondent got expired until its renewal). It is further contended by the complainants that the respondent did not share the status of construction and other development works carried out at the site of the project.

In this regard it is observed that the complainants at the time of execution of the plot buyer agreement had opted for a time linked payment plan. A schedule of payment, as agreed between the parties has been annexed as Annexure C-4 of the complaint. The same is reproduced below for reference:

Payment Stage	**Total Amount(in ₹)**
On Booking	11,47,500 /-
Within 3rd Month	7,65,000 /-
Within 6th Month	12,15,000 /-
Within 9th Month	8,90,000 /-
Within 12th Month	15,97,500/-
Within 15th Month	12,72,500 /-
Within 18th Month	11,47,500 /-
On Possession	8,90,000 /-
Total	89,25,000 /-

As per the schedule of payment, the complainants had to make payment of ₹ 80,35,000/- out of the total sale consideration amount of ₹ 89,25,000/- in

timely instalments within a period of 18 months from the date of booking (i.e 06.06.2011). Only a payment of ₹ 8,90,000/- had to be paid at the time of offer of possession. As per facts, complainants in the present case have only made a payment of ₹ 38,97,500/- to the respondent by 31.10.2012 out of the total sale consideration amount. Thereafter no further payments have been made by the complainants.

34. In light of these peculiar circumstances, it becomes necessary to get a clarity on roles and obligations of both the parties towards the sale and purchase of plot bearing no. 756 to enable proper adjudication of the matter. In this regard it is observed that at the time of executing the agreement, the complainants had themselves opted for a time linked payment plan as per which the complainants were duty bound to make a payment of ₹ 80,35,000/- by 06.12.2012. However, as is apparent from the record, the complainants failed to make payment of due consideration amount as per the terms agreed between the parties. An agreement for sale is a sacrosanct document which has a binding effect on the executing parties, in addition to, the agreement itself being a statement of commitment made by them at the time of signing the contract. As soon as a unit is booked in a project, an obligation is cast upon both the parties in respect of the said unit as it governs the conduct of both parties, including making payment of sale consideration, till the end. Till 27.02.2014(due date of possession) the complainants were under an obligation to make payment of outstanding amounts

as per the agreed terms. However, the complainants in the present case failed to make payment of further amount from a self chosen date without any justifiable reason. The licence for setting up the colony/project in question was obtained on 05.04.2011 and it was valid for 4 years i.e. upto 04.04.2015. Meaning thereby that till the passing of the due date the respondent promoter had a valid license and approvals for carrying out construction works. Thus, the complainants were under absolute obligation to make necessary payments. Had there been grievance, if any, the complainants should have raised their objections with the respondent. However, the complainants have not placed on record any document to show that they had any objection/grievance to the development works being carried out and that the same had been communicated to the respondent. The conduct of the complainants is contrary to their pleadings. Drawing an adverse inference against the complainants it can be surmised that the complainants were rather disinterested in pursuing their allotment in respect of the plot in question.

35. Even further, in the proceedings through the Complaint no. 336 of 2018, which had been previously filed by the complainants, in respect of the plot in question the complainants had pressed upon relief of refund of paid amount. Said complaint had been filed by the complainants on 19.07.2018 and by that time the project had already received part completion certificate as on 19.04.2018, which is a public document. At the time of pressing for refund, the complainants were having knowledge of the status of the project and had made an informed choice. The complainants had further pressed upon relief of refund of the paid

amount against the respondent till the year 2023. However, during the course of hearing dated 20.12.2023 the complainants orally expressed their wish to press for relief of possession of the booked plot along with delayed possession charges instead of refund. The request of the complainants was denied and accordingly the Complaint no. 336 of 2018 was withdrawn by the complainants with a liberty to file a fresh complaint.

It is further worthy to note that vide termination letter dated 31.05.2018 the respondent had terminated the plot of the complainants after forfeiting the entire amount of ₹ 38,97,500/- (as 15% of the Basic Sale Price + Interest on delayed payments). Meaning thereby that vide said letter of termination the entire amount paid by the complainants stood forfeited on account of non payment of dues.

36. The complainants have now filed the present complaint seeking relief of possession of the booked unit along with relief of delayed possession charges. Upon thorough examination of record and submission made by both parties, it is observed that in present instance, the sequence of events and the choices made thereunder reflect a clear picture of gain staking on the part of the complainants. After failing to adhere to the terms and conditions of the plot buyer agreement the complainants had thereafter sought refund of the paid amount to save their investment. However, in the year of 2023, post pandemic period, when the prices in the Real Estate Sector touched a new high, the stance of the

complainants got shifted. Prima facie, it would appear so that the complainants were seeking luxurious gains at the cost of the respondent.

37. As per facts, the complainants remained silent for a good number of approximately 6 years before approaching the Authority. Further, the Authority notes that the complainants have failed to annex any documentary evidence showing that they ever communicated with the respondent for the purpose of seeking possession of the unit in question. The delay, coupled with the absence of any documented interaction between the parties weighs heavily against the maintainability of the relief of possession along with interest for delay in handing over of possession sought by the complainants vide present complaint. A clear examination of facts reveals that the complainants had made last payment in lieu of the booked plot in the year 2012. Thereafter no payment has been made by the complainants nor there is any communication in respect of the possession of the plot in question. The allotment of the plot in favour of the complainants stood cancelled vide termination letter dated 31.05.2018. Even with this knowledge since 25.01.2019, the complainants till withdrawal of Complaint no. 336 of 2018 (i.e by 20.12.2023) did not choose possession of the plot in question as a relief. The complainants after availing a period of 5 long years cannot be allowed to change relief as per their whims and fancies after having defaulted for more than 13 years. Thus, the Authority after perusing all the facts and circumstances observes that the present case is not made out for relief of possession of the plot.

38. As per observations, recorded in preceding paragraph, though the complainant is not entitled to relief of refund of paid amount, however, the complainant in its relief clause xii has pressed upon "any other relief which the Authority deems fit". In presence instance, the allotment of the unit in favour of the unit had been cancelled on account of non payment of dues, however, at the time of cancellation, the respondent had forfeited the entire amount of ₹ 38,97,500/- paid by the complainant on account of forfeiture as 15% of the Basic Sale Price + Interest on delayed payments. This forfeiture of the amount is more than the 10% booking amount/earnest money which is unlawful and bad in the eyes of law. Respondent cannot be allowed to use its dominant position to advantage and seek wrongful gains. Thus, the forfeiture of this huge amount of ₹ 38,97,500/- is quashed.

39. Earnest money is defined by Hon ble Supreme Court in judgment dated 03.02.2025 passed in **Godrej Projects Development Limited vs Anil Karlekar & Ors. Civil Appeal no. 3334 of 2023**.

> *"This Court in the case of Satish Batra v. Sudhir Rawal (supra), after considering the earlier judgments of this Court, has observed thus:*
>
> *"15. The law is, therefore, clear that to justify the forfeiture of advance money being part of "earnest money" the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of nonperformance by the depositor. There can be converse situation*

also that if the seller fails to perform the contract the purchaser can also get double the amount, if it is so stipulated. It is also the law that part-payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards partpayment of consideration and not intended as earnest momey then the forfeiture clause will not apply.

16. When we examine the clauses in the instant case, it is amply clear that the clause extracted hereinabove was included in the contract at the moment at which the contract was entered into, It represents the guarantee that the contract would be fulfilled. In other words, "earnest" is given to bind the contract, which is a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of militates the default or failure of the purchaser. There is no other cause than against the clauses extracted in the agreement dated 29- 11-2011. We are, therefore, of the view that the seller was justified in forfeiting the amount of Rs 7,00,000 as per the relevant clause, since the earnest money was primarily a security for the due performance of the agreement and. consequently, the seller is entitled to forfeit the entire deposit. The High Court has, therefore, committed an error in reversing the judgment of the trial court"

As such, builder buyer agreement provides for 15% of the basic sale price as earnest money. However, the same is not justified. In support, decision in Appeal no. 292/2019 titled as **Experion Developers Pvt Ltd vs Sanjay Jain & Smt. Kokila Jain** is relied upon, wherein Hon'ble Appellate Tribunal has

observed that forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the Real Estate i.e. apartment/plot/building. Relevant part of the order is reproduced below for reference:-

> *"17. The legal Hon position with regard to the earnest money has been dealt India (1969)(2) Honble Supreme Court in citations MaulaBux v. Union of SCC 554, and SatishBatra's case (supra) and the same price can be when condensed as follows:- "Earnest money is part of the purchase transaction the transaction goes forward: it is forfeited when the Law falls through, by reason of the fault of failure of the vendee. being is, therefore, clear that to justify the forfeiture of advance money explicit. part Earnest of earnest money the terms of the contract should be clear and money is paid or given at the time when the contract is entered No.292/2019 into and, as a pledge for its due performance by the 13 Appeal performance, & 35/2021 depositor to be forfeited in case of non- by the depositor. There can be converse situation also that double if the seller fails to perform the contract the purchaser can also get the the amount, if it is so stipulated. In other words, earnest money is transaction given to bind the contract, which is a part of the purchase price when the is carried out and it will be forfeited when the transaction falls through by reason of the default or failure of the purchaser." 18. 11.11.2014 The perusal of Article 1 Clause 1(xiii) of the agreement dated shows that it has been specifically stipulated that earnest money would be 15% of the basic sale price which was meant to ensure performance, compliance and fulfillment of obligations and responsibilities of the buyer. Though, the allottees have taken the stand that the earnest money in the present case is Rs.11,00,000/- which was deposited by*

them at the time of booking of the plot, but the same cannot be allotment attached any credence because the booking is only request for and does not constitute a final allotment or agreement. 19. Now, the question to be determined is that whether the earnest money to the tune of 15% of the basic sale price, as stipulated in the Agreement of 11.11.2014 can be termed as reasonable or not? In citation Pioneer Urban Land and 14 Appeal No.292/2019 & 35/2021 Infrastructure Lid. 's case (supra), the Hon 'ble Supreme Court has laid down that the courts will not enforce and will, when called upon to do so, strike down am unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between the parties, who are not equal in bargaining power. A term of a contract will not be final and binding if it is shows that flat purchaser had no option but to sign on the dotted line. on a contract framed by a builder. Further, incorporation of one-sided clauses in an agreement constitutes an unfair trade practice since it adopts the builder. unfair methods or practices for the purpose of selling the flat by 20. In citation DLF Lid.'s case (supra), the Hon'ble National Consumer Disputes Redressal Commission. while discussing the cases of MaulaBux's case (supra), SatishBatra's case (supra) and other cases as only mentioned a reasonable in para No. 10 of the said order, has clearly laid down that of amount can be forfeited as earnest money in the event forfeit default any on the part of the purchaser and it is not permissible in law to amount beyond a reasonable amount unless it is shown that extent the person of the forfeiting the said amount had actually suffered loss to the amount forfeited sale 15 Appeal by him. Further, it was held that 20% of the reasonable No.292/2019 & 35/2021 price cannot be said to be a account of default amount which the petitioner company could have

forfeited on had suffered on the part of the complainants unless it can show it loss to the extent the amount was forfeited by it. In absence sale of evidence price, of actual loss, forfeiture of any amount exceeding 10% of the cannot be said to be a reasonable amount. submitted 21. In his last desperate attempt, learned counsel for the promoter has sale that since the allottees had specifically agreed to pay 15% of the price price as earnest money, the forfeiture to the extent of 15% of the sale cannot be said to be unreasonable as the same is in consonance with as the terms the agreed between the parties. Ile has also submitted that so long between promoter was acting as per the terms and conditions agreed the parties, it cannot be said to he deficient in rendering services to counsel the allottees. This aforesaid submission as put forward by the learned for the promoter, was also submitted before the Hon'ble National (supra) Consumer Disputes Redressal Commission, New Delhi in DLF's case and while dealing with the same, it was observed that forfeiture of the amount which cannot be shown to be a reasonable amount, would he contrary to the very concept of forfeiture of the 16 Appeal No.292/2019 & 35/2021 earnest money and if the said contention is accepted, then, an unreasonable person in a given case may insert a clause in Buyer's Agreement whereby say 50% or even 75% of the sale price is to be treated as earnest money and in the event of the default on the part of the buyer: he may seek to forfeit 50% sale price as earnest money. It was further observed and held that an agreement for forfeiting more than 10% of the sale price would be invalid since it would be contrary to the established legal principle that only a reasonable amount can be forfeited in the event of default on the part of the buyer. Here, it is also pertinent to mention that the deduction of 10% of the total sale consideration of the unit, out of the

amount deposited by the allottees, is also inconformity with the Regulations 2018, as notified by the Authority, wherein, it has been stipulated that forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the Real Estate apariment/plot/building."

Accordingly, respondent can be allowed to deduct only 10% of basic sale price as earnest money which works out to ₹ 8,92,500/- (basic sale price is ₹ 89,25,000/-) and return remaining amount to the complainants. In the interest of justice, the respondent is duty bound to refund the remaining amount along with interest from date of payments till its actual realization subject to forfeiture of the 10% earnest money. 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(za) of the Act which is as under: :

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

Explanation.-For the purpose of this clause-

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

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

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

> ***"Rule 15:*** *"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost of lending rate +2%:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"*

40. Hence, Authority directs respondent to refund to the complainant the paid amount 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.

41. Authority has got calculated the interest on total paid amount from date of payments till date of order(i.e 26.05.2026) and same is depicted in the table below:

Sr. No.	Principal Amount (in ₹)	Date of Payment	Interest Accrued till date of order i.e 26.05.2026(in ₹)
1.	11,47,500/-	06.06.2011	18,56,913/-

2.	5,00,000/-	02.05.2012	7,60,142/-
3.	5,00,000/-	11.05.2012	7,58,811/-
4.	10,00,000/-	01.11.2012	14,66,137/-
5.	7,50,000/-	14.11.2012	10,96,718/-
Total: 38,97,500/-			59,38,721/-
Total amount of refund interest = 98,36,221/-			
Total amount (98,36,221/-)- earnest money(8,92,500/-) = 89,43,721/-			
Total amount to be refunded by respondent to complainant ₹ 89,43,721/-			

In the complaint file, the complainants have claimed to have paid an amount of ₹ 38,97,500/- to the respondent in lieu of the booked unit. However, the complainants have only annexed receipt to the tune of ₹ 31,47,500/-. For the remaining amount of ₹7,50,000/- complainants have placed on record demand letter dated 14.11.2012 in which the receipt of said amount has been admitted by the respondent. Therefore, for the purpose of calculation of interest, the date of payment for the amount of ₹ 7,50,000/- shall be taken as 14.11.2012.

42. The complainants' vide relief clause (iii), (iv) and (v) are seeking to impose penalty upon the respondent for contravention of various provisions of RERA Act 2016. In this regard it is observed that provision for penalty upon the respondent-promoter is a mandate provided to the Authority under the RERA Act 2016. Further, these reliefs are neither part of the pleadings nor pressed

upon during hearing. Thus the plea of the complainants for imposition of penalty upon the respondent is rejected.

43. The complainants vide relief clause (vi) are seeking direction to respondent to not to collect the amount from the complainant in lieu of interest, penalty for delayed payments. It is observed that since the present case is held to be not made out for possession of the booked unit, thus this relief becomes infructuous.

44. With regard to the relief clause vii, viii and ix it is observed that same are not part of pleadings nor pressed for during arguments Hence the same are not adjudicated upon.

45. Further, complainants vide relief clause x and xii are seeking litigation expenses and compensation on account of mental agony. 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, complainants are

advised to approach the Adjudicating Officer for seeking the relief of compensation & litigation expenses.

G. DIRECTIONS OF THE AUTHORITY

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

i. Respondent is directed to refund the entire amount along with interest of @ 10.80 % ₹ 89,43,721/- to the complainant as specified in para 39 of this order after deducting earnest money as per principles laid down in this order. Interest shall be paid up till the time period under section 2(za) i.e till actual realization of amount.

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

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

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