



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1900 of 2023
Date of filing:	24.08.2023
First date of hearing:	19.12.2023
Date of decision:	28.09.2026

Varun Sharma,
S/o Sh. Vinod Kumar,
Current Address: 1st floor, Verma Cottage,
Near IT Park/Bhawan, Mehli, Shimla, HP-171009.

.....COMPLAINANT

Versus

i. Green Space Infraheights Pvt. Ltd.,
Regd. Office 306, 3rd Floor Indra Prakash Building,
21, Barakhamba Road, Connought Place, New Delhi 110001.

ii. Shree Vardhman Green Space,
National Highway-73, Panchkula-Yamunagar Nagar Highway, Panchkula
Extension.

iii. State Bank of India, SME Panthaghati,
Suryansh Building, Near Passport office, Shimla, Himachal Pradesh.

.....RESPONDENTS

Present: - Mr. Naveen Sheokand, counsel for the complainant, through VC.
Mr. Vishwajeet Kumar, counsel for the respondent, through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 24.08.2023 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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 RERA, 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, 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	Shree Vardhman Green Space, Sector-14, Panchkula Extension II (Affordable Group Housing)
2.	Name of the promoter	Green Space Infraheights Pvt. Ltd
3.	Flat No. allotted	0603, Tower G, 6 th Floor
4.	Flat area (Carpet area)	511 sq.ft
5.	Date of allotment	02.08.2017



6.	Date of execution Builder Buyer Agreement	08.11.2017
7.	Due date of offer of possession	15.03.2020
8.	Possession clause in BBA dated 09.04.2016	<i>"Clause 8 (a) "Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of instalments of the other charges as per the payment plan. Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within a period of 4(four years) from the date of approval of building plans or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date")"</i>
9.	Basic sale consideration	₹20,94,000/-
10.	Amount paid by complainant	₹19,99,770/- (as per pleadings)
11.	Offer of possession	Not given till date



B. FACTS OF THE COMPLAINT

3. Facts of the complaint are as follows:

- i. Case of the complainant is that complainant had applied for a residential flat in an affordable group housing project namely; "Shree Vardhman Green Space" being developed by respondent Green Space Infraheights Pvt. Ltd at Village Billah, Sector-14, Panchkula Extension-II, District, Panchkula, Haryana. Complainant was allotted flat No.0603, Tower no. G, 6th floor in the project, namely; "Shree Vardhman Green Space". A copy of allotment letter dated 02.08.2017 is annexed as Annexure-C-2.
- ii. That on 08.11.2017, a Builder Buyer Agreement (BBA) was executed between complainant and respondent for basic sale price of ₹20,94,000/- and a copy of same is annexed as Annexure C-3. Complainant made total payment of ₹19,99,770/- against the total sale price.
- iii. That as per Clause 8 (a) of the Flat Buyer's Agreement, the respondent was liable to hand over the possession of the flat to the complainant within a period of four years from the date of approval of building plans or grant of environment clearance, whichever is later. However, till date respondent failed to handover the possession of the unit.
- iv. That a tripartite agreement was executed between the parties on 18.12.2017, where builder duly agreed and signed on the document which states that the possession will be given on 01.01.2020. Copy of tripartite agreement dated 18.12.2017 is annexed as Annexure C-4.



- v. That despite promising several times and despite the written commitments made in the tripartite agreement, respondent has failed to perform its obligations as per the agreed terms and conditions of the Builder Buyer Agreement and failed to handover the possession of the flat till date.
- vi. That complainant after executing the agreement has taken loan from the State Bank of India with a limit of ₹19,00,000/- at an interest of 8.70% out of which approx.. ₹17 lakhs has already been disbursed by the State Bank of India from his loan account of which the complainant is paying Pre-EMI Interest per month. Copy of bank statement showing the disbursal of the amount and amount paid to the Bank on account of Pre-EMI interest is annexed as Annexure C-5.
- vii. That as per the latest statement issued by the builder, total amount paid by the complainant is ₹19,99,770/- of which builder issued a call notice/intimation letter. Copy of letter dated 04.02.2019 is attached as Annexure C-6. Main grievance of the complainant in the present complaint is that despite payment of a total amount of ₹19,99,770/- on time by the complainant, the respondent has miserably failed to deliver the possession.
- viii. That at project site no construction activity is there and project is far from completion. Complainant is suffering because of undue delay on



part of respondent in handing over of possession. Therefore, complainant wants to withdraw from the project.

- ix. Complainant is now seeking refund of the paid amount alongwith interest as per Section 18 of the RERA Act of 2016.

C. RELIEFS SOUGHT

4. Complainant sought following reliefs :

1. The respondent party may kindly be directed to refund the paid amount along with interest under sections 11(4), 12, 18 and 19(4) of the RERA Act of 2016 and HRERA Rules and regulations thereunder.
2. The respondent party may kindly be directed to pay compensation of ₹10,00,000/- for mental agony, harassment, discomfort and undue hardship.
3. The respondent party may kindly be directed to pay litigation cost of ₹1,00,000/-.
4. The respondent party may kindly be directed to refrain from giving effect to unfair clauses unilaterally incorporated in the sale agreement.
5. Any other relief/direction which the Hon'ble Authority deems fit and proper in the facts and circumstances of the present complaint.
6. That in the interest of justice, this Authority should pass strict and stringent orders against errant promoters and developers who take



huge investment from the innocent investors and then deny them the right to take possession as agreed at the time of the sale agreement. The purpose and legislative intent behind setting up this Authority should also be kept into consideration while deciding the present complaint as respondent has not only treated the complainant unfairly but many other such buyers.

D. REPLY ON BEHALF OF RESPONDENT NO. 1 AND 2

5. Respondent had made the following submissions vide reply dated 13.01.2026:

- i. That the complainant had applied with the respondent for allotment of a residential flat in the project of the respondent via application form bearing no. 1825 dated 26.07.2017 signed and submitted by the complainant. Complainant was made aware of all the necessary particulars of the residential scheme, such as description of land, license and building plans granted/approved by DTCP, Haryana and also, salient terms and conditions on which the allotment was to be made. The complainant was also apprised of the payment plan in accordance to which the complainant was to make payment of the due instalments.
- ii. The respondent vide its letter dated 02.08.2017 intimated the complainant about the allotment of Flat No. G-0603 on 6th Floor in Tower-G having carpet area of 511 square feet and balcony area of 100 square feet along with one open parking space for two- wheeler in the



- said scheme. Subsequently, a Flat Buyer Agreement dated 08.11.2017 was executed between the complainant and the respondent in regard to the said flat upon mutual agreement to the terms and conditions set forth therein. Copy of the allotment letter dated 02.08.2017 and Flat Buyer's Agreement dated 08.11.2017 is annexed as Annexure B & C.
- iii. That at the time of booking of the said flat, complainant had paid an amount of ₹1,05,000/- through cheque bearing no. 000019 dated 22.07.2017. As complainant was not having the enough amount to make payment against the rest of the sale consideration of the said flat therefore, he availed a home loan from the State bank of India, Shimla RASMECCC. A tripartite agreement dated 18.12.2017, stipulating the rights and obligations of the borrower, builder and lender was executed between complainant, answering respondent and respondent no.3. A copy of tripartite agreement dated 18.12.2017 is annexed as Annexure D.
- iv. That complainant on 10.09.2020 entered into Memorandum of Understanding with the answering respondent on account of compensation for the delay in completion and handing over of the possession of the said flat to the complainant. As per the said MOU, it was agreed between the parties concerned that answering respondent will pay ₹10,000/- per month with the effect from 01.01.2020 till the date of handing over of the possession of the flat to the complainant on account of delay in completion and handing over of the possession of the flat.

Handwritten signature

The said MOU was the full and final settlement between the complainant and answering respondent with respect to any grievance related to the said flat. It was further agreed that complainant shall not raise further claim for delay in handing over of the possession. Copy of MU dated 10.09.2020 is annexed as Annexure E.

- v. That Clause 8(a) of the agreement clearly indicated that the period of 4 years from the date of approval of building plans or grant of environment clearance as mentioned therein was only a tentative period within which the project was estimated to achieve completion. This agreement also clearly indicated that the possibility of delay in completion of the project was well within the contemplation of the parties at the time of entering into the said agreement and the agreement itself contain provision which were to come into play in the event of delay beyond the tentative period of 4 years which clearly indicate that the parties were aware that the period of 4 years was not sacrosanct and there was a possibility of delay also. Furthermore, the tentative period specified in the Clause 8(a) was also subject to certain conditions, including force majeure, intervention of statutory authorities, and receipt of occupation certificate.
- vi. That the construction and development of the project was stalled on account of various unavoidable circumstances which were beyond control of the respondent company. The company, however, now seeking



to make progress with the construction of the project, and has already formulated a scheme for revival of the project. It is highly anticipated that the project would be completed and that possession of the units shall be handed over to all eligible allottees, within a period of next 8 to 10 months. That a major part of the construction work has already been completed. The main structure, external work, and much of the internal work have been finished. The remaining work relates mostly to finishing of internal work. Therefore, only for completion of the project a limited amount of work remains to be done.

- vii. That period of four years for offering of possession of the flat in question was a tentative period and the obligation of the respondent to offer possession within that period was subject to various force majeure circumstances and other circumstances impeding the progress of the project in question. Various such force majeure circumstances like Covid 19 came into play during the course of the development of the project which had a catastrophic effect on the project's cash flow, resources, supply chains, planning etc, because of which the project was stuck. The said time period was also subject to timely payments by the allottees of the project, however, a large number of allottees including the complainant in the present case defaulted and /or delayed in making payment of the due instalments which also severely impacted the cash



flows which was already under strain because of aforesaid circumstances.

- viii. The period of four years is to be counted from approval of the building plans or grant of environment clearance, whichever is later. In the present case though the building plans were approved on 09.12.2014, however, the environment clearance was granted on 15.03.2016. The said environment clearance required the respondent to obtain the consent to establish/operate from Haryana State Pollution Control Board, which permission was obtained on 12.04.2016. That the period of four years as mentioned in clause 8(a) started ticking on 12.04.2016. Copy of the Environment Clearance dated 15.03.2016 is annexed as Annexure F and a true copy of the consent to establish dated 12.04.2016 is annexed as Annexure G.
- ix. That from January 2020 onwards force majeure situation emerged that made the construction at site impossible for a considerable period of time. The unprecedented situation created by the Covid-19 pandemic resulted in halting all project related activities, including construction, processing of approval files etc. The Ministry of Home Affairs, Government of India vide notification dated 24.03.2020 bearing no. 40-3/2020-DM-I(A), recognised that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 (twenty) days which started from



25.03.2020. By virtue of various subsequent notifications, the MHA, GOI further extended the lockdown from time to time. Even before the country could recover from the first wave of the pandemic, the second wave of the same struck very badly in the March/April 2021, disrupting all the activities again. Various state governments, including the Government of Haryana had also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, halting all commercial, construction activity. The pandemic created acute shortage of labour and material. The nation witnessed a massive and unprecedented exodus of migrant labourers from metropolitan cities to their native village. In the aforesaid facts and circumstances, it is clear that the respondent has neither indulged into any unfair trade practice nor committed any deficiency in service is committed to handover the possession of the said flat after completing the project expeditiously.

- x. That complainant having been entered into MOU dated 10.09.2020 towards full and final settlement of all the disputes relating to delay in completion and handing over of the possession of the said flat, is estopped from exiting from the said project and continuing the present complaint. Having already been received substantial amount as compensation, complainant cannot be allowed to enjoy and retain the benefits arising out of the said MOU and simultaneously disregard its



binding effect, to the grave prejudice and detriment of the answering respondent.

- xi. Complainant is not entitled to seek refund of the paid amount having voluntarily entered into tripartite agreement dated 18.12.2017. Clause 4 of the tripartite agreement clearly provides that in the event of cancellation of the unit due to any default on the part of the borrower, shelving of the project, or for any reason whatsoever, the builder is obligated to refund the amount received on behalf of the borrower exclusively to the lending bank after deducting the earnest money/cancellation charges and not to the complainant.
- xii. That the present complaint includes a prayer where the complainant has sought a sum of ₹10,00,000/- towards mental agony and harassment, which is a claim for compensation, which is not maintainable before this Hon'ble Authority. It is a settled position of law that the jurisdiction to adjudicate and grant compensation under Sections 12, 14, 18, and 19 of the RERA Act vests exclusively with the Adjudicating Officer. This Hon'ble Authority does not have the jurisdiction to entertain the prayer for compensation. Therefore, the complaint is liable to be dismissed on this ground alone.
- xiii. In view of the MOU, complainant cannot be allowed to withdraw from the project and in view of tripartite agreement entered into between the parties, is not entitled to the refund of any amount.



E. REPLY ON BEHALF OF RESPONDENT NO. 3

6. Respondent no.3 had made the following submissions vide reply dated 19.12.2023:

- i. That complainant has no cause of action against the respondent no.3 and is liable to be dismissed against the respondent no.3.
- ii. Complaint is not maintainable against the respondent no.3 on account of misjoinder as respondent no.3 is not subject matter of dispute.
- iii. That respondent no.3 does not fall under the ambit of Section 2(zk) of the RERA Act of 2016. Hence no cause of action arises.
- iv. That a tripartite agreement was executed between the parties on 17.12.2017 and is agreed that the construction of the flat latest by 01.01.2020. Further as per clause 14 of the agreement, respondent no.1 and 2 had assured the respondent no.3 that construction shall be completed as per the Schedule and as per the sanctioned plans and on completion of the construction, title of flats with proportionate undivided share in the land shall be conveyed in the name of the borrower.
- v. That as per the norms of replying respondent no.3, the borrower is bound to deposit the title document and after 01.01.2020 the replying respondent is requesting the borrower to deposit the title document. However, as per the borrower, the title and possession of the flat has not been given to the borrower till date despite the assurance given by the



respondent no. 1 and 2 that construction shall be completed as per the schedule and as per the sanctioned plan.

- vi. It is admitted that the application form for the home loan of ₹19,50,000/- was submitted by the petitioner on dated 14.08.2017 to the replying respondent no.3 and thereafter, the same was sanctioned on dated 26.10.2017. Copy of application is annexed as Annexure R3/1, Copy of Sanctioned letter is annexed as Annexure R3/2 and copy of arrangement letter is annexed as Annexure R3/3.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

7. Today, both the parties reiterated the pleadings mentioned in complaint and written submissions respectively.

G. ISSUE FOR ADJUDICATION

8. Whether the complainant is entitled to refund of the amount deposited by the complainant along with interest in terms of Section 18 of RERA, Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

9. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:
- i. Admittedly, complainant booked a flat in the real estate project, "Shree Vardhman Green Space" being developed by the promoter namely;



Green Space Infraheights Pvt. Ltd and complainant was allotted flat no.0603, Tower G, 6th floor admeasuring carpet area of 511 sq.ft. and balcony area of 100 sq.ft in said project at sector-14, Panchkula Extension-II, District Panchkula, Haryana vide allotment letter dated 02.08.2017. The builder buyer agreement was executed between the parties on 08.11.2017. Complainant contends that complainant had paid an amount of ₹19,99,750/- against the total sale price of ₹20,94,000/-. To substantiate the said claim, complainant relied upon Call notice dated 04.02.2019 which is annexed as Annexure C-6

- ii. It is to mention that vide order dated 29.01.2024, complainant was directed to file the receipts of the paid amount to the respondent.

Relevant part is reproduced for reference:

"3. On perusal of the file, it is revealed that complainant has not placed on record all the receipts of paid amount, in the absence of which, the amount of interest cannot be ascertained. Therefore, it is necessary that complainant file the receipts of the paid amounts. In case, receipts are not available, complainant has to file an affidavit wherein a chart in tabular form be prepared mentioning therein the exact amounts of money paid with dates on which said amounts were paid by the complainants to respondent. The said affidavit should be duly supported by bank statement of account of complainant from which payments were made.

4. Accordingly, complainant is directed to file receipts or an affidavit as stated above in para 3 of this order within two



weeks from today with an advance copy supplied to the respondent."

Again vide order dated 22.04.2024, same directions were issued to the complainant. On 27.01.2025, complainant filed an application in compliance of order dated 29.01.2024.

On 04.08.2025, during the course of hearing Authority inquired from the complainant as how much loan is pending on behalf of complainant after perusing the application dated 27.01.2025. With this counsel for the complainant stated that he will file details and case was adjourned to 27.10.2025. Relevant part of order dated 04.08.2025 is reproduced for reference:

"1. Ld. counsel for the complainant stated that complainant wants refund of ₹19,99,770/- paid to the respondent along with interest. Out of the total paid amount, ₹1,05,000/- is directly paid by the complainant and for rest of the payments, complainant availed home loan from State Bank of India, Shimla, H.P and same is disbursed by the bank to the respondent no.1 and 2. Authority inquired from the complainant as how much loan is pending on behalf of complainant and if Authority, pass the order of refund, then to whom the refund amount to be paid? To this, Ld. counsel for complainant stated that loan of the complainant is going on and he will file the details of loan amount.

Thereafter, till 27.10.2025, no details were filed by the complainant and case was adjourned to 12.01.2026. On 12.01.2026, again no details were



filed and case was adjourned to 06.04.2026. On 19.01.2026, application mentioning the same loan details were filed by the complainant. Thereafter, case was adjourned to 06.04.2026. On 06.04.2026 detailed order was passed and certain directions were issued to the complainant and with these directions, case was adjourned to 03.08.2026. Relevant part of order dated 06.04.2026 is reproduced for reference:

"5. Authority has considered the pleadings of the complainant, wherein it is stated that the complainant has paid a total amount of ₹19,99,770/- to the respondents. For the said payment, the complainant had availed a housing loan from respondent no. 3, i.e., State Bank of India. As per records, a Tripartite Agreement was executed on 18.12.2017 between the complainant, respondent nos. 1 and 2, and respondent no. 3. As per the pleadings, the complainant availed a loan facility of ₹19,00,000/- from respondent no. 3 at an interest rate of 8.70%, out of which approximately ₹17,00,000/- has been disbursed. Complainant is presently servicing the loan by paying pre-EMI interest on the disbursed amount on a monthly basis.

6. Authority has perused the reply dated 13.01.2026 filed by respondent nos. 1 7. 8. 9. and 2, wherein it has been stated that a Memorandum of Understanding (MoU) was executed between the complainant and the said respondents. As per the terms of the MoU, it was mutually agreed that the answering respondents shall pay a sum of ₹10,000/- per month to the complainant with effect from 01.01.2020 till the date of handing over possession of the flat, on account of delay in completion and delivery of the said unit.



7. Further, upon perusal of the application dated 27.01.2026 filed by the complainant, it is observed that the complainant has merely furnished details regarding the disbursal of the loan amount. However, No Objection Certificate (NOC) from respondent no. 3 (bank) has not been placed on record along with the said application.

8. Vide order dated 04.08.2025, the Authority specifically directed the complainant to clarify the outstanding loan liability and to state as to whom the refund amount should be remitted in the event of an order of refund is passed by the Authority. However, the complainant has failed to furnish the requisite details and has not submitted any NOC issued by the bank to date.

9. In view of the above, the complainant is directed to file a detailed response to the Memorandum of Understanding executed between the parties, along with complete particulars of the outstanding loan and the requisite NOC from the lending bank. All such documents shall be filed within a period of 10 days from the date of uploading of this order, with an advance copy supplied to the opposite parties."

On 03.08.2026, Authority granted last opportunity to the complainant to comply with directions as contained in the order dated 06.04.2026 and the case was adjourned to 24.08.2026.

On 24.08.2026, during course of hearing, counsel for the informed that complainant has cleared the pending loan of respondent no.3 and also, obtained NOC from respondent no.3. relevant part is reproduced:



"2. Today, Id counsel for the complainant stated that a tripartite agreement was executed between the parties and complainant has taken home loan from the respondent no.3. The complainant has now cleared the pending loan of respondent no.3 and also, obtained NOC from respondent no.3. Further, he stated that he will file the said details in the registry today itself. In addition, during the course of hearing a copy of the said documents have also been supplied to the associate of respondent no. 1 and 2, who was present during the hearing.

3. Id counsel for the respondent no.1 and 2 requested for some time to file the reply/objections to the requisite documents filed by the complainant.

4. Both the parties are directed to file the requisite documents within next 10 days with an advance copy supplied to each other."

As per office record, complainant had filed an application dated 24.08.2026, mentioning that loan amount is cleared and to substantiate the same No Objection Certificate has been attached by the complainant which is annexed as Annexure C-9. No reply to the said application has been filed by the respondent no.1,2/builder till date.

- iii. Now, perusing the documents on record, Authority observes that an amount of ₹1,05,000/- is paid by the complainant on 26.02.2017. Complainant availed home loan from respondent no.3 and for that tripartite agreement was executed between the builder, complainant and respondent no.3 on 18.12.2017 for an amount of ₹19,50,000/- which is



annexed as Annexure C-4 of the complaint. As per application dated 24.08.2026, No Objection Certificate has been issued by the bank/respondent no.3 regarding the amount of ₹19,50,000/-. Further, taking on record, application dated 19.01.2026, mentioning the payment details along with affidavit it is clear that complainant paid an amount of ₹19,99,770/- to the respondent builder. Now Authority will adjudicate upon the said amount ₹19,99,770/-.

- iv. As per clause 8 (a) of the agreement respondent /developer was under an obligation to hand over possession to the complainant within 4 years from the date of approval of building plans or grant of environment clearance whichever is later. Relevant clause is reproduced as under :

"Clause8 (a) "Subject to Force Majeure Circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of instalment of the other charges as per the payment plan, stamp duty and registration charges, the Developer proposes to offer possession of the said flat to the Allottee within a period four years from the date of approval of building plans or grant of environment clearance whichever is later (hereinafter referred to as the "Commencement Date")"



It is on record that respondent/ developer got the environment clearance on 15.03.2016. That means, as per possession clause, a period of 4 years is to be taken from 15.03.2016 and therefore, date of handing over of possession comes to 15.03.2020. Respondent has sought to contend that the deemed date for computation of possession ought to be reckoned from 12.04.2016 on the premise that, pursuant to the Environmental Clearance dated 15.03.2016, it was required to obtain Consent to Establish/Operate from the Haryana State Pollution Control Board, which was granted on 12.04.2016. In this regard, the rights and obligations of the parties are governed by the express terms and conditions of the Builder Buyer Agreement, which are binding upon them. The possession clause unequivocally stipulates that the period for delivery of possession shall be calculated from the date of grant of Environmental Clearance. The Agreement does not provide for extension of such period on account of subsequent statutory compliances or approvals. Any additional permissions or formalities required from statutory authorities are within the exclusive domain and responsibility of the respondent/promoter. The allottee cannot be penalized or made to suffer for delays attributable to the respondent in securing such ancillary approvals. Therefore, said plea of the respondent is rejected.

- iv. Further, respondent had taken plea of force majeure conditions like lockdown due to Covid 19, labour shortage as entire labours migrated to



their respective states, construction activities for not performing the obligations as per terms and conditions of the agreement. Now, the question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration. Looking at this aspect as to whether the said situation or circumstances was in fact beyond the control of the respondent or not? The obligation to deliver possession within a period of 4 years was not fulfilled by respondent. There is delay on the part of the respondent. The reason given by the respondent is ceasement of construction activities during the COVID-19 period .As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

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



The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 15.03.2020 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself. To conclude, Authority observes that mere averment of force majeure without any relevant proof of the same for causing delay in offering the possession is not sufficient to justify the delay caused.

- v. Period of 4 years is a reasonable time to complete development works in the project and handover possession to the allottee. The project of the respondent is of an affordable group housing colony and allottees of such project are supposed to be mainly middle class or lower middle class persons. After paying his hard earned money, legitimate expectations of the complainant would be that possession of the flat will be delivered within a reasonable period of time. However, respondent has failed to fulfill its obligations as promised to the complainant. Thus, complainant is at liberty to exercise his right to withdraw from the project on account of default on the part of respondent to offer legally valid possession and



seek refund of the paid amount along with interest as per section 18 of RERA Act.

- vi. 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. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."



The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainant.

10. 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;

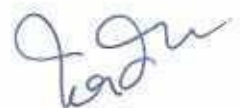
(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee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

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



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

12. 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., 28.09.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.
13. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainant is entitled for refund of deposited amount along with interest. Thus, respondent will be liable to pay the interest from the dates the amounts were paid till the actual realization of the amount to the complainant. Authority directs respondent to refund to the complainant the paid amount along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.80% (8.80% + 2.00%) from the date amounts



were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.80% till the date of this order and total amount works out as per detail given in the table below:

Sr.no	Principal amount	Date of payments	Interest accrued till 28.09.2026
1.	₹1,05,000/-	26.07.2017	₹104142/-
2.	₹4,81,320/-	04.01.2018	₹454313/-
3.	₹5,86,320/-	19.02.2018	₹545441/-
4.	₹5,44,440/-	14.09.2018	₹473135/-
5.	₹2,82,690/-	15.04.2019	₹227850/-
	₹19,99,770/-		₹18,04,881/-
Total amount to be refunded by respondent to complainants = ₹19,99,770/- + ₹18,04,881/- = ₹38,04,651/-			
Respondent shall make the payment of refund after deduction of paid amount of ₹1,65,000/-			

14. It is to mention that as per application alongwith affidavit dated 24.08.2026, complainant claims to receive an amount of ₹1,65,000/- from the respondent no.1,2/ builder in pursuance of MOU entered into between the complainant and respondent no.1,2. Vide order dated 24.08.2026, respondent was granted opportunity to file reply to the said application dated 24.08.2026 filed by the complainant, however, no reply has been filed by the respondent no.1,2/builder till date. It is an admitted fact that complainant has received an amount of ₹1,65,000/- from the respondent

no.1,2/builder. Hence, the same shall be deducted from the refunded amount along with interest.

15. Reliefs under clause (iv) and (vi) are neither argued during course of proceedings so no observations are made in this regard.

16. Further, complainant is seeking damages of ₹10lakh for mental torture, agony, and harassment and ₹1 lakh as litigation charges. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief for mental torture, agony, discomfort and undue hardship of litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

17. 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 entire paid amount with interest to the complainant as per table mentioned in paragraph no. 13 of this order after deducting paid amount as mentioned therein. It is further clarified that respondent will remain liable to pay the interest to the complainant till the actual realization of the above said amount.
- (ii) A period of 90 days is given to the respondent no.1/ developer 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.

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



.....
NADIM AKHTAR
[MEMBER]