



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1589 of 2024
Date of filing:	05.11.2024
Date of first hearing:	16.12.2024
Date of decision:	20.08.2026

Shanta Chakraborty W/o Sh. Arumoy Chakraborty,
R/o B-2006, BPTP Princess Park
Sector-86, Faridabad-121002

....COMPLAINANT

VERSUS

M/s BPTP Limited
M-11, Middle Circle, Connaught Circus,
New Delhi- 110001

....RESPONDENT

CORAM:	Parneet Singh Sachdev	Chairman
	Nadim Akhtar	Member
	Dr. Geeta Rathee Singh	Member
	Chander Shekhar	Member

Present: - Mr. Pranjal P. Chaudhary, Counsel for the complainant through VC

Ms. Shanta Chakraborty, Complainant.

Mr. Hemant Saini, Counsel for the respondent.

ORDER:(PARNEET S. SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 05.11.2024 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill 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, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Discovery park, Sector-80, Faridabad
2.	Nature of the project.	Residential group housing project
3.	RERA Registered/not registered	Registered
4.	Details of allotted unit.	Unit No.- A-206, measuring 1120 sq.ft.

5.	Allotment Letter	29.03.2011
6.	Date of Flat Buyer Agreement-	Not executed
7.	Deemed date of possession	Not available
8.	Possession clause	Not available
9.	Paid amount	17,65,128/-
10.	Last payment	23.12.2013
11.	Termination letter	15.03.2021

B. FACTS OF THE PRESENT CASE AS STATED BY THE COMPLAINANT IN THE COMPLAINT:

3. That in 2011, the respondent started developing their residential project in District Faridabad, under the name and style of "Discovery Park", at Sector 80 Faridabad.
4. That the complainant applied for booking an apartment in 2011 and was thereafter allotted unit no. A 206 on 29.03.2011. Booking amount and further payment at the time of allotment as and when called for by the Respondent company were paid from time to time. A copy of the Allotment Letter is Annexed herewith as Annexure C/1.



5. That till date no Builder Buyer Agreement has been entered into between the parties in spite of payment of Rs. 17,65,128/- having already been made. A copy of receipts/ proof of payments is annexed herewith as Annexure C/2.
6. That it would be of vital importance to mention here that between 2011 and 2013 an amount of Rs. 17,65,128/- was paid to the respondent by the complainant, which they duly received. The Respondent kept demanding installments through various illegal demand letters even when the stage of development was not in accordance with the demand raised as mentioned in the buyer agreement. Demands were raised even before the said stage of construction was completed. Statement of a/c as available is attached herewith as Annexure C 3.
7. That despite the illegal demands raised by the opposite party the complainant kept paying as demanded, although they were not liable to pay in accordance with the demand raised as stage of construction for raising a particular demand was never reached.
8. That the complainant herein made regular visits and also wrote E-mails to the Respondent herein dated 25.03.2019, 07.09.2019 however no concrete commitment was made by the respondents. A copy of the said mails is annexed herewith as Annexure C 4 and Annexure C 5 respectively.
9. That thereafter an Email was received from the company on 04.12.2019 vide which revised completion plan was shared. The same itself goes on to show



that the project in question was suffering from inordinate delay since booking was done way back in 2011. A copy of the said E-mail is annexed herewith as Annexure C 6.

10. That the respondent herein thereafter sent another E mail dated 15.03.2021 whereby due to alleged nonpayment the unit/flat allotted to the complainant herein was terminated. It is pertinent to mention here that till date no BBA was entered into between the parties and thus any further demand by the respondent was in complete contravention of RERA. Section 13 of the act prohibits the promoter from demanding more than ten percent without entering into an agreement first and in the present case in spite of almost 50% payment no BBA was signed and thus the termination is bad in the eyes of law. A copy of the said mail is annexed herewith as Annexure C 7.
11. That yet again the complainant visited the office of the respondent in Feb 2024 and was assured of redressal of his grievance by the authorised person but till date no response has been received. Another Email was sent to the respondent on 03.02.2024 after the aforementioned visit and the same is annexed herewith as Annexure C 8.
12. That due to the inordinate delay the complainant herein is no longer interested to take possession of the said unit and thus the present complaint is being filed to seek refund of amount paid to the builder.



13. The respondents deliberately delayed handing over possession and kept using the funds for their selfish interests. The complainant is aggrieved by the conduct of the opposite party as they had demanded and accepted the payments even when they had delayed the possession of the property. Hence the respondents are liable to pay interest over the amount received from the complainant from the date of payments till actual date of refund.
14. The Complainant further submits that the respondent is guilty of gross deficiency in service for which it is liable to compensate the Complainant.
15. That since 2014 the OPs have been evading any concrete commitment for fixing a particular date of handing over of possession and have not even conveyed the status of development of the project to the complainant. This clearly shows that the flat in question is neither ready for possession nor the respondents are in position to construct, develop and deliver the same in near future.
16. That it goes without saying that Complainant is suffering physically and mentally besides facing financial hardships since 2015 due to the non-delivery of possession of the unit in question.
17. This Hon'ble Authority has jurisdiction over the present complaint.
18. That The complainant has not filed any other or similar petition before any other Tribunal, Court or before the Supreme Court in respect of the subject matter of the present complaint.

19. That the cause of action for filing the present complaint arose wherein agreeing, the respondents failed to hand over the physical possession of the said unit timely. The cause of action thereafter arose from time to time when the respondents despite repeated requests, failed to complete the construction or to handover the possession to the Complainant. The cause of action for filing the present complaint is recurring and continuous. Hence the present complaint is filed within the period of limitation.

20. Feeling aggrieved, present complaint has been filed.

C. RELIEF SOUGHT

21. That the complainant seeks following relief and directions to the respondents:-

- i. In exercise of powers under section 35 of RERA Act, 2016, direct the Opposite party to place on record all statutory approvals and sanctions of the project.
- ii. In exercise of powers under Section 35 of RERA Act, 2016 and Rule 21 of HRE (R&D), Rules, 2017, to provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and pending demand if any.
- iii. To pay delay interest to the Complainant for the delay in completion of the project by paying delay interest from respective date of payments till

refund is given since complainant is no longer interested in possession of the said unit, at the rate in accordance with rule 15 of the RERA Act, 2016.

- iv. To remove any delay interest charged from the complainant by the respondent since all demands raised were illegal.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

22. Learned counsel for the respondent submitted a detailed reply on 13.05.2025 pleading therein:
23. That the Complainant expressed his interest and willingness to purchase a unit in the project of the Respondent known under the name and style of "Discovery Park". Accordingly, an application/ booking form was executed by the Complainant. Consequently, the unit, a flat bearing no. A-206, Tower A, tentatively admeasuring 1120 sq. ft. was allotted to the Complainant. A copy of the Booking Form is annexed as Annexure R1. A copy of the Allotment Letter dated 29.03.2011 is annexed as Annexure R2.
24. That it was the obligation of the Complainant to execute the Agreement for Sale within 15 days of the receipt of the same and the same understanding was recorded under clause 26 of the Booking Form. However, the Complainant has failed to execute the Agreement for sale.
25. At this stage, it is pertinent to highlight that the relationship between the parties was purely contractual and flowed from the explicitly agreed terms and conditions of the Booking Form and Allotment Letter.

26. That as per the Booking Form, Clause 17, the due date of possession was proposed to be in 36 months from the date of sanctioning of the building plan or execution of the FBA, whichever is later with a grace period of 180 days. At this stage, it is submitted that the benefit of grace has to be given as has also been considered by the Ld. Tribunal, Chandigarh in the case titled Emaar MGF Land Ltd. vs Laddi Praramjit Singh Appeal no. 122 of 2022 that if the grace period is mentioned in the clause, the benefit of the same is allowed.
27. It is pertinent to mention that the building plans were initially sanctioned on 27.06.2012 and were later revised and approved on 26.09.2018, however, the Buyer's Agreement has not been executed by the Complainant hence, the subjective due date has not reached yet. That without prejudice to the submissions of the Respondent that the due date of possession not reached yet, it is submitted that the due date was subject to the incidence of force majeure circumstances and the timely payment by the Complainant. That the construction of the Unit was deeply affected by such circumstances, the benefit of which is bound to be given to the Respondent in accordance with Clause 17 of Booking Form.
28. That in the year 2012, on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed the framing of modern

mineral concession rules. Reference in this regard may be taken from the judgment of Deepak Kumar v. State of Haryana, (2012) 4 SCC 629, where the competent authorities took substantial time in framing the rules in case where the process of the availability of building materials including sand which was an important raw material for the development of the said Project became scarce. The respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A. No. 171/2013, wherein vide Order dated 02.11.2015, mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. Thus, on account of several orders, directions passed by the various authorities/forum hindered the development of project. Ban by NGT vide order dated 19.07.2016 for 30 days, Ban by Environment Pollution Authority vide order dated 07.11.2017 and 01.11.2019 for 90 days and 4 days respectively and Ban by Hon'ble Supreme Court vide order dated 04.11.2019 for 102 days.



29. That additionally, even before normalcy could resume the world was hit by COVID-19 Pandemic. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 10-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities.
30. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. That considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021 (103 days), each and every activity including the construction activity was banned in the State. Therefore, it is safely concluded that the said delay of 350 days in the seamless execution of the Project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay. That from the facts indicated above and documents



appended, it is comprehensively established that a period of 349 days was consumed on account of circumstances beyond the power and control of the Respondent, owing to the passing of aforesaid Orders by the statutory authorities. All the circumstances stated come within the meaning of force majeure

31. That in addition to the above, the construction was also affected by the receipt of timely payment against the Unit. That timely payment of instalments is the essence of the agreement, accordingly, Respondent raised demands upon reaching respective milestones but the Complainant unlawfully and malafidely failed to make the complete payments. That in such a circumstance, several reminders were issued by Respondent to the Complainant, however, the Complainant has miserably defaulted in adhering to the obligation of making the due payment. As is widely known and understood that the continuous flow of funds is pertinent to the real estate industry, it is submitted that upon the failure of the Complainant to make due payments as per the schedule agreed upon, has a cascading effect on the operations and the cost for the proper execution of the Project increases exponentially and further causes enormous business losses to the Respondent. That upon delay being caused by the Complainant on payment of different installments, they were served with various Payment Reminders.



Copies of demand letters, reminders and receipts are annexed as Annexure R-3.

32. It is further submitted that despite there being several defaulters in the Project, the Respondent had to infuse funds into the Project and has diligently developed the project in question. That the Respondent, despite defaults on the part of the Complainant, earnestly fulfilled its obligation under the Booking Form and Allotment Letter however, the Complainant has failed to make the timely payment against the total sales consideration of the unit.
33. That the Complainant had failed to make payment against the demand. That the last payment made by the Complainant was on 23.12.2013 and thereafter no payments has been made by the Complainant.
34. That upon the non-payment by the Complainant, the Complainant was considered under default under Clause 16 of the Booking Form and upon the failure of the Complainant to pay due amounts/installments, the Respondent had the complete right to terminate the unit of the Complainant.
35. That the right of the Respondent to validly cancel/terminate the Unit arises not only from the Agreement but also from the Model RERA Agreement which also recognizes the default of the allottee and the forfeiture of the interest on the delayed payments upon cancellation of the unit in case of default of the allottee.



36. That upon cancellation the Respondents are entitled to forfeit the earnest money, deduction of interest amounts due or payable, and other non-refundable amounts including brokerage.
37. That no person should be granted the benefit of their own wrong' is a settled principle of law, and is squarely applicable in the present case, where the default of the Complainant had led to the termination of the Unit. Hence, no, benefit of any sort should be granted to the complainant.
38. That the facts and circumstances of the present case reveal that the Complainant has no cause of action to file the present complaint. The allotment of the Complainant stands cancelled, and the Respondents are ready to refund the amount to the Complainant. In reference to this, present claim against the Respondent is infructuous.
39. In parawise reply, it is stated that the respondent vide letter dated 27.08.2014 terminated the unit; however, on request of the complainant, the unit was revised (correct word 'revived') and an opportunity was given to the complainant, despite which the complainant has failed to make payment of the dues, hence the unit was finally terminated on 15.03.2021.

E. ADDITIONAL DOCUMENTS BY THE PARTIES

40. Respondent had filed an application in registry on 12.05.2026 for placing on record the compliance affidavit vide order dated 22.01.2026. It is stated that 'vide order dated 22.01.2026, this Hon'ble Authority directed the respondent



to file an affidavit stating therein that *no affidavit pertaining to giving up claim of allotment rights in unit in question has been received from side of the co-allottee Mamta Sengar*’.

41. Complainant had filed compliance affidavit of Mrs. Shanta Chakraborty in registry on 13.05.2026 wherein it is stated that:

- “a. That the amount of Rs. 17,65,128/- (Rupees Seventeen Lakhs Sixty Five Thousand One Hundred Twenty Eight only) paid towards the allotment of the unit in question was paid by me from my own funds.*
- b. That though the allotment letter stood in the names of myself and co-allottee Ms. Mamta Sengar, all disputes/issues inter se between us regarding the said unit stand amicably settled.*
- c. That Ms Manta Sengar has no subsisting right, title, interest, claim or Protection in respect of the allotted unit and/or the refund amount payable in relation thereto.*
- d. That I shall be solely entitled to receive the entire refund amount in respect of the said allotment.*
- e. That in the event any claim, dispute, objection or demand is raised in future by Ms. Mamta Sengar or by any person claiming through or under her in respect of the allotted unit and/or refund amount, I undertake to solely defend, satisfy and settle the same at my own risk, cost and responsibility.*
- f. That I hereby fully indemnify and keep indemnified BPTP Ltd., its directors, officers and representatives against any future claim, liability, litigation, loss or consequences arising out of any claim made by Ms. Mamta Sengar in relation to the allotment and/or refund amount pertaining to the unit in question.”*

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

42. The learned counsel for the complainant reiterated the basic facts of the case, asserting that the respondent was obligated to hand over possession of the unit

to the complainant in 2014. However, the respondent failed to fulfill this obligation. Moreover, the construction work was not going on at good pace at the site. As a result, the complainant is seeking a refund of the amounts paid since 2019. Respondent acted otherwise and issued termination letter on 15.03.2021. But no communication, such as an email or letter, was made by the respondent inviting the complainant to collect the refunded amount till filing of this complaint.

43. On the other hand, the learned counsel for the respondent stated that the complainant did not come forward for execution of agreement. In absence of agreement, terms and conditions of booking form and allotment letter shall prevail for deciding the obligations of the parties. Construction work was going on but the same got hampered due to several bans detailed out in reply and restrictions due to COVID-19. Termination letter was issued on 15.03.2021 in terms of clause 16 of booking form. Fact remains that last payment was made by complainant in year 2013. The counsel emphasized that the complainant was at fault for not making timely payments. The respondent sent several reminders, dated 11.04.2017, 02.09.2017, urging the complainant to pay the balance amount, but the complainant failed to respond. As a result, the respondent canceled the unit and issued a termination letter on 15.03.2021. The counsel further referred to Section 19(6) and 19(7) of the RERA Act, 2016, stating that the complainant was obligated to make



payments against the demand letters issued by the respondent. The respondent's counsel prayed that the refund be made, with applicable deductions such as earnest money, as per the terms and conditions of the booking form and allotment. Further, he stated that an amount of ₹ 9,57,159/- has already been paid to complainant.

G. ISSUES FOR ADJUDICATION

44. Whether the complainant is entitled for refund of the amount paid by her along with interest in terms of Section 18 of RERA, Act of 2016?

If yes, the quantum thereof.

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

45. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the complainant booked a flat in the real estate project; "Discovery Park, Sector 80, Faridabad, Haryana" being developed by the promoter namely; "M/s BPTP Ltd". Thereafter, respondent issued an allotment letter dated 29.03.2011 vide which complainant was allotted Unit no. A-106, admeasuring 1120 sq. ft. Flat buyer agreement had not been executed between the parties. Complainant has paid a total amount of ₹14,65,128/- against sale out of total sale consideration of ₹31,86,400/-.
46. As per complainant, the construction work of the project was not going at required pace, hence, no further payment was made beyond year 2013. It is

the stand of respondent that as per clause 17 of booking form, the possession was to be delivered within 36 months of approval of building plans. Respondent in its reply has stated that building plans were initially approved on 27.06.202 and got later revised on 26.09.2018 , subjective due date has not been reached yet.

47. Clause 17 of booking form provides that *'the company proposes to handover the possession of the flat to the applicant within a period of 36 months from the date of sanction of the building plan or execution of flat buyer's agreement, whichever is later'*. Flat buyer agreement has not been executed between the parties. Proof of approval/sanction/revision of building plans has not been placed on record by the respondent.
48. In absence of specific clause of deemed date of possession, it cannot rightly be ascertained as to when the possession of said unit was due to be given to the complainant. In Appeal No. 273/2019 titled as "TDI Infrastructure Ltd vs Manju Arya", Hon'ble Tribunal has referred to 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) and Anr. In which it has been observed that period of 3 years is a reasonable time of completion of construction work and delivery of possession. In present case, unit was allotted to complainant vide allotment letter dated 29.03.2011, taking 3 years time period as a

reasonable time for completing the project, the deemed date of possession works out to 29.03.2014.

49. It is pertinent to highlight the 'Sequence of events' of the present case for better adjudication of claim of complainant. Same is incorporated in the table below:-

Sr. No.	Letters/correspondences/ Payments	Issued/relied by	Contents of the documents
i.	Application/booking form by complainant on 09.01.2011.	Respondent	Complainant paid ₹ 2,26,000/- as booking amount. Copy annexed as Annexure R-1 to reply
ii.	Receipt dated 28.01.2011 for ₹ 2,26,000/-	Complainant	Receipt annexed at page 19 of complaint.
iii.	Allotment letter issued on 29.03.2011 alongwith demand of ₹ 2,21,188/-	Complainant and respondent	Copy of allotment annexed in complaint as Annexure C-1. In reply, it is annexed as Annexure R-2.
iv.	Receipt dated 13.04.2011 for ₹ 2,21,188/-	Complainant	Receipt annexed at page 20 of complaint.
v.	Demand letter- 'At the start of excavation' for amount of ₹ 2,99,620/-	Respondent	Copy of demand letter dated 19.04.2012 annexed at page 48 of reply.



vi.	Complainant paid the amount of ₹ 2,99,620/- on 30.04.2012.	Complainant	Receipt dated 30.04.2012 annexed at page 60 of reply.
vii.	Demand letter- 'towards EEDC' for amount of ₹ 1,34,196/-	Respondent	Copy of demand letter dated 10.05.2012 annexed at page 51 of reply.
viii.	Complainant paid the amount of ₹ 1,34,196/- on 27.08.2012.	Complainant	Receipt dated 27.08.2012 annexed at page 22-23 of complaint.
ix.	Demand letter- 'towards casting of upper basement slab' for amount of ₹ 4,39,150/-	Respondent	Copy of demand letter dated 01.08.2013 annexed at page 57 of reply.
x.	Complainant paid the amount of ₹ 4,44,974/- on 25.11.2013.	Complainant	Receipt dated 25.11.2013 annexed at page 62 of reply.
xi.	Demand letter- 'towards on casting of 1 st floor slab'	Respondent	Copy of demand letter dated 07.12.2013 annexed at page 63 of



	for amount of ₹ 4,39,150/-		reply.
xii.	Complainant paid the amount of ₹ 4,39,150/- on 23.12.2013.	Complainant	Receipt dated 23.12.2013 annexed at page 65 of reply.
xiii.	Demand letter- 'towards on casting of 4 th floor slab' for amount of ₹ 4,39,150/-	Respondent	Copy of demand letter dated 03.03.2014 annexed at page 66 of reply. Complainant did not pay. Reminder issued on 17.07.2014.
xiv.	Termination letter issued on 27.08.2014 on basis of reminder dated 17.07.2014	Respondent	Copy of termination letter dated 27.08.2014 annexed at page 79 of reply.
xv.	It is the submission of respondent that on request of complainant, allotment of unit was revived in favor of complainant. But no documentary evidence is placed on record in this regard. No documents/demand letters/communication between the parties during years 2014-2017.		

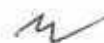


xvi.	Demand letter- 'towards on casting of 8 th floor slab' for amount of ₹ 11,48,789/-	Respondent	Copy of demand letter dated 11.04.2017 annexed at page 70 of reply. Complainant did not pay.
xvii.	Demand letter- 'towards on casting of 12 th floor slab' for amount of ₹ 11,68,561/-	Respondent	Copy of demand letter dated 03.07.2017 annexed at page 72 of reply. Complainant did not pay.
xviii	Demand letter- 'towards on casting of 14 th floor slab' for amount of ₹ 19,69,992/-	Respondent	Copy of demand letter dated 02.09.2017 annexed at page 75 of reply. Complainant did not pay.
xix.	Demand letter- 'towards at the start of external plaster' for amount of ₹ 22,95,508/- (including of outstanding amount plus interest)	Respondent	Copy of demand letter dated 05.02.2018 annexed at page 77 of reply. Complainant did not pay.
xx.	E-mails dated 25.03.2019, 07.09.2019, 11.09.2019	Complainant	Copy of emails are annexed at page 33 and 40 of complaint.



	sent by complainant to respondent asking for refund of paid amount as <i>project is late and builder is not in position to handover flat.</i>		
xxi.	Termination letter issued by respondent on 15.03.2021 on basis of cancellation letter dated 17.07.2014.	Respondent	Copy of termination letter dated 15.03.2021 annexed at page 81 of reply.
xxii.	E-mails dated 12.02.2024 and 03.02.2024 sent by complainant to respondent asking for refund of paid amount as <i>builder has not handed over possession of flat timely.</i>	Complainant	Copy of emails are annexed at page 40 and 41 of complaint.
xii.	Respondent did not refunded the paid amount. Hence, the present complaint has been filed by complainant on 05.11.2024.		

50. Contents of termination letter dated 15.03.2021 reflects that cancellation has been carried out on the basis of 'Final Demand notice-cum-intimation of cancellation of the unit dated 17.07.2014 (final notice)'. Whereas, respondent had issued demand letters in year 2017-2018 as reflected in aforesaid table. Issuing of demand letters after final notice dated 17.07.2014 dilute the purpose of cancellation. Hence, it cannot be treated as valid termination on part of respondent. Any termination/intimation of basis of final notice dated 17.07.2014 lacks strength and cannot be held as legal/valid. Moreover, the respondent did not refund any amount post cancellation of unit in year 2014 and 2021 nor any action has been taken on request of complainant seeking refund in year 2019.
51. The sequence of events underscores that the respondent failed to adhere to the agreed timeline and terms, causing significant inconvenience and financial burden to the complainant. Due to failure on the part of respondent to handover the possession on due date of possession, complainant has stopped making payments and had requested for refund of paid amount on 25.03.2019 to respondent. Respondent has failed to refund the amount till date.
52. The facts set out in the preceding paragraphs demonstrate that respondent had failed to fulfill its obligation to handover possession by 29.03.2014, i.e. deemed date of possession. Further, respondent neither had placed on record any documents stating explanation with regard to not refunding money of



complainant, even after a clear request for withdrawal was made by complainant on 25.03.2019 and 12.02.2024. Keeping the hard earned money of allottees without justification establishes that respondent want to take advantage of its own wrong first by not completing construction as per allotment/payment plan, secondly, keeping illegally the hard earned money paid by complainant. In these circumstances, the provisions of Section 18(1)(a) of the Act clearly come into play by virtue of which the complainant is seeking refund of paid amount along with interest on account of default in delivery of possession of booked unit within a reasonable period of time.

53. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others " in CIVIL APPEAL NO(S). 6745 - 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, allottee has an unqualified right to seek refund of amount paid to the promoter along with interest. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the

allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

54. So, the Authority finds it to be a fit case for allowing refund in favour of complainant. The complainant will be entitled to refund of the paid amount from the dates of various payments till realization. It is pertinent to mention here that any claim/dispute if any raised by co-allottee Mamta Sengar in future pertaining to unit in question, it shall be the responsibility of complainant only. An affidavit has already been tendered by complainant to this effect.
55. 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 HIRERA 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 (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public". "

56. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 23.07.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.
57. Hence, Authority directs respondent to pay refund to the complainant on account of failure in timely delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of various payments till actual realization of the amount.
58. Authority has got calculated the interest on the total paid amount from the date of respective payments till the date of this order in the table below:

Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till 20.08.2026 (in ₹)
1	226000	28.08.2011	380096
2.	210008	13.04.2011	348540
3.	284639	30.04.2012	440144
4.	134196	27.08.2012	202785
5.	444974	25.11.2013	612499
6.	424169	23.12.2013	580347
Total:	17,23,986/-		25,64,411/-
Amount already paid to complainant=₹ 9,57,159/-			

59. It is pertinent to mention that complainant has claimed to have paid an amount of ₹ 17,65,128/- to the respondent in lieu of booked unit. On perusal of record reveals that said amount has been calculated/admitted by complainant inclusive of timely payment discount provided by the respondent. Fact is that timely payment discount is a discount given by the respondent to the allottees who make requisite payments on time and receive benefit of the same towards the sale consideration. This amount is

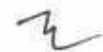


made a part of the payment made towards sale consideration of the booked unit. This amount is never actually paid by the allottee nor received by the respondent. It is just an added benefit towards the booked unit. Captioned complaint pertains to refund of the paid amount as the complainant is not continuing with the project, therefore, this amount cannot be entertained as payment made towards sale consideration. Only the actual amount paid by the complainant is taken for consideration in order to award refund to the complainant. Therefore, the total paid amount for the purpose of refund and calculation of interest is being taken as ₹ 17,23,986/- .

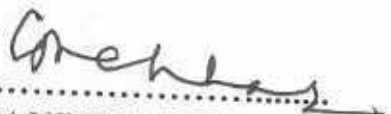
I. DIRECTIONS OF THE AUTHORITY

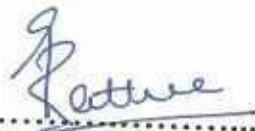
60. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. Respondent is directed to refund the entire amount of ₹17,23,986/- alongwith interest of ₹ 25,64,411/- (till date of order i.e., 20.08.2026) to the complainant after deduction of already paid amount of ₹ 9,57,159/-. It is clarified that respondent will remain liable to pay further interest till actual realization of the amount at the rate of 10.80%.

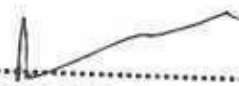


- ii. Any claim/dispute, if any raised by co-allottee Mamta Sengar in future pertaining to unit in question, it shall be the responsibility of complainant only. Affidavit of complainant in this regard is already on record.
- iii. A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.
61. Hence, the complaint is accordingly disposed of in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET S. SACHDEV
[CHAIRMAN]