HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 196 OF 2025

Sameer Singh .... COMPLAINANT

Versus

Ashiana Real Tech Pvt. Ltd. ....RESPONDENT

CORAM: Dr. Geeta Rathee Singh **Member**

Date of Hearing: 21.07.2026

Hearing: 5th

Present: Adv. Shajat Kataria, Ld. Counsel for the Complainant.

Adv. Kamal Jeet Dahiya, Ld. Counsel for the Respondent through VC.

ORDER : DR. GEETA RATHEE SINGH -(MEMBER)

1. Today, case is fixed for further arguments and consideration.
2. Ld. Counsel for the respondent raised an objection regarding the maintainability of the complaint, contending that the unit in question was cancelled on 02.09.2016, whereas the present complaint was instituted on 06.02.2025, after an inordinate delay of over eight years.

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3. In response, Ld. Counsel for the complainant submitted that the respondent till date failed to refund the deposited amount. It is submitted that the non-refund of amount paid after cancellation constitutes a continuing wrong and therefore the cause of action survives. Hence, the present complaint is not hit by limitation.

4. Argument heard. Case is disposed of. Detailed order to follow.

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DR. GEETA RATHEE SINGH
[MEMBER]

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**196 of 2025**
Date of filing.:	**06.02.2025**
First date of hearing.:	**25.03.2025**
Date of decision.:	**21.07.2026**

Sameer Singh

R/o D-401 The 54 Pioneer Araya,

Sector-62 Gurugram-122101 ....COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.

203-205, progressive chamber d-3 block, commercial complex, Prashant vihar, New Delhi-11085 ......RESPONDENT

Present- Adv. Adv. Shajat Kataria, Ld. Counsel for the Complainant.

Adv. Kamal Jeet Dahiya, Ld. Counsel for the Respondent through VC.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed by complainant 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.	The Cubix, Sector-23, Village Maheshwari, Tehsil Dharuhera, District Rewari.
2.	Nature of the project.	Residential Apartment
3.	RERA Registered/not registered	Registered vide Registration No. 39 of 2018
4.	Details of the unit.	2 BHK Apartment Tower No. B1-607,6th Floor Floor, measuring super area of 1600sq.ft.

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5.	Date of Booking	27.12.2012
6.	Date of Allotment	27.04.2013
7.	Buyer Builder Agreement	Not Executed
8.	Basic sale Price	₹38,40,000/-
9.	Amount paid by complainant	₹17,60,998/-

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. That the complainant booked a residential apartment bearing Unit/Flat No. B1-607, located on the 6th Floor, admeasuring 148.64 Sq. Mtrs. (1600 Sq. Ft.) in the respondent's project titled "The Cubix" at Sector-23, Dharuhera, Rewari, Haryana. The booking was secured via an initial payment of ₹3,80,000/- through HDFC Bank Cheque No. 370486 dated 27.12.2012. Subsequently, a further payment of ₹4,15,000/- was made to the respondent. The respondent thereafter issued an allotment letter dated 27.04.2013. Consequent to the allotment, the complainant consistently complied with the financial demands raised by the respondent.
4. That on 02.10.2015, owing to a manifest lack of progress and complete dissatisfaction with the development of the project, the complainant

formally requested the respondent to rescind the booking and refund the entire amount deposited.

5. That despite having already received a substantial sum of ₹17,60,998/- from the complainant, and without even executing a standard builder buyer agreement, the respondent issued a further demand letter dated 15.06.2016 seeking additional balance payments.
6. In response, the complainant sent an e-mail dated 17.06.2016 reiterating the demand for a full refund. The respondent replied to the same via a communication dated 28.06.2016, which is annexed herewith as annexure A-4.
7. Upon receipt of the respondent's letter dated 28.06.2016, the complainant served another formal request dated 16.08.2016, clarifying that the demand for a refund was an ongoing grievance persisting since the year 2013.
8. That vide a reply dated 02.09.2016, the respondent arbitrarily and unlawfully agreed to refund only a partial sum of ₹10,45,398/-, while illegally forfeiting 10% of the basic sale price (equivalent to ₹3,84,000/-) and further deducting ₹3,31,600/- under the guise of brokerage charges, which is completely untenable in law.
9. That after conducting multiple site visits, the complainant observed a total stagnation of construction work, forcing the complainant to repeatedly seek a refund of the hard-earned principal amount along with the interest expenses incurred thereon. Instead of addressing these legitimate

grievances, the respondent adopted an aggressive posture, ignoring the refund requests and issuing coercive cancellation threats and payment reminders.

10. That the complainant has paid an aggregate amount of ₹17,60,998/- to the respondent till date.

11. That despite personal visits by the complainant to the respondent's office, respondent deliberately neglected to redress the complainant's legitimate claims. Instead, the respondent unilaterally and high-handedly cancelled the allotment of the subject flat without prior notice, while illegally withholding the entire deposited amount.

C. RELIEF SOUGHT

12. That complainant seeks following relief and directions to the respondent:-

i. To direct the respondent to refund the entire amount received from the complainant i.e. ₹17,60,998/-(Rupees Seventeen lacs Sixty Thousand Nine Hundred and Ninety Eight only) along with interest at the rate of 18% p.a. From the date of each payment till the actual date of refund of the deposited amount.

ii. Payment of ₹1,00,000/- as compensation towards mental agony caused to the complainant.

iii. Payment of ₹1,00,000/- towards the litigation expenses for the filing of the Complaint.

iv. Any other relief to which the allottee is found entitled by this Hon'ble Authority.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

13. The respondent through its counsel filed a reply on 04.09.2025 and raised following objections.

i. The present complaint was filed on 05.02.2025, which is more than eight years and five months after the cancellation of the unit on 02.09.2016. The claim is heavily barred by the law of limitation, delay, laches, and the principle of acquiescence under the Limitation Act, 1963.

iii. The statutory relationship of "Promoter and Allottee" between the parties stood permanently terminated upon the cancellation of the unit on 02.09.2016. Because this cancellation occurred prior to the enforcement of the RERA Act (01.05.2016) and the notification of the Haryana RERA Rules (28.07.2017), the complainant does not qualify as an "allottee" under the Act. RERA cannot be applied retroactively to revive a contract that was lawfully terminated prior to the implementation of its regulatory framework.

14. That the unit No. B-1 607 (1600 sq. ft.) was provisionally allotted to the complainant via an allotment letter dated 27.04.2013 for a total sale consideration of ₹51,15,183/-. The complainant paid only the initial three installments and defaulted on all subsequent payments after October 2013, failing to comply with multiple statutory demand letters and reminders issued between 04.10.2014 and 15.06.2016.

15. The complainant deliberately avoided executing the standard builder buyer agreement as a tactic to evade his financial obligations. While the complainant requested a transition to a "possession-linked payment plan" on 02.10.2015, he failed to clear the requisite financial differential stipulated by the respondent. This confirms that the unit was booked purely for speculative investment purposes rather than genuine personal use.

16. Due to continuous defaults, the respondent lawfully cancelled the booking vide a cancellation letter dated 02.09.2016. In accordance with Clause 7 of the booking agreement, the earnest money (10% of the total sale consideration) and brokerage fees were liable to be forfeited.

17. That the respondent successfully registered the project under RERA on 20.08.2018 (Reg No. HRERA-PKL-RWR-39-2018) and has completed the construction of "The Cubix" using its own internal resources. This completion was achieved despite severe financial strain caused by a 55.5% inventory vacancy rate and over ₹7.57 crores in outstanding defaults from

various allottees, including the complainant, between 01.10.2015 and march 2017.

18. Under Section 19(6) of the RERA Act, 2016, an allottee is statutorily obligated to make timely payments as per the agreed schedule. By failing to clear the outstanding dues despite repeated reminders and an eventual offer of possession, the complainant committed a material breach of his statutory duties.

19. That the complainant has suppressed material facts, failed to approach this Hon'ble Authority with clean hands, and has instituted this frivolous litigation as a counterblast to cover up his own contractual defaults in an attempt to extract unlawful financial gains.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENT

20. Learned counsel for the complainant and respondent reiterated the submissions as were made in complaint and reply.

F. ISSUES FOR ADJUDICATION

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

G. FINDINGS ON THE PRELIMINARY OBJECTIONS RAISED BY THE RESPONDENT

G.1 Objection with regard to maintainability of complaint on ground that it is barred by limitation

The respondent has raised a preliminary objection that the present complaint is barred by limitation on the ground that the allotment was cancelled on 02.09.2016 and the complaint has been filed on 05.02.2025. Authority observes that provisions of the Limitation Act, 1963 are not strictly applicable to proceedings under the Real Estate (Regulation and Development) Act, 2016, as the Authority constituted under the Act is a quasi-judicial body and not a civil court. In this regard, reliance is placed upon the judgment of the Hon'ble Supreme Court in ***M.P. Steel Corporation v. Commissioner of Central Excise*** (Civil Appeal No. 4367 of 2004), wherein it was held that the Limitation Act primarily governs proceedings before courts and does not automatically apply to tribunals or statutory authorities unless specifically provided.

Further, on cancellation of the unit on 02.09.2016,the respondent continues to withhold the amount paid by the complainant, Hence, the cause of action is a continuing one Consequently, a present complaint is not barred by the limitation.

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G.2 Objection regarding retrospective/ retroactive applicability of the Act

Another objection raised by the respondent is that the relationship of promoter and allottee stood terminated upon the cancellation of the unit on 02.09.2016 and, therefore, the complainant cannot be treated as an allottee under the Real Estate (Regulation and Development) Act, 2016. It has further been contended that since the cancellation preceded the enforcement of the Act and the Haryana RERA Rules, the provisions of the Act cannot be applied to revive a contract allegedly terminated prior to the coming into force of the regulatory framework.

In this regard, reference may be made to the judgment of the Hon'ble Supreme Court in ***M/s Newtech Promoters & Developers Pvt. Ltd. v. State of U.P. & Ors.***, wherein it has been categorically held that the provisions of the Act are retroactive in nature and apply to ongoing projects and subsisting rights and liabilities arising therefrom. The Hon'ble Apex Court has further held that the Act was consciously enacted to protect the interests of allottees and that promoters cannot avoid the applicability of the Act merely on the basis of contractual terms or transactions entered into prior to its commencement. The Act applies to all projects which had not attained completion and for which completion certificates had not been issued, irrespective of the date of execution of the agreement.

The relationship between the allottee and the promoter remains intact as the respondent continues to withhold the amount paid by the complainant. Mere issuance of a cancellation letter cannot by itself defeat the statutory remedies available under the Act, particularly when the project falls within the ambit of RERA act and the consequences of the cancellation continue to affect the rights of the complainant. Therefore, the complainant cannot be non-suited solely on the ground that the cancellation was effected before the enactment of the Act. In view of the law laid down by the Hon'ble Supreme Court, the provisions of the Act and the Rules framed thereunder are applicable to the present dispute, and the objection regarding the retrospective applicability of RERA and the status of the complainant as an allottee is accordingly rejected.

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

22. The Authority has gone through the rival contentions and the material available on record. In light of the background of the matter as captured in this order and the submissions made by both parties, Authority observes that the complainant had booked a residential apartment bearing Flat No. B1-607, situated on the 6th Floor, admeasuring 1600 sq. ft. (super area), in the real estate project "The Cubix" located at Sector-23, Dharuhera, District Rewari, Haryana, pursuant to which an allotment letter dated 27.04.2013 was issued in favour of the complainant. No builder buyer agreement has been executed between the parties to crystallise the terms in respect of the

unit in question. It has been submitted by the complainant that an amount of ₹17,60,998/- has been paid to the respondent towards sale consideration. Said fact has been admitted to by the respondent. It is the contention of the complainant that the respondent had failed to perform its due diligence with respect to the unit in question and further failed to construct the project in a timely manner, thus, constraining the complainant to withdraw from the project and seek refund of paid amount. However, the respondent instead of issuing refund of total paid amount illegally forfeited an amount of ₹3,84,000/- as earnest money and an amount of ₹3,31,600/- as brokerage charges out of total paid amount of ₹17,60,998/-. Hence, the present complaint seeking refund of the entire paid amount along with interest in terms of the RERA Act,2016.

23. Admittedly, an allotment letter had been issued to the complainant in respect of the unit in question on 27.04.2013. Thereafter no further document had been executed between the parties crystallising the terms qua the said unit. It is the submission of the complainant that the respondent had issued a unilateral, one sided and unfair builder buyer agreement in the month of June 2013. However, the complainant refuted to execute the same as the terms were illegal in totality. The respondent on the other hand has alleged that the complainant had deliberately failed to execute the builder buyer agreement. Fact of the matter is that in respect of the unit in question no proper terms and conditions qua the sale/purchase had been agreed

between the parties beyond the letter of allotment dated 27.04.2013. Said letter of allotment merely mentions the unit no., block, floor and area of the said unit but nothing further. It is the primary contention of the complainant,which has been documented by him in letter dated 16.08.2016, that when the complainant had booked the unit in the year 2012 and started making payments, the respondent had issued a one sided and unfair builder buyer agreement to him in the month of June 2013. In view of such unilateral terms and conditions, complainant had wanted to withdraw from the project and seek refund of paid amount, however, upon requesting cancellation, the complainant was cautioned of financial penalty. Thus, in order to save his hard earned money, the complainant had opted to continue with the project and make further payment. As per the complainant's understanding he had booked a unit under the construction linked plan, yet the respondent never provided any proof of development despite taking a huge amount of ₹17,60,998/- by 2013 itself.Towards sale consideration, thus constraining the complainant to stop making further payments fearing loss of paid amount. This fear of the complainant then materialised into fact as even till the year 2016, the respondent had failed to construct the project and deliver possession. Thus, in view of continuous default and non delivery of possession, the complainant had no choice but to withdraw from the project and seek refund of paid amount. The complainant had expressed his will repeatedly to the respondent vide letter/email dated 02.10.2015 and

16.08.2016, which have also been acknowledged by the respondent in letter dated 28.06.2016. Though the respondent had acceded to the request of the complainant and cancelled the allotment of the complainant vide letter dated 02.09.2016, however, the respondent had admittedly forfeited an amount of ₹3,84,000/- as earnest money and an amount of ₹3,31,600/- as brokerage charges from the total paid amount of ₹17,60,998/. It has been emphatically argued by the complainant that through the entire correspondence in respect of the unit in question, it is the respondent who has acted with malafide intent and failed to honour its obligation and deliver possession of the booked unit thus, the respondent is in no legal position to forfeit any amount from the total paid amount.

24. Per contra, the respondent has argued that it is the complainant who had deliberately stopped making payments in respect of the unit in question after 12.10.2013. The respondent has placed on record a copies of the various demand letters issued to the complainant seeking further payment between 2014 and 2016, which the complainant allegedly failed to respond. Thereafter the respondent had sent a letter dated 28.06.2016 to the complainant, explicitly cautioning the complainant that continued non-payment would result in the cancellation of the allotment expressly mentioning that, upon cancellation, the respondent would exercise its contractual right under Clause 7 of the Booking Agreement to forfeit 10%

of the total sale consideration, alongside the deduction of brokerage fees and other contractually stipulated charges from any refundable balance.

25. Upon thorough appreciation of the documents placed on record by the parties and the oral submissions made in this regard, Authority observes that besides the issuance of the allotment letter dated 27.04.2013, no proper agreement for sale/builder buyer agreement had been executed between the parties to crystallise the terms qua the sale/purchase of the said unit in respect of total sale consideration, payment schedule, due date of possession, penalty etc. Since, there are no terms and conditions agreed between the parties it is difficult to examine the conduct of either of the parties in performing the respective obligations cast upon them. There is no payment plan executed between the parties to ascertain any default qua the same. As per the complainant, the complainant had booked the unit under construction linked payment plan. This fact is corroborated by letter dated 28.06.2016 issued by the respondent, wherein the respondent has itself admitted that the complainant had opted for construction link payment plan. From various demand letters/statements of account it is certain that the basic sale price of the unit was fixed as ₹38,40,000 /-. By the year 2013 itself, the respondent had already taken a huge amount of ₹17,60,998/- from the complainant without providing any proof of construction or builder buyer agreement. Even in the demand letters placed on record, the respondent did not explicitly mention the stage of construction against

which the said demand is being raised. Thus, the conduct of the respondent is contrary to the pleadings. In the absence of any proof of construction, the complainant was justified in ceasing to make further payments after having already made payment of more than 40% of the sale consideration amount that too without executing builder buyer agreement. Further, in the absence of a builder buyer agreement, it cannot be rightly ascertained as to when the possession should have been delivered to the complainant. In these circumstances, reliance is placed upon the observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time to deliver possession of a unit in cases where there is no fixed deemed date of possession. In captioned complaint, complainant had been allotted a unit in the project in question vide allotment letter dated 27.04.2013. Therefore, taking a period of three years from the said date, the due date of possession works out to 27.04.2016. Meaning thereby that the respondent should have delivered possession of the unit to the complainant by 27.04.2016. As is evident from the record that the respondent was not in a position to deliver possession of the unit in question by said date. Seeing no scope of delivery of possession in the immediate future, the complainant expressed his concerns to withdraw from the project on account of gross misconduct and malpractices on the part of the respondent in carrying out its obligations towards the unit in question. The fact that the complainant was dissatisfied and wished to withdraw from the project is supported by the unimpeachable evidence referred above vide email/letter dated june 2013 (as reflected in letter dated 16.08.2016) and 02.10.2015, 26.04.2016 & 17.06.2016 (all reflected in letter dated 28.06.2016). Acceding to the request of the complainant the respondent cancelled the allotment vide cancellation letter dated 02.09.2016. However, at the time of said cancellation the respondent forfeited a huge amount of *₹3,84,000/- & ₹3,31,600/-* in terms of clause 7 of the Booking Application Agreement dated 27.12.2012 as elaborated below:

> *"Therefore, without going further to expose the default and breached and reserving the right to take appropriate action , we in terms of clause 7 of the Booking Application Agreement dated 27.12.2012, which read as follows ,*
>
> *"In case of request of cancellation of the flat earnest money will be forfeited and balance amount will be paid without any interest and only after allotment of the same to any other persons"*
>
> *Hereby cancel the booking of your unit B2-607,(Sixth Floor), Tower B-1 at the "THE CUBIX" situated at sector -23 Dharuhera, Rewari, Haryana, and forfeit 10% of basic sale price ₹3,84,000/-. We further hereby adjust/ deduct brokerage charges of ₹3,31,600/- from the deposit amount. With cancellation of your unit, you have no right surviving whatsoever, with respect to the said unit and we are liberty to sell/ transfer the same. The payment of the refund amount of ₹10,45,398/- without interest shall become due and payable*

after the sale / allotment of the aforesaid unit to the third party."

A bare reading of this letter reveals that at the time of cancellation of the subject unit, the respondent unilaterally forfeited 10% of the basic sale price as earnest money and deducted a further sum towards brokerage charges, thereby quantifying the refundable amount at ₹10,45,398/-. To justify these deductions, the respondent placed reliance on Clause 7 of the preliminary "booking application agreement" dated 27.12.2012. As per record, a copy of this "booking application agreement" has not been placed on record by either of the parties. Complainant specially alleged the forfeiture to be illegal and arbitrary in absence of an builder buyer agreement Examining the alleged letter of cancellation and the Clause 7 of "booking application agreement"as reproduced in cancellation letter dated 02.09.2016, it is revealed that the very basis of the clause 7 is wholly arbitrary, unfair and heavily loaded in favour of the respondent. The respondent using its dominance has placed itself in a position of advantage to seek wrongful gains and cause wrongful loss to the complainant. Firstly, the alleged "booking application agreement" has not been placed before the Authority to examine the veracity of the same and in absence of any documentary evidence, the respondent cannot be allowed to rely upon the same. Secondly, even if there is such a "booking application agreement", yet this very clause 7 is unfair and unreasonable and thus, bad in the eyes of law. Reliance is placed upon judgement, **Pioneer Urban Land and Infrastructure Lid. 's case (supra),** wherein the Hon 'ble Supreme Court has laid down that the

> *"courts will not enforce and will, when called upon to do so, strike down an 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".*

26. In present case, since there is no binding contract/ builder buyer agreement placed before the Authority containing the contractual stipulation to forfeit 10% of earnest money i.e, ₹3,84,000/- and ₹3,31,600/- towards brokerage charges. In the absence of the relevant documents, the respondent has failed to discharge the burden of establishing that the forfeiture of earnest money and deduction of brokerage charges was permissible. Therefore, it is germane to say that the forfeiture of earnest money and deduction of brokerage charges made by respondent in bad in the eyes of law.

With regard to the alleged deduction of 10% of forfeiture as earnest money. without entering into builder buyer agreement. Authority has placed reliance upon *Suresh Kumar Wadhwa Versus State of M.P CIVIL APPEAL No.7665 OF 2009* wherein Supreme Court have held that:-

> *23. Reading of Section 74 would go to show that in order to forfeit the sum deposited by the contracting party as "earnest money" or "security" for the due 14 performance of the contract, it is necessary that the contract must contain a stipulation of forfeiture. In other words, a right to forfeit being a contractual right and penal in nature, the parties to a contract must agree to stipulate a term in the contract in that behalf. A fortiori, if there is no stipulation in the contract of forfeiture, there is no such right available to the party to forfeit the sum.*

27. Furthermore, the condition imposed by the respondent deferring the release of the refundable amount until the sale or re-allotment of the cancelled unit to a third party is legally untenable. Once the allotment stood cancelled, it became incumbent upon the promoter to effect the refund within a reasonable timeframe. The respondent cannot be permitted to indefinitely withhold an admitted refund by making its release contingent upon an uncertain future event entirely within its own administrative domain and control. Such an oppressive condition cannot be allowed to operate to the detriment of an allottee for an indefinite duration. The respondent's indefinite retention of the complainant's hard-earned fund without any lawful justification or proof of remittance amounts to unjust enrichment. Consequently, the respondent continues to unlawfully retain the deposited amount and is liable to refund the principal amount in full.

28. Authority hereby concludes that complainant is entitled to receive a refund of the paid amount along with interest as per Rule 15 of HRERA Rules 2017 on account of failure on part of the respondent. As per Section 18 of

the RERA Act, interest shall be awarded at such rate as may be prescribed. Section 18 of RERA Act, 2016 is reproduced below for reference:

> *"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"*

Further, 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;*

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(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"*

29. Hence, Authority directs the 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 SBI (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.

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

Sr. No.	Principal Amount (in ₹)	Date of Payment	Interest Accrued till date of order i.e 21.07.2026
1.	₹3,80,000/-	02.01.2013	₹5,56,457/-
2.	₹9,65,998/-	12.10.2013	₹13,33,681/-
3.	₹4,15,000/-	26.04.2013	₹5,93,712/-
Total	₹17,60,998/-		₹24,83,850/-

31. The complainant is seeking ₹1,00,000/- as compensation towards mental agony and ₹1,00,000/- towards litigation charges. It is observed that the Hon'ble Supreme Court of India in ***Civil Appeal Nos. 6745-6749 of 2021, M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Ors. (supra)***, has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18, and 19 of the RERA Act, 2016. The Court further clarified that such claims are to be adjudicated by the learned Adjudicating Officer under Section 71 of the Act, 2016, and the quantum of compensation and legal expenses is to be determined having due regard to the factors enumerated in Section 72 of the Act, 2016. Accordingly, the Authority observes that the claim for compensation and litigation costs cannot be adjudicated in the present proceedings. The complainant is therefore, advised to approach the learned Adjudicating Officer for seeking relief in respect of compensation and litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

32. Hence, the Authority hereby passes this order and issue 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 amount to the complainant as specified in the table provided in para 30 of this order. It is further clarified that respondent will remain liable to pay the interest to the complainant till the actual date of realization of the amount.

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

33. **Disposed o**f. Files be consigned to the record room after uploading of the order on the website of the Authority.

Rathee

....

DR. GEETA RATHEE SINGH
[MEMBER]