

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 4859 of 2025
Date of complaint : 24.09.2025
Date of order : 11.08.2026

Mrs. Geetha Nayak

R/o - Flat No. 131, DDA SFS Flats, Sector-22, Pocket-1,
Dwarka, New Delhi – 110077

Complainant

Versus

M/S YB BUILDER PVT LTD

Corporate Office : SCO 304, 2ND floor, sector 29 Gurugram
Through its Directors

M/S Nimai Developers Pvt. Ltd.

Address: SCO-304, 2nd Floor, Sector-29, Gurugram,
Haryana – 122001, Through Its Directors

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Parminder Singh

Advocate for the complainant

Sh. Sushil Yadav

Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall

be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	Nimai Place , Sector 114, Gurugram, Haryana
3.	Nature of the project	Commercial Project
4.	DTCP license no.	126 of 2012 dated 20.12.2012
5.	HRERA registered/ not registered	Registered 7 of 2018 July 2018 upto September 2019
8.	Shop no.	177, 1 st floor [page 46 of compliant]
9.	Shop measuring (super area)	586 sq. ft. [page 46 of compliant]
10.	Date of execution of buyer's agreement	04.05.2015 [page 19 of complaint]
	Date of sanction of building plans	18.06.2013
11.	Possession clause	26. <i>The developer shall offer possession of the unit any time within a period of 36 months from the date of sanction of building plans or date of execution of buyer's agreement whichever is later.</i> (Emphasis supplied) [page 26 of reply]

12.	Due date of possession	04.05.2018 [Note: Calculated from the date of buyer's agreement as it is later]
13.	Basic Sale consideration	₹ 41,09,029/- [As per buyer's agreement at page 20 of reply]
14.	Total amount paid by the complainant	₹ 25,69,686/-
15.	Reminder letters	04.10.2016, 05.02.2022, 20.07.2022, 04.06.2023
16.	Occupation certificate granted on	10.02.2023 (71 of reply)
17.	Offer of possession	01.04.2023 [pg. 49 of reply]
18.	Email w.r.t. the clearance of outstanding dues	21.05.2024 (page 51 of reply)
19.	Cancellation	06.05.2025 (page 54 of reply)
20.	Payment plan	Construction linked payment plan

B. Facts of the complaint:

3. The complainant has made the following submissions: -
 - i. That the respondents have always advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. The respondents while launching and advertising any new housing project always commit and promise to the targeted consumers that her dream shop will be completed and delivered to her within the agreed timeline initially in the agreement while selling the shop to her. The respondents also assured the consumers like complainant that they have secured all the necessary sanctions and

approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.

- ii. The respondents were very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any Shops is the delivery of completed house within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing her shop. Therefore, the respondents used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that her dream shop will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the installments loan like in the case of other builders in market.
- iii. That, somewhere in the year 2013 the through its marketing executives had advertisement done through various medium and means approached the complainant with an offer to invest and buy a shop in the proposed project of respondents, which the respondents was going to launch the project under the name and style of "NIMAI PLACE" situated at Sector-114, Gurugram (hereinafter be referred to as "said project"). The respondents had represented to the complainant that the respondents are very ethical business house in the field of construction of residential and commercial project and in case, the complainant would invest in the project of respondents then they would deliver the possession of proposed shop on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured the complainant that the respondents has already secured all the necessary sanctions and approvals from the

appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondents were also shown the brochures and advertisement material of the said project to the complainant given by respondents and assured that the allotment letter and builder buyer's agreement for the said project would be issued to the complainant within 60 days of booking to be made by the complainant. The complainant while relying on their presentations and warranties of the respondents and believing those to be true had agreed to the proposal of the respondents to book the shop in the project of respondent. The representative of the respondents had also shown the brochures to the complainant.

- iv. That the respondents arranged the visit of its representatives to the complainant and they also assured the same as assured by the respondents to the complainant, wherein it was categorically assured and promised by respondents that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would allot the shop in the name of complainant after 60 days of booking. Relying upon those assurances and believing those to be true, on 07/03/2013, the complainant booked one shop no. 177 measuring an area of 586 sq. ft., at the rate of Rs.7,012/- per Sq. ft., EDC/IDC charge 594/- per sq ft, car parking Rs. 4,00,000/- total amounting Rs. 48,57,116/- in the project "NIMAI PLACE" situated at Sector-114, District Gurugram Haryana.
- v. That at the time of booking, the complainant paid a sum of ₹5,00,000/- through cheque no. 459402 drawn on State Bank Travancore, and on 10.03.2013, a further sum of ₹5,78,968/- in cash was paid to the respondent. Thus, at the very initial stage, a total of ₹10,78,968/- was deposited.

- vi. That, while booking the said unit, it was represented by respondents that the respondents has already secured all necessary permissions, sanctions and approvals from the competent authorities and project will be completed within 36 months from the date of sanction of building plan i.e 20/12/2012 and the agreed date of possession after 36 months is April 2016. Since the complainant has booked the unit, the complainant was assured by the respondents that it would allot the said unit in favour of the complainant well within a period of maximum 60 days of the booking. However, the respondents miserably failed in issuing any allotment letter or builder buyer agreement to the complainant despite repeated requests made by complainant in this regard.
- vii. That thereafter, in compliance with the construction-linked payment plan, the complainant continued to make payments as demanded:
- o ₹3,52,000/- on 01.07.2013 (Cheque No. 459406).
 - o ₹6,39,490/- on 10.03.2014 (Cheque No. 459411, receipt dated 12.03.2014).
 - o ₹5,03,196/- on 11.03.2016 (Cheque No. 459418, receipt No. NP/REC/01055 dated 15.03.2016).
- viii. That in this manner, between March 2013 and March 2016, the complainant paid a total sum of ₹25,69,686/- to the respondents which is amounting more than 50% of the total cost of shop.
- ix. That despite repeated requests, the builder-buyer agreement, which was to be executed within 60 days of booking, was not provided in time. It was only forwarded on 22/03/2014 for signing and the complainant signed and returned the agreement on the same date and respondents belatedly give back this fully executed copy on 04.05.2015, i.e., after an inordinate delay of 26 months.

- x. That as per the said agreement, possession had to be handed over within 36 months from the date of sanction of building plan i.e., licence no 126 of 2012 dated 20/12/2012 and 36 months completed in the month of April 2016. However, no construction progress was visible and possession was never offered.
- xi. That when no development was noticed, the complainant, vide letter dated 14.11.2015, sought clarification regarding construction status, signed copy of the agreement, and revised payment schedule. No meaningful reply was ever received.
- xii. That after expiry of the contractual period of 36 months, the complainant, vide letter dated 29.06.2016, by way of this letter demanded refund of the entire amount of ₹25,69,686/- along with interest @ 24% per annum, in view of the respondent's failure to hand over possession.
- xiii. That thereafter, several reminders and letters were issued by the complainant, including on 22.10.2016, 07.02.2017, 18.02.2017, 02.06.2017, 22.07.2018, 18.01.2019, 17.06.2019, 21.09.2019, 28.12.2019, 22.05.2020, 02.07.2020, 03.09.2020, and 09.05.2021. In response to one such communication, the respondents vide email dated 27.01.2017 admitted delays and replied that "the progress of the construction has been slightly slow in the past since we adopted the latest technique to cast the slab of the two basements, which allows a stronger and beamless structure. The progress of work presently at site is quite brisk. The slowness favoured the slow market conditions also as it would not be advisable to complete the project without any infrastructural facility in the vicinity and add up the cost of maintaining the building not in use. These are testing times and we seek your cooperation as your patron."

- xiv. That this vague justification further demonstrates that instead of offering a definite timeline or possession, the respondents only gave excuses to cover its default. Finally, vide letter dated 15.07.2021, the complainant once again placed on record the full chronology of payments and delays. In this letter, it was categorically demanded that either refund of ₹25,69,686 with 24% interest compounded quarterly be made, or possession of the unit be given without demanding any further payments.
- xv. That shockingly, instead of complying with his obligation to either refund the money or hand over possession of the unit, the respondents issued a demand letter in May 2022 asking the complainant to pay an alleged outstanding sum of ₹30,15,045/- along with interest of ₹10,99,716/-, totalling ₹41,14,761/- and as per this letter in 2022 the construction was at the stage of flooring. It means they are still not at a stage of giving possession in year 2022. On the one hand, the respondents have already delayed the project by more than seven years till 2022, and on the other hand, he has attempted to wrongfully levy interest against the complainant for so-called delayed payment. This action clearly shows the mala fide intention of the respondents to unjustly enrich itself while keeping the complainant deprived of both her money and possession.
- xvi. That the complainant immediately objected to this arbitrary and baseless demand by sending a detailed written reply on 08.05.2022, categorically denying liability to pay any further amount and reiterating that it was the respondents who was in default, not the complainant. Despite this, the respondents have failed to either withdraw its illegal demand, refund the amounts already received, or hand over possession of the allotted unit.
- xvii. That astonishingly, even after the lapse of more than ten years since booking, the respondents once again issued a fresh demand letter dated 04.06.2023,

this time alleging an outstanding of ₹35,59,684/- along with interest of ₹17,99,332/-, totalling ₹53,59,016/-. Instead of refunding the complainant's money or handing over possession, the respondents has continued to raise arbitrary demands with inflated interest, despite itself being in gross default of delivering the project.

- xviii. That the complainant immediately rejected this illegal demand as well and issued a detailed reply dated 24.07.2023, reiterating her stand that no further payment is due from her side, that it is the respondents who is in breach, and that she is entitled either to a refund with interest or possession without additional demands.
- xix. That in a further shocking development, the respondents issued a forfeiture notice dated 06.05.2025, alleging that due to lack of response to its demand letters and so-called "hundreds of follow-up calls and reminders," the complainant's allotment was liable to be forfeited. This notice was nothing but an arbitrary and high-handed attempt by the respondents to wrongfully deprive the complainant of her investment, despite the fact that the respondents itself has been in continuous default since 2016.
- xx. That the complainant immediately refuted this illegal action and, through her counsel, issued a legal notice dated 26.05.2025 to the respondent. In this notice, the complainant categorically stated that "she is not in default, that it is the respondents who has failed to deliver possession within the promised timeline, and demanded refund of the entire amount paid along with compensation for the prolonged harassment and financial loss".
- xxi. That the respondent's act of demanding exorbitant interest and outstanding dues after completion of the project in 2024 instead of 2016 almost 8 year delayed period is wholly illegal and unjustified. The respondents itself was

in default since April 2016, when possession was due. The complainant had already sought refund in June 2016 due to this default. Having failed to honour its contractual and statutory obligations for years, the respondents cannot now turn around and levy massive interest charges upon the complainant. Such a demand is not only beyond the complainant's financial capacity but also amounts to exploitation, unjust enrichment, and abuse of the provisions of law.

- xxii. That the conduct on the part of respondents has cleared the dust on the fact that all the promises made by the respondents at the time of sale of the said flat were fake and false. The respondents had made all those false, fake, wrongful, and fraudulent promises just to induce the complainant to buy the said flat basis of its false and frivolous promises, which the respondents never intended to fulfill. The respondents in its advertisements had represented falsely the area, price, quality, and the delivery date of possession and resorted to all kinds of unfair trade practices while transacting with the complainant.
- xxiii. That the complainant had faced all these financial burdens and hardship from their limited income resources, only because of respondent's failure to fulfill its promises and commitments. Failure of commitment on the part of respondents has made the life of the complainant miserable socially as well financially as all their personal financial plans and strategies were based on the date of delivery of possession as agreed by the respondent. Therefore, the respondents have forced the complainant to suffer grave, severe and immense mental and financial harassment with no fault on their part. A complainant is a common person who just made the mistake of relying on the respondent's false and fake promises, which lured them to buy the said commercial shop in the aforesaid project of the respondent.

- xxiv. That the cause of action accrued in favor of the complainant and against the respondents on 22.07.2013, when the complainant had booked the said commercial shop and it further arose when respondents failed to deliver the said commercial shop and the cause of action is continuing and is still subsisting on a day-to-day basis as the respondents has neither delivered the possession of said commercial shop even after various repeated requests made by the complainant to the respondents in this regard.
- xxv. That the complainant further declares that the matter regarding which the present complaint has been made is not pending before any court of law and any other authority or any other tribunal on the subject matter.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to refund the entire amount of ₹25,69,686/- received from the complainant, along with interest @ 24% per annum compounded quarterly, or at such rate as deemed fit, from the dates of payment till realization and compensation.
 - II. Direct the respondent to award suitable compensation for harassment, mental agony, and financial loss caused due to inordinate delay and counsel fees of Rs. 51000/-.

D. Reply by respondent:

5. The respondent vide reply had contested the complaint on the following grounds:
- i. The respondent developers had conceived and planned a commercial project under the name and style of Nimai Place various facilities and amenities on land situated in Sector 114 Gurugram, Haryana (subject matter of the present complaint). That the Respondent Developer has obtained

License from the DGTCP/DTCP under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and the rules made there under for using the Land for construction and development of the commercial project thereon in a planned and phased manner over a period of time by obtaining necessary sanctions, permissions and approvals from the concerned authorities for the development of the commercial project.

- ii. That complainant after conducting his own due diligence applied for booking of shop in the said project vide application form. The complainant had also duly signed and understood the indicative terms and conditions of the allotment along with the application form. All the terms and conditions including the cost of the shop, size/super area of the shop, timeline for possession etc. The complainant paid an amount of Rs. 5,00,000/- towards booking amount of the unit in question.
- iii. That the complainant was allotted unit no. 177 on first floor having a area of 586 sq. ft. and the same was further increased to 604 sq. ft. builder buyer agreement was execution on 04.05.2015 between the complainant and the respondent.
- iv. That the total sales consideration of the unit is Rs. 57,76,262/- and the total amount paid by the complainant is Rs.19,94,686/- of the said unit. It is pertinent to mention that the payment plan for the said unit was time link plan and the complainant have deliberately and intentionally failed to make the payment according to the plan.
- v. That from the month of April 2016 respondent fails to make the payment of installment of the unit in question to the respondent. The respondents have also sent the demand notice to the complainant and requested to make the payment of installment but even then, the complainant failed to make the payments of installments timely.

- vi. That the complainant has failed to make timely payment and at every installment the respondent herein had to request the complainant to provide the same. That despite serving several reminders the complainant failed to make time payment for the respective unit. And, on account of not receiving payment from the respondent bound to issue payment reminder on 04.10.2016. The respondent further sent complainant reminder on 06.09.2019 and upraised complainant with the fact that construction of the project is getting affected due to the delay in the payment of dues on complainant part but complainant deliberately ignore to pay the same.
- vii. That the respondent sent the complainant a pre-cancellation notice dated 13.04.2021 due to the non-payment of installments dues pending toward the unit in question but the complainant again failed to pay the said dues.
- viii. That the respondent was committed to complete the project therefore, the respondent herein applied for the Occupation Certificate before the Department of Town and Country Planning Haryana (herein referred to DTCP). However, the DTCP vide letter dated 10.02.2023, granted the Occupation Certificate to the respondent. The major amount of time was taken by the DTCP in issuing the Occupation Certificate for the said project which was purely beyond the control of the respondent.
- ix. That after receiving the occupation certificate from the competent authority, respondent sent the offer of possession dated 01.04.2023 to the complainant. It is pertinent to mention that complainant even fails to take the possession of the unit in question.
- x. That the respondent again sent reminders to the complainant on 02.05.2022, 20.07.2022, 01.04.2023 and 21.05.2024 for the payments of installment dues pending towards the unit in question but again complainant failed to pay the same.

- xi. That after sending multiple demand, reminders and pre- cancellation to the complainant for the payment of installment due, which the complainant intentionally and deliberately ignores to pay, the respondent finally cancelled the unit in question on 06.05.2025 and sent the same to the complainant.
- xii. That it is also pertinent to mention here that the complainant has severally file false police complaint just to harass the respondent and extort illegal demands from the respondent.
- xiii. That the complainant has been a persistent defaulter and has failed to make any payment after April 2016. Despite continuous reminders, demand notices, and follow-up communications issued by the respondent at regular intervals, the complainant neither cleared the outstanding dues nor showed any intention to comply with the payment schedule. The respondent obtained the Occupation Certificate in February 2023; however, even thereafter, the complainant did not pay the balance amount and, on the contrary, insisted on taking possession without clearing the lawful dues. Out of the total payable amount of ₹57,77,626/-, the complainant has paid only ₹19,94,666/-, which is merely 34% of the total consideration. The complainant is thus in grave breach of the payment obligations under the agreement.
- xiv. That the complainant's present complaint is inherently contradictory and not maintainable. On one hand, she seeks possession of the unit; on the other hand, she simultaneously seeks refund. These two remedies are mutually inconsistent, demonstrating that the complainant herself is unclear, uncertain, and unsure about the relief she is seeking.
- xv. In view of the complainant's chronic default, willful non-payment, failure to comply with repeated demands, and refusal to pay even after the grant of OC, the respondent was constrained to cancel the allotment. Accordingly, the

Respondent cancelled the complainant's unit on 06.05.2025 in accordance with the terms of the agreement and applicable law. The cancellation is thus lawful, justified, and a direct consequence of the complainant's continuous breach.

- xvi. That it is relevant to mention that the respondent has already spent enormous amount of money towards the due construction and development for which Occupation Certificate has been granted including the tower in which the Unit of the complainant is situated and the same being ready for occupation. The complainant has severely committed defaults in making payment of the consideration amount in accordance with the agreed payment plan. Therefore, it is the respondent who after having spent enormous sums of money (including funds borrowed from banks and financial institutions and other entities) has been unable to realize the proceeds of the unit from the complainant and the legitimate dues of the complainant have been withheld by the respondent and therefore, on account of such breaches and defaults of the complainant it is the respondent who is entitled to claim compensation from the complainant.
- xvii. That respondents have given numerous opportunities to complainant to clear his due for the said unit but complainant fails to pay and even communicate with the respondent consequently respondent cancelled the said unit and forfeit the amount paid by complainant as per RERA Rules. That complainant has surrendered all his rights against the said unit and now it is respondent who is aggrieved person.
- xviii. That the complainant has breached their obligations and have also breached the obligation cast upon him in terms of Section 19(10) of the Act, whereby the complainant was under obligation to take the possession within the prescribed period upon receipt of the notice of offer of possession. That the complainant however, have failed to clear their dues and take the physical

possession of the Unit and also complete all the formalities for the due conveyance, transfer and grant of rights, title and interest in the said Unit in their favour.

- xix. That Section 31 (1) of the Real Estate (Regulation and Development) Act, 2016 categorically provides that "any aggrieved person may file a complaint before the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or rules or regulations made there under against any promoter allottee or real estate agents, as the case may be."
- xx. That considering the above facts, the complainant has defaulted in the obligation cast upon him and thus the respondent is entitled to seek the remedy as provided under the Act.
- 6. All other averments made in the complaint were denied in toto.
- 7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

- 8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

- 9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** and followed in case of ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to

examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon Under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication Under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer Under Section 71 and that would be against the mandate of the Act 2016"

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant:

F.I. Direct the respondent to refund the entire amount of ₹25,69,686/- received from the complainant, along with interest @ 24% per annum compounded quarterly, or at such rate as deemed fit, from the dates of payment till realization and compensation.

14. The complainant has submitted that, as per Clause 26 of the Buyer's Agreement, the respondent was liable to hand over possession of the unit within a period of 36 months from the date of sanction of the building plans or the date of execution of the Buyer's Agreement, whichever was later. Accordingly, the due date for handing over possession fell on 04.05.2018, reckoned from the date of execution of the Buyer's Agreement, being later. The complainant, vide letter dated 14.11.2015, sought clarification from the respondent regarding the status of construction, however, the respondent failed to pay any heed to the complainant's request. Thereafter, vide letter dated 29.06.2016, the complainant demanded refund of the entire amount paid by him towards the unit. Subsequently, vide letter dated 15.07.2021, the complainant once again placed on record the complete chronology of payments made by him and the delays on the part of the respondent and

reiterated his demand for refund of the amount paid. However, despite repeated requests and demands, the respondent has failed and neglected to refund the amount paid by the complainant till date.

15. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest @18% p.a under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building:-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

16. **Due date of handing over of possession:** Clause 26 of the apartment buyer's agreement dated 04.05.2015 provides for handing over of possession and is reproduced below:

26 SCHEDULE FOR POSSESSION

The developer shall offer possession of the unit any time within a period of 36 months from the date of sanction of building plans or date of execution of buyer's agreement whichever is later.

17. As per clause 26 of the buyer's agreement, the due date of possession comes out to be 04.05.2018 (calculated from the date of execution of buyer agreement, being later).

18. **Admissibility of refund along with prescribed rate of interest:** The complainant/allottee intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at 18% p.a. However, the legislature in its wisdom in the subordinate legislation, under the provision of rule 15 of the rules vide notification dated 12.09.2019, has determined that 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%. the prescribed rate of interest. Therefore, in case the complainant/allottee intends to withdraw from the project after commencement of the Act, 2016, the amount paid by him shall be refunded alongwith interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced 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.

19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
20. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 11.08.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.

21. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that as per clause 26 of the agreement dated 04.05.2015, the possession of the apartment was to be delivered by 04.05.2018. It is pertinent to note that the complainant, vide letter dated 29.09.2016, expressly requested the respondent to accept surrender of the subject unit, citing the alleged inordinate delay in completion of the project and apprehension regarding timely delivery of possession. However, the said request was admittedly made prior to the stipulated date of possession. Consequently, the complainant cannot, on the basis of the said letter alone, assert that there had already been a delay in handing over possession as on 29.09.2016 or that the respondent had committed a breach of its obligation to deliver possession within the stipulated period. At best, the said letter evidences the complainant's decision to seek cancellation/surrender on account of the apprehended or alleged delay, it cannot, by itself, establish an accrued cause of action for delayed possession before expiry of the contractual period. Further, the respondent's failure to accept or address the request for surrender/refund does not retrospectively convert the pre-possession surrender request into proof of an existing delay in handing over possession. The legal effect of the letter dated 29.09.2016 must therefore be considered in the context of the contractual possession date and the rights and obligations of the parties as subsisting on that date. So, in such a situation, the complainant withdrew from the project even prior to the due date. Thus, he is not entitled to refund of the complete amount but only after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under.

"5. AMOUNT OF EARNEST MONEY

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money **shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be** in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

22. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs. 25,69,686/- after deducting 10% of the sale consideration of Rs. 41,09,029/- being earnest money along with an interest @10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 29.09.2016 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*

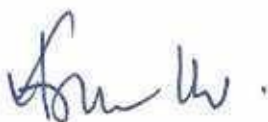
G.II Direct the respondent to award suitable compensation for harassment, mental agony, and financial loss caused due to inordinate delay and counsel fees of Rs. 51000.

23. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & 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 adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the 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.

G. Directions of the Authority:

24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent/promoter is directed to refund ~~to refund~~ the paid-up amount of Rs. 25,69,686/- after deducting 10% of the sale consideration of Rs. 41,09,029/- being earnest money along with an interest @10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 29.09.2016 till its realization.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
25. The complaints stand disposed of.
26. Files be consigned to the registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.08.2026