



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 793 OF 2025

Vinod Kumar Jain

....COMPLAINANT

VERSUS

Jagran Developers Pvt Ltd.

....RESPONDENT

Date of Hearing: 22.09.2026

Hearing: 6th

Present: - Adv. Chaitanya Singhal, Learned Counsel for the
Complainant through VC
Adv. Madhur Panwar, Learned Counsel for the
Respondent through VC.

ORDER(DR. GEETA RATHEE SINGH- MEMBER)

1. Today, the case is fixed for arguments and consideration.
2. Parties heard. Case is disposed of. Detailed order shall follow.


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DR. GEETA RATHEE SINGH
[MEMBER]



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Ashwani Jain

....COMPLAINANT

VERSUS

Jagran Developers Pvt Ltd.

....RESPONDENT

Date of Hearing: 22.09.2026

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[MEMBER]



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	793 of 2025
Date of filing.:	05.06.2025
First date of hearing.:	22.07.2025
Date of decision.:	22.09.2026

Vinod Kumar Jain

....COMPLAINANT

R/o: House no. 368, Sector 13,

Urban Estate, Kurukshetra, Haryana- 136118

VERSUS

Jagran Developers Pvt Limited

....RESPONDENT

Regd Offc: DSM 609-610, 6th floor,

DLF Tower, Shivaji Marg, (Najafgarh road)

Moti Nagar, New Delhi-110015

Complaint no.:	794 of 2025
Date of filing.:	05.06.2025
First date of hearing.:	22.07.2025
Date of decision.:	22.09.2026

Ashwani Jain

....COMPLAINANT

R/o: House no. 315, Sector 13,

Urban Estate, Kurukshetra, Haryana- 136118

VERSUS

Jagran Developers Pvt Limited

....RESPONDENT

Regd Offc: DSM 609-610, 6th floor,

DLF Tower, Shivaji Marg, (Najafgarh road)

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Present: Adv. Chaitanya Singhal, Learned Counsel for the
Complainant through VC

Adv. Madhur Panwar , Learned Counsel for the
Respondent through VC.

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Captioned complaints have been filed by complainants, respectively, under
Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for

Rathee

short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

2. Both the captioned complaints are being taken up together as they pertain to the same project of the respondents and facts and grievances involved are similar and being decided taking Complaint No. 793 of 2025 as the lead case.

A. Unit and Project Related Details of the lead case:

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

S.No.	Particulars	Details
1.	Name of the project.	The Galleria, Kurukshetra Global City, Sector-29, Kurukshetra
2.	Nature of the project.	Commercial Complex
3.	DTCP License no.	License No. 288 of 2007 dated 29.12.2007
	Licensed area	1.45 acres
4.	RERA Registered/not registered	Registered vide no 304 of 2017 dated 16.10.2017



5.	Date of allotment	14.07.2011
6.	Details of unit.	LG-18(initially LG-7)
7.	Date of Builder buyer agreement	10.04.2014
8.	Possession Clause (27a)	Time of handing over the Possession Subject to the terms of this clause, clause 46 and subject to Allottee having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the Allottee under this Agreement etc.. as prescribed by the Developer, the Developer proposes to hand over the possession of the Said Premises within a period of Thirty Six (36) months from the date of signing of this Agreement with a further grace period of Six months. It is however understood between the parties that the possession of various commercial units comprised in the Development/ The Galleria as also the various common facilities planned therein shall be ready & complete in phases and will be handed over to the allottees of different shops as and when completed.
8.	Due date of possession	10.10.2017(36+6 months; clause 27 a)



9.	Total sale consideration	₹20,88,845/-
10.	Amount paid by complainants	₹5,23,724/-
11.	Offer of possession.	13.03.2020
12.	Status of Occupation certificate	Received on 17.03.2020

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

4. That on 29.06.2011, the complainant booked a commercial shop in respondent's project namely "The Galleria", Kurukshetra Global City, Sector 29 Kurukshetra, Haryana and paid a booking amount of Rs.1,10,000/-.
5. On 14.07.2011, the respondent issued an allotment letter to the complainant wherein the complainant was allotted Shop no. 7, located on the lower ground floor, admeasuring approx. 248.42 sq. ft (super area) in project in question for basic sale price of Rs. 13,33,000/-. Copy of the allotment letter is annexed as Annexure P-1.
6. Complainant was initially allotted unit no. LG-7 which was unilaterally replaced with Shop No. LG-18. The area of the originally allotted shop was 248.42 sq. feet which was unilaterally increased to 314.73 sq. ft. and subsequently increased to 351.14 Sq. feet.. The respondent on 27.12.2011 got an "Undertaking cum No Objection Letter" signed from the complainant wherein it was stated that the complainant had no objection in change in shop



no. and increment in the size of the unit. On site there is no increment in the carpet area of the shop which remains the same. Copy of the undertaking is annexed as annexure P-2.

7. That on 10.04.2014, after a huge lapse of 3 years from the date of booking, the respondent entered into builder buyer agreement with the complainant. As per Clause 2.1 of the agreement, the respondent had allotted shop no. LG-18, lower ground floor, measuring super area of 351.4 sq. ft. for a total sale consideration of ₹20,88,845/- out of which the complainant had paid a sum of ₹ 5,23,724/- to the respondent till date. Copy of the builder buyer agreement is annexed as Annexure P-3.
8. As per Clause 27 (a) of the agreement, the respondent had committed to handover the possession of the shop in question within a period of 3 years from the date of execution of agreement along with a grace period of 6 months i.e. on 10.10.2017 (due date of possession).
9. That as per Clause no. 37.4 (ii) of the agreement, the complainant/ allottee has an option to terminate the builder buyer agreement if the respondent/ developer fails to hand over the possession to the complainant within the stipulated time and in that eventuality the developer shall be liable to refund the entire money paid by the allottee under any head whatsoever, along with interest @ 8% P.A within 30 days of the receipt of such termination notice.
10. On 13.10.2014 the complainant had sent a letter to the respondent raising his grievance related to exorbitant increase in super area of booked unit from



originally 248.4 sq. feet to 351.14 sq. ft. leading to 48 % increase in super area which in turn lead to budget constraint and further requested the respondent to tell the carpet area of shop at the time of booking in the year 2011 and revised carpet area of shop in the year 2014. However the respondent had not acted upon it. Thereafter the complainant had gone for inspection of size of the unit wherein it was found that there was no increase in carpet area of unit due to increase in super area of booked unit from 248.4 sq. feet to 366.4 sq. ft. Copy of the letter dated 13.10.2014 is annexed as Annexure P-5.

11. The respondent failed to complete the project within the stipulated period of 3 years and lately received occupation certificate on 17.03.2020 after a huge lapse of 3 years from the due date of possession.
12. That on 13.03.2020 after a delay of 3 years, the respondent sent "OFFER OF POSSESSION LETTER" of the unit without receipt of occupation certificate which is in-valid in the eyes of law. That occupation certificate was received by respondent on 17.03.2020 and possession was offered prior to it. Further the respondent for the second time increased the area of the unit from initially 248.4 sq. ft. to 351.14 sq. ft. to 366.4 sq. ft. which in turn led to 48% increase in super area without any increase in carpet area of unit. The carpet area of the unit is 160 sq. ft. only. Copy of offer of possession letter is annexed as Annexure P-6.



13. That on 31.07.2020 the complainant sent a legal notice to the respondent to refund the entire paid up amount along with interest on account of huge delay in completing the project in terms of Clause no. 37.4 (ii) of the agreement. However, the respondent failed to refund the said amount along with interest. Copy of the legal notice dated 31.07.2020 is annexed as Annexure P-7.
14. On 07.08.2020, the respondent replied to the aforesaid letter stating that the project is complete and occupation certificate has already been received. Thereafter, on 10.09.2020, the complainant counter replied to the aforesaid reply expressly stating that he is seeking refund of the paid amount as there was huge difference in the size of the allotted unit and what was being charged. Copy of the aforesaid letters is annexed as Annexure P-8 & 9 respectively.
15. On 27.09.2023 the respondent sent "Pre-Cancellation Notice" to the complainant in spite of the complainant's refund requests pending since the year 2020 and failure of respondent to refund the amount paid. The complainant visited several times to the office of respondent for the refund of amount; however, the respondent had not refunded any amount to the complainant. The complainant has been devoid of his hard earned money from the last 14 years. The respondent has deliberately and intentionally not issued a refund which is an attempt to cheat and dupe with a mala fide and dishonest intention to cause undue gain to respondent itself and undue losses to the complainant. The respondent is arbitrarily withholding the money of



complainant. Copy of the pre-cancellation letter is annexed as Annexure P-10.

16. That the complainant is not interested in taking the possession of the booked shop since his requirement for purchase of shop has extinguished now. Respondent has committed grave deficiency in service in so far as misrepresenting the complainant regarding the timeline for delivery and status of the unit, and also by not offering possession of the shop in question within the specific timeline.
17. Respondent has arbitrarily increased the super area of the shop from 248.4 sq. ft. to 366.4 sq. ft., an increase of over 48% without any corresponding increase in the actual carpet area, which remains approximately 160 sq. ft. This constitutes a clear violation of the principle laid down under Section 4(2)(1)(C) and Section 11(4)(a), which obligate the promoter to disclose and adhere to the carpet area-based pricing model.
18. Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" has highlighted that the allottee has an unqualified right to seek refund and delayed possession interest if delivery of possession is not done as per agreed state.
19. In view of the observations made above, the complainant had acquired an unqualified right to seek refund of the paid amount along with interest.
20. Further the facts of the present case are completely identical to a case already decided by the Hon'ble Rera Authority Panchkula vide order dated



22.03.2023 in **Complaint no. 962 of 2019 titled "Shri Raman Bansal v/s Jagran Developers (P) Limited"** wherein the Honble Rera Authority had directed the respondent to refund the amount paid by the complainant along with interest on account of failure of the respondent to timely construct and handover the possession of shop in time.

C. RELIEF SOUGHT

21. The complainant in present complaint seeks following relief:

- i. Direct the respondent to refund the entire amount of ₹5,23,724/- received from the complainant along with interest thereon at the rate prescribed under Rule 15 of the Haryana Real Estate Rules, 2017, i.e., SBI MCLR + 2%, from the date of each respective payment till realization on account of respondent's failure to timely construct and deliver the possession of booked shop within a period of 36 months and arbitrary increase in the super area of booked shop to the extent of 48 % than original agreed area without any increase in carpet area of shop;
- ii. Declare the offer of possession dated 13.03.2020 as void and of no legal consequence for want of occupation certificate at that time;



- iii. Award any other relief or directions deemed just, equitable, and appropriate in the facts and circumstances of the present case.

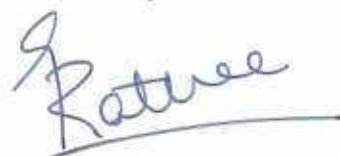
D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 16.12.2025 pleading therein:

22. That the instant complaint in its present form is not maintainable under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'RERA Act'). The answering respondents has not violated or contravened any provision of the 2016 Act, and the allegations raised do not fall within the scope or ambit of any provision thereof.

23. That it is pertinent to mention here that the alleged dispute is liable to be referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996, as amended by the Arbitration and Conciliation (Amendment) Act, 2015, in terms of Clause 55 of the Agreement. The filing of present reply is without prejudice to the said fact, and it should not be construed that the respondents have agreed to submit to jurisdiction of this Hon'ble Authority or that it has waived its plea for referral of alleged dispute to arbitration.

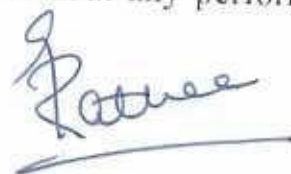
24. Complainant herein applied for booking a commercial unit in the respondent company's project, "The Galleria, Kurukshetra Global City" on 29.06.2011



and paid a booking amount of Rs. 1,10,000/-. That vide provisional allotment letter dated 14.07.2011, unit no. LG-07 was allotted to the complainant. That thereafter, the complainant accepted change of booked unit and was accordingly allotted shop no. LG-18. Upon allotment, the agreement was executed on 10.04.2014 between the respondent and the complainant for purchase of shop no. LG-18. The complainant entered into the agreement dated 10.04.2014 and was allotted Shop/Office No. LG-18, Lower Ground Floor in The Galleria, Kurukshetra Global City, Kurukshetra, having a super area admeasuring 32.62 Sq. Mtr. or 351.14 Sq. ft. at a mutually agreed upon sale consideration in accordance with the agreement.

25. That thereafter, completion of development works in the area and construction of the unit of the complainant was started. During the commencement of construction, the respondent demanded various installments as per the payment schedule provided under Annexure-II of the agreement, but the complainant committed default on payment of such installments. That the respondent issued various demand letters on 14.04.2014, followed by 09.05.2014, followed by 23.05.2014, followed by 02.06.2014, followed by 21.06.2014, followed by 08.07.2014, followed by 21.07.2014, followed by 12.08.2014.

26. Despite the issuance of the demand letters, upon the default committed by the complainant, the respondent issued a pre-cancellation letter dated 01.09.2014. That despite issuing the pre-cancellation letter, without any performance by



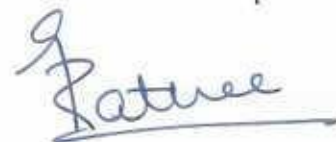
the complainant, as a gesture of goodwill, the respondent did not cancel the agreement and continued to send reminder letters, as evidenced from the letters dated 16.09.2014, followed by 16.10.2014, followed by 01.11.2014, followed by 13.11.2014, followed by 04.12.2014. Subsequently, as the complainant did not pay the amount even after receiving the reminder letters, as dated above, another pre-cancellation letter was issued to the complainant on 15.12.2014. That even after the issuance of the above-mentioned pre-cancellation letter, the complainant willfully neglected to pay the installments and defaulted on his obligations. As a gesture of goodwill, the respondent did not cancel the agreement and sent another reminder letter on 22.12.2014, followed by 09.02.2015, followed by 11.02.2015. Upon further default on the part of the complainant, the respondent were compelled to send another pre-cancellation letter dated 25.02.2015. As a gesture of goodwill, the respondent did not cancel the agreement and kept sending reminder letters dated 12.06.2015, followed by 03.08.2015, followed by 16.01.2017, followed by demand for payment of HIVAT dated 21.02.2017, followed by 27.02.2017, followed by demand for payment of HIVAT dated 02.05.2017, followed by HIVAT letter dated 27.02.2020, followed by 13.03.2020.

27. It is stated that after the subsequent completion of construction of the business unit (without receipt of payment from complainant), the respondent applied for occupation certificate to the office of District Town Planner, Kurukshetra. The possession of the Shop No. LG-18 Lower Ground Floor having a Super



area of 32.62 Sq. Mtr. or 351.14 Sq. ft. was duly offered to the complainant on 13.03.2020. The complainant had not paid an amount of ₹37,72,263/- on account of installments & interests on delay payments as on 13.03.2020, IFMS & CAM Charges including GST, which is clearly seen by the final dues summary sheet attached to the offer of possession dated 13.03.2020.

28. Upon issuance of the offer of possession letter, a legal notice was sent to the respondent by the complainant dated 31.07.2020, demanding refund of ₹5,23,724/-, to which the respondent sent a reply dated 07.08.2020. Subsequently, a counter-reply was sent by the complainant dated 10.09.2020. Upon further default, a pre-termination letter dated 27.09.2023 was issued to the complainant, directing him to pay ₹36,08,387/- to the respondent, and ₹2,36,388/- in favour of Metro Facility Management Pvt. Ltd. within 10 days from the date of issuance of the letter, to which the complainant further defaulted on. Finally, a legal notice dated 16.06.2025 was issued to the respondent for filing a reply to the present complaint. A copy of demand letters along with reminder letters is duly annexed herewith as Annexure R-2. A copy of offer of possession on dated 13.03.2020, along with final dues summary, is duly annexed, herewith as Annexure R-3. A copy of the notice dated 31.07.2020, along with the reply and counter-reply dated 07.08.2020 and 10.09.2020, respectively, is duly annexed herewith as Annexure R-4. A copy of the pre-termination letter dated 27.09.2023 is duly annexed herewith as Annexure R-5. The amount of default committed by the Complainant on



payment of installments along with interest can be seen in the annexed account statement as Annexure R-6.

29. Complainant failed to fulfill his obligations and continued to default on the amount payable by him, the respondent terminated the agreement as per clause 37.2 (a) of the agreement. As per clause 37.2 (a), in the event the complainant defaults on performing his obligations, the respondent shall have the right to terminate the agreement, and the complainant shall have 30 days to rectify his default. In the event the complainant fails to rectify the default within 30 days, the agreement stands automatically cancelled. It is further stated that as per the aforementioned clause, upon such cancellation of the agreement by the respondent, the respondent shall have the right to sell the business unit to any other party at its sole discretion.
30. Accordingly, the business unit was allotted to Mr. Desh Kumar Lalit and Mrs. Suman Lalit on 06.05.2024 and a conveyance deed was executed between the new allottees and the respondent on 09.08.2024. A copy of the conveyance deed dated 09.08.2024 is annexed herewith and marked as Annexure R-7. Finally, a RERA complaint was filed by the complainant on 23.05.2025 and legal notice dated 16.06.2025 was issued by this Hon'ble Authority to the respondent for filing a reply to the present complaint. A copy of the complaint is annexed herewith and marked as Annexure R-8. A copy of the Notice is annexed herewith and marked as Annexure R-9.

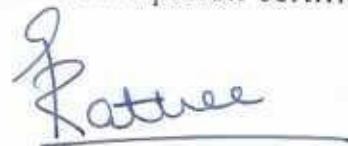


31. Complainant has defaulted on installment payments towards purchase amount of the business unit, with default in payment of ₹.44,88,694/-, for which the unit was rightly cancelled and allotted to a subsequent buyer.

E. REJOINDER FILED BY THE COMPLAINANT

Learned counsel for the complainant filed rejoinder on 25.08.2026 pleading therein:

32. That the objection raised by the respondent that the present complaint is not maintainable in view of Clause 55 of the builder buyer agreement dated 10.04.2014, providing for arbitration, is wholly misconceived and deserves outright rejection.
33. That the mere existence of an arbitration clause in an agreement between a promoter and an allottee does not, and cannot, oust the special statutory jurisdiction conferred upon this Hon'ble Authority under the Act. The Hon'ble Supreme Court, in **Emaar MGF Land Ltd. v. Aftab Singh**, (2019) 12 SCC 751, has authoritatively held that an arbitration clause contained in a builder-buyer agreement cannot circumscribe the jurisdiction of a special statutory forum created for the protection of consumers/allottees.
34. That the objection that the complaint is barred by limitation, on the ground that it has been filed more than five years after the offer of possession dated 13.03.2020, is denied. It is submitted that the failure of the respondent to hand over legal and valid possession of unit without a valid occupation certificate,


J. Lathee

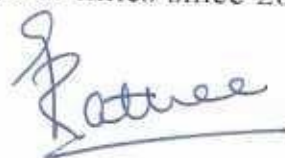
and its continued retention of the complainant's hard-earned money without refund, constitutes a continuing wrong and a continuing deficiency in service, giving rise to a fresh cause of action from day to day for so long as the default subsists.

35. That it is denied that the 'offer of possession' dated 13.03.2020 was a valid offer in the eyes of law. It is submitted that no 'occupation certificate' for the project had ever been received from the District Town Planner ("DTCP"). An offer of possession made prior to, and independent of, a valid occupation certificate is premature, non-est and of no legal consequence. That the respondent's belated plea (raised for the first time in the Reply filed in 2025) that it was in any event entitled to rely upon a "Deemed Occupation Certificate" under Sub-Clause 4.10(5) of the Haryana Building Code, 2017, is denied and is misconceived in law.
36. It is further submitted that the respondent has failed to place on record any document evidencing (a) the date on which it applied for the occupation certificate, (b) that sixty (60) days had in fact elapsed from such application without communication from the DTCP, or (c) any contemporaneous assertion, at or around 13.03.2020, that possession was being offered on the strength of a "deemed" certificate. In the absence of any such contemporaneous document, the plea is a clear afterthought raised only to justify an offer of possession that the respondent's own record shows was



admittedly made "without O.C.," and the respondent is put to strict proof thereof.

37. It is most pertinent to submit that, till date, no copy of any occupation certificate issued by the DTCP, Haryana, has ever been placed on record by the respondent neither with the offer of possession dated 13.03.2020, nor with the reply filed in the present proceedings, wherein Annexures R-1 to R-9 conspicuously omit any such document.
38. That it is denied that the complainant is a "defaulter" in the manner alleged, or that the respondent has suffered any prejudice entitling it to terminate the allotment and resell the unit. It is submitted that the complainant's obligation to make further payments was inextricably linked to the respondent's own obligation to complete construction and obtain a valid occupation certificate within the time stipulated, and that the respondent, having itself defaulted in timely completion (taking until 17.03.2020 — three years beyond the due date of 10.04.2017 even to obtain the occupation certificate), cannot be heard to blame the complainant for withholding further payments pending resolution of the area-increase dispute that the complainant had already flagged as early as 13.10.2014 (Annexure P-5).
39. That it is further denied that the respondent was entitled, in law, to unilaterally terminate the agreement and allot the unit to a third party (Mr. Desh Kumar Lalit and Mrs. Suman Lalit) vide Conveyance Deed dated 09.08.2024, particularly when the respondent was, at all material times since 2020, aware



of the complainant's live and continuing claim for refund first through the legal notice dated 31.07.2020, and thereafter through the counter-reply dated 10.09.2020 and yet chose to proceed to terminate and resell the unit in 2024 without approaching this Hon'ble Authority or any other forum of competent jurisdiction for adjudication of the underlying dispute.

40. That it is further submitted, and it is significant, that despite the averments in the reply regarding termination of the agreement under Clause 37.2(a) thereof, no cancellation letter has, till date, ever been received by the complainant a fact that stands confirmed by the respondent's own reply, which speaks only of a series of "pre-cancellation" letters (including one dated 27.09.2023), and thereafter proceeds directly to narrate the resale of the unit to a third party, without placing on record any formal cancellation letter addressed to, or received by, the complainant.

F. ARGUMENTS ON BEHALF OF LEARNED COUNSELS FOR BOTH THE PARTIES

41. During the course of arguments, learned counsel for the complainant reiterated the submissions made in the complaint file and rejoinder. He asserted that the alleged offer of possession dated 13.02.2020 issued by the respondent was not a valid offer of possession since the occupation certificate was yet to be granted. Learned counsel for the complainant placed reliance on the judgement passed by the Haryana Real Estate Appellate Tribunal



(HREAT) in case titled *Landmark Apartments Pvt. Ltd. v. Hari Ram & Anr.* (Appeal No. 881 of 2022), decided on February 17, 2026 wherein the Hon'ble Tribunal ruled that a mere application for the grant of an occupation certificate to the authorities does not constitute the completion of a real estate project. It does not prove that the unit is in habitable condition and fit for possession.

42. Per contra, learned counsel for the respondent argued that the builder buyer agreement dated 10.04.2014 executed between the parties had been on the increased area of 351.14 sq ft. In case, the complainant had any grievances with regard to the increased area the complainant should have not executed the said agreement. Instead the complainant wilfully executed the builder buyer agreement with regards to the unit in question and later failed to make payment of balance amount. Respondent issued several reminder letters to the complainant, however the complainant failed to make requisite payment. Thus ultimately constraining the respondent to cancel the allotment of the complainant. The respondent had duly issued a Pre-cancellation letter to the complainant on 27.09.2023. However, the complainant remained silent thereafter and took no steps from 2023 until the filing of the present complaint. Thus, the present complaint is barred by limitation and cannot be allowed.



G. ISSUES FOR ADJUDICATION

43. Whether the complainant is entitled to receive refund of the paid amount along with interest in terms of Section 18 of Act of 2016?

H. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENTS.

H. 1 Objections raised by the respondent stating that dispute ought to be referred to Arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 (as amended in 2015).

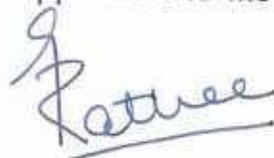
Respondent has averred that the present dispute ought to be referred under Section 8 of the Arbitration & Conciliation Act, 1996 (as amended in 2015) as per clause 63 of agreement for sale dated 12.04.2014. In this regard Authority observe that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that Section-79 of the RERA Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on **National Seeds Corporation Ltd. v. M.**


J. Latture

Madhusudhan Reddy and Anr. (2012) 2 SCC 506, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

H. II Objections raised by the respondent that the complaint is barred by limitation.

In this regard it is observed that since, the promoter has till date failed to fulfil its obligations to hand over the possession of unit in question in its project as per the terms agreed between the parties, all the while retaining the amount paid by the complainant, the cause of action is recurring and the ground that complaint is barred by limitation stands rejected. Further reference in this regard is made to the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise wherein it is observed that the Indian Limitation Act applies only to courts and does not apply to quasi-judicial bodies. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than courts, such as a quasi judicial tribunal, or even an executive authority. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 thus would not be applicable to the proceedings



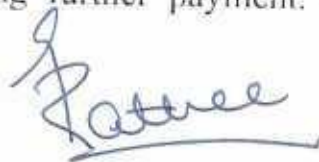
under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts. For the foregoing reasons, the arguments of the respondent company against maintainability of present complaint stands rejected.

I. OBSERVATIONS OF THE AUTHORITY

44. Factual matrix of the captioned complaint, reveals that the complainant had booked a commercial shop in respondent's project namely "The Galleria", Kurukshetra Global City, Sector 29 Kurukshetra, Haryana on 29.06.2011 by paying a booking amount of Rs.1,10,000/-. Vide allotment letter dated 14.07.2011 the complainant was allotted Shop no. 7, located on the lower ground floor, admeasuring approx. 248.42 sq. ft (super area) in project in question. Thereafter, the respondent, allegedly, unilaterally changed the allotment of the complainant's from Shop No. 7, Lower Ground Floor to Shop No.-18 Lower Ground Floor and the area of the allotted shop was unilaterally increased to 351.14 Sq. feet. Further, the respondent got signed an "Undertaking cum No Objection Letter" dated 27.12.2011 from the complainant wherein it was stated that the complainant had no objection in change in shop no. and increment in the size of the unit. Thereafter, on 10.04.2014 a builder buyer agreement was executed between the parties in respect of the unit in question, Shop No.-18 Lower Ground Floor, for a total sale consideration of ₹20,88,845/- out of which the complainant had paid a sum of ₹ 5,23,724/- to the respondent.



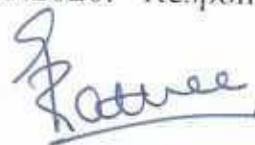
till date. As per Clause 27 (a) of the agreement, the respondent had committed to handover the possession of the shop in question within a period of 3 years from the date of execution of agreement along with a grace period of 6 months i.e. on 10.10.2017. Admittedly, an offer of possession had been issued to the complainant on 13.03.2020. This offer of possession had been assailed by the complainant on grounds that said offer of possession had been issued without receipt of occupation certificate and further the fact that the area of the unit from initially 248.4 sq. ft. to 366.4 sq. ft. which in turn led to 48% increase in super area without any increase in carpet area of unit. After receipt of aforesaid letter of possession, the complainant vide legal notice dated 31.07.2020 had apprised the respondent that he is no longer interested in taking possession of the unit in question and requested for refund of paid amount. As per respondent's own admission, the respondent sent a reply dated 07.08.2020 to the aforesaid letter stating that the project is complete and occupation certificate has already been received, thus the respondent is not in a position to refund the amount paid by the complainant as it would hamper the project. Thereafter, on 10.09.2020, the complainant counter replied to the aforesaid reply expressly stating that he is seeking refund of the paid amount as there was huge difference in the size of the allotted unit and what was being charged. However, rather than returning the amount paid by the complainant, the respondent ignored the repeated requests of the complainant's and thereafter on 27.09.2023, respondent sent "Pre-Cancellation Notice" to the complainant seeking further payment. It is the



contention of the complainant that the respondent has retained the entire amount of ₹ 5,23,724/- paid by the complainant and hence, the present complaint seeking refund of the paid amount along with interest.

45. Upon thorough appreciation of the documents placed on record by the parties, it is observed that as per clause clause 27 (a) of the builder buyer agreement, the possession of the unit should have been delivered to the complainant by 10.10.2017. Unrefutedly, the possession of the said unit got delayed beyond the time stipulated between the parties. Although, an offer of possession was issued to the complainant on 13.03.2020, however, said offer of possession has been assailed by the complainant on grounds that the same has been issued without receipt of occupation certificate and also accompanying the offer of possession, was a unilateral modification of the subject matter, the respondent had unilaterally increased the area of the unit from initially 248.4 sq. ft. to 366.4 sq. ft. which in turn led to 48% increase in super area without any increase in carpet area of unit. Complainant, by way of legal notice dated 31.07.2020, had expressed his intent to withdraw from the project and seek refund of the paid amount. Respondent on the other hand ignored the request of the complainant on grounds that the project has been completed and occupation certificate has been received on 17.03.2020.

In this regard, it is observed that the alleged 'offer of possession' dated 13.03.2020 had been issued prior to the issuance of the mandatory occupation certificate, which was obtained only on 17.03.2020. Respondent in its



submission has argued that the offer of possession dated 13.03.2020 had been issued as per authority under clause 4.10 sub clause 4 & 5 of the Haryana Building Code 2017 as having received 'deemed occupation certificate'. The respondent's contention that the offer of possession dated 13.03.2020 was lawfully issued is untenable. It is a settled position of law that a valid and legally binding offer of possession can be issued solely upon the actual grant of an occupation certificate or completion certificate by the competent authority. Also, there is no letter on record of "deemed occupation certificate" been communicated to respondent by any competent Authority. An offer issued prior to the receipt of such certification—as occurred on 13.03.2020, prior to the issuance of the Occupation Certificate is premature, non-est, and invalid in the eyes of the law. Furthermore, the purported offer was coupled with a unilateral modification of the area of the unit, a steep increase of approximately 48% without any corresponding enhancement in the actual carpet area, imposing a substantial financial and structural variance which constitutes a material alteration to the builder buyer agreement that cannot be unilaterally thrust upon the complainant. Complainant could not have been forced to accept said offer of possession. Relevant clauses 37.3 and 37.4 of the BBA reads as follows:-

"37.3 Subject to clause 27 and 46 of this Agreement, the Developer shall be in default, if it fails to meet any of the following milestones:

(i) Developer delays the construction and misses two consecutive construction linked milestones.



(ii) Developer fails to provide the possession to the Allottee within the time period specified.

37.4 In case of default on the part of Developer as mentioned above, Allottee shall be entitled to:

(i) Stop making any more payments to Developer as demanded by the Developer. If the Allottee stops making payments, the Developer shall correct the situation by achieving the milestones and thereafter the Allottee shall promptly make the next payment without any penal interest or

(ii) The Allottee shall have the option of terminating the Agreement, in that eventuality the developer shall be liable to refund the entire money paid by the Allottee under any head whatsoever towards the purchase of the Said Premises, along with simple interest @ 8% per annum within 30 days of receipt of such termination notice."

Nevertheless, it is observed that, at the time of issuance of the legal notice dated 31.07.2020, the complainant was not aware of the occupation certificate subsequently issued in respect of the project. Vide the said notice, the complainant sought termination of the agreement and refund of the amount paid, along with applicable statutory interest, on the ground of prolonged delay in handing over possession and an allegedly invalid offer of possession.

The record further reveals that, upon becoming aware of the issuance of the occupation certificate, the complainant, without undue delay, reiterated his

J. Latture

intention to withdraw from the transaction vide counter-reply dated 10.09.2020, wherein specific objection was raised to the alleged arbitrary and unconsented increase of approximately 48% in the super area of the unit. The receipt of the said communication has not been disputed by the respondent. It is also pertinent to note that the complainant had raised his grievance regarding the substantial increase in the super area, without any corresponding significant increase in the carpet area, as early as vide letter dated 13.10.2014.

Thus, the communications dated 13.10.2014, 31.07.2020 and 10.09.2020, when considered cumulatively, demonstrate that the complainant had consistently raised his objections and exercised his right to seek termination of the contractual arrangement on the grounds stated by him. Upon receipt of the aforesaid communications, the respondent was required to act in accordance with the terms of the agreement and the applicable statutory provisions governing the transaction.

In the facts and circumstances of the present case, the failure of the respondent to either hand over possession in accordance with the contractual and statutory requirements or to refund the amount received from the complainant, along with applicable interest, constitutes a continuing failure to discharge its corresponding contractual and statutory obligations.

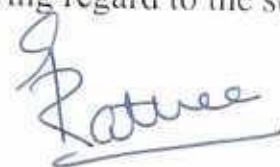


46. It is the principal argument of the respondent that the complainant had failed to honour the payment schedule and make payment of requisite amounts. In this regard it is observed that the complainant had made a payment of ₹5,23,724/- against the total sale consideration of ₹20,88,845/- upto 24.12.2013. No further payment was made on behalf of the complainant. Respondent has submitted that throughout the years it had issued several reminder letters to the complainant from the year 2014 till the year 2020 which were ignored by the complainant. The non-payment of subsequent installments was directly attributable to the respondent's unconsented, arbitrary increase in the area of the unit from 248.4 sq. ft. to 351.14 sq. ft. The complainant raised timely written objections to this material change vide letter dated 13.10.2014, which the respondent conspicuously chose to ignore while continuing to issue automated demand notices. Although the respondent issued an initial "Pre-Cancellation Letter" on 01.09.2014 threatening forfeiture of earnest money, it failed to act upon its own notice. The respondent continued the agreement by issuing further reminder letters, retaining the amount paid by the complainant and further delaying the delivery of possession beyond stipulated time. Having failed to reasonably exercise its right of cancellation or address the complainant's legitimate objections, the respondent is now estopped from pleading default by the complainant. Furthermore, even after issuing a subsequent "Pre-Cancellation Letter" on 27.09.2023 in response to the complainant's refund requests, the



respondent neither refunded the admissible balance nor completed the statutory and contractual procedural formalities required to formally terminate the agreement. The respondent's deliberate retention of the complainant's money while simultaneously creating third-party rights over the subject unit constitutes a severe continuing breach, unfair trade practice, and actionable deficiency in service, causing irreparable prejudice to the complainant.

47. The project suffered an inordinate delay, failing to achieve completion within the timeframe stipulated under the agreement. Meanwhile, complainant has already exercised his right to terminate the builder buyer agreement in terms of said agreement and termination of which was duly communicated by issuance of notices dated 31.07.2020 and 10.09.2020 to the respondent well within time. The complainant has thus exercised his option to withdraw from the project and seek refund of the amount paid, along with interest as admissible under the provisions of the RERA Act, 2016.
48. Section 18(1) of the RERA Act provides that where the promoter fails to complete or is unable to give possession of an apartment in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, the allottee, if he intends to withdraw from the project, shall be entitled to receive the amount paid by him in respect of such apartment, plot or building, with interest at such rate as may be prescribed and compensation in the manner provided under the Act. In the facts and circumstances of the present case, particularly having regard to the substantial



and inordinate delay in offering possession and significant material change in the subject unit in question, the complainant has acquired legitimate right to seek withdrawal from the project. Accordingly, the relief of refund of the amount paid by the complainant, along with interest as permissible under the RERA Act, 2016, is liable to be allowed.

49. 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, the allottee has an unqualified right to seek refund of amounts 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."

[Signature]
Rattree

50. The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The remedy under Section 18(1) is thus available to an allottee who chooses to withdraw from the project on account of the respondent's failure to deliver possession within the agreed period.

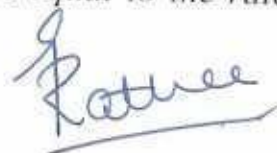
51. In the present case, the complainant has clearly expressed his unwillingness to continue with the project and has sought refund of the amount deposited. Accordingly, the complainant is held entitled to withdraw from the project and receive refund of the amount paid towards the allotted unit, together with interest in terms of Section 18(1) of the RERA Act, 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

52. So, the Authority hereby concludes that the complainant is entitled to receive a refund of the paid amount along with interest as per Rule 15 of RERA 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. 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 (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"

53. Hence, Authority directs the respondents 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.



54. Authority has got calculated the interest on total paid amount from date of payments till date of order (i.e 22.09.2026) in respective complaints and same is depicted in the table below:

Complaint no. 793 of 2025

Sr. No.	Principal Amount (in ₹)	Date of Payment	Interest Accrued till date of order i.e 22.09.2026 (in ₹)
1.	1,10,000/-	29.06.2011	1,81,129/-
2.	95,446/-	25.08.2011	1,55,554/-
3.	3,18,278/-	24.12.2013	4,38,481/-
Total amount: 5,23,724/-			7,75,164/-
Total payable to complainant (5,23,724 + 7,75,164) : 12,98,888/-			

Complaint no. 794 of 2025

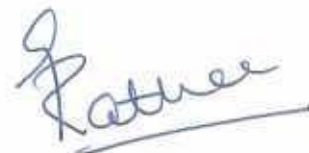
Sr. No.	Principal Amount (in ₹)	Date of Payment	Interest Accrued till date of order i.e 22.09.2026 (in ₹)
1.	1,10,000/-	29.06.2011	1,81,129/-
2.	95,446/-	22.08.2011	1,55,639/-
3.	3,20,270/-	24.12.2013	4,41,225/-
Total amount: 525716 /-			7,77,993/-
Total payable to complainant (525716 + 7,77,993): 1303709 /-			

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J. DECISION OF THE AUTHORITY

55. 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. In Complaint no. 793 of 2025 respondent is directed to refund the entire amounts along with interest of @ 10.80% ₹ 12,98,888/- to the complainant as specified in para 54 of this order. Interest shall be paid up till the time period provided under section 2(za) of RE(RD) Act of 2016 i.e till actual realization of amount.
- ii. In Complaint no. 794 of 2025 respondent is directed to refund the entire amounts along with interest of @ 10.80% ₹ 1303709/- to the complainant as specified in para 54 of this order. Interest shall be paid up till the time period provided under section 2(za) of RE(RD) Act of 2016 i.e till actual realization of amount.
- 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 failing which legal consequences would follow.



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



DR. GEETA RATHEE SINGH
[MEMBER]



सत्यमेव जयते

Panchkuta