



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3151 of 2022
Date of filing:	25.11.2022
First date of hearing:	14.02.2023
Date of decision:	16.03.2026

Balwan Singh

S/o Late Sh. Ram Chander,
R/o 14/476, Dayanand Nagar,
Bahadurgarh, Distt. Jhajjar (Haryana)

.....COMPLAINANT

Versus

**1. Housing Board Haryana,
through its Chairman**

C-15, Awas Bhawan,
Sector-6, Panchkula, Harayana

**2. Housing Board Haryana,
through its Chief Administrator**

C-15, Awas Bhawan,
Sector-6, Panchkula, Harayana

...RESPONDENT(S)

Present: - Adv. Lakshay Sikri, counsel for the complainant through VC.

Adv. Arvind Seth, counsel for the respondent through VC.

had

ORDER (NADIM AKHTAR-MEMBER)

Present complaint is filed by the complainant 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 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.

1. UNIT AND PROJECT RELATED DETAILS-

The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Multi storeyed flats for serving/Ex-Defence and Para Military Personnel of Haryana up to the rank of JCOs and equivalent and their widows and orphans on Hire Purchase Basis at Rohtak-Sector 5
2.	Name of the promoter	Housing Board Haryana



S.No.	Particulars	Details
3.	RERA registered/not registered	Unregistered
4.	Unit no.	Final Reg. No. 120
5.	Date of builder buyer agreement	Not executed
6.	Due date of offer of possession	Not available
7.	Possession clause in BBA	Not available
8.	Amount paid by complainant	₹3,93,000/-
9.	Offer of possession given on	Not given till date

2. FACTS OF THE PRESENT COMPLAINT

- i. That the present complaint has been filed by the complainant through his Power of Attorney, Sh. Deepak Sangwan, seeking refund of the amount deposited with the respondents, which according to the complainant has been legally withheld. Copy of Power of Attorney has been annexed at page no. 20 and 21 of the complaint book.
- ii. That the respondents have floated a housing scheme in the year of 2014 for allotment of multi-storeyed flats for serving/ ex-Defence and Para Military Personnel of Haryana up to the rank of JCOs and equivalent

Deepak Sangwan

- and their widows and orphans on Hire Purchase Basis at various locations.
- iii. That applications were invited by the respondents for registration for allotment of Type A & B flats and the period of registration was from 17.02.2014 to 15.05.2014. According to the said scheme, applicants were permitted to apply for more than one station, however, allotment was restricted to only flat at a station where the applicant was successful in the draw of lots. Copy of brochure is annexed at page no. 22-37 of the complaint book.
- iv. That accordingly, the complainant applied for Type-B flat at Sector 5, Rohtak vide application No. 48456, which was received by the respondents on 30.06.2014 along with a Demand Draft for an amount of ₹1,57,000/-. The receipt of the said amount duly acknowledged by the respondents is annexed at page no. 40.
- v. That after the draw of lots, Type-B flat for Ex-serviceman at Sector 5, Rohtak was allotted to the complainant vide Housing Board Final Registration No. 120. Copy of the allotment letter is annexed at page no. 38 of the complaint book. The respondents demanded a further amount of ₹2,36,000/- vide letter bearing Memo No. HBH/CRO(PM)/DEFENCE/2015/SPL-4645 dated 12.02.2015. Accordingly, the complainant deposited the said amount vide Demand Draft No. 208618 dated 09.03.2015 drawn on ICICI Bank, payable at

Panchkula, which was accepted by the respondents. The complainant also submitted the requisite documents as demanded by the complainant. Copy of the DD is annexed at page no. 39 of the complaint book.

- vi. That after receipt of the said amount and documents from the complainant, respondents failed to communicate any further progress of the scheme to the complainant. Consequently, complainant approached the respondents for surrender of the said flat and sought refund of the amount deposited with the respondents vide application which was received by the respondents on 10.04.2019. However, no satisfactory response was received by the complainant from the respondents. Thereafter, the complainant again approached the respondents vide application dated 05.12.2019, which was received and acknowledged by the respondents on the same date vide reference No. CA/HBH/4227 dated 05.12.2019. However, even thereafter, no response or refund was made by the respondents. Copies of the said letters are annexed at page no. 41 and 42 of the complaint book.
- vii. That the complainant made repeated requests to the respondents, both through personal visits and through correspondence, seeking refund of the total deposited amount of ₹3,93,000/-, however, the respondents failed to give any suitable reply to the complainant.
- viii. That the total amount of ₹3,93,000/- (₹1,57,000/- + ₹2,36,000/-) is still lying with the respondents. That the respondents have unlawfully

withheld the hard-earned money of the complainant, who has been suffering from paralysis for more than seven years.

- ix. That The complainant was constrained to issue a legal notice dated 28.06.2022 to the respondents, which was duly served upon the respondents on 01.07.2022.
- x. That the office of the respondents is situated at Panchkula, which falls within the jurisdiction of this Hon'ble Authority. Accordingly, the Authority has the territorial jurisdiction to adjudicate and decide the captioned complaint.
- xi. That the cause of action to institute the present complaint first arose when the respondents floated the project, and further arose when the flat was allotted to the Complainant. It further arose when the complainant was constrained to get the flat cancelled due to the fault of the respondents and on various subsequent dates when the complainant served the letters on the respondents for seeking refund, and also when the legal notice was served upon the respondents. It is still continuing as the deposited amount has neither been refunded nor any satisfactory explanation has been furnished till date.

3. **RELIEFS SOUGHT -**

Complainant sought following relief:



1. Pass orders directing the respondents to pay an amount of ₹3,93,000/- along with interest @18% p.a. from the date of retaining the amount by the respondents till making the payment to the complainant;
2. Direct the respondents to discontinue their deceptive and unfair trade practices and to provide proper and good services to its subscribers being the department of State Government.
3. Direct the respondents to pay a sum of ₹25,000/- towards the damages for the mental harassment and agony suffered by the complainant at the hands of Respondents.
4. Direct the respondents to pay the cost of litigation in favour of the complainant.
5. Any other order or relief in favour of the complainant and against the respondents which this Hon'ble Authority deem fit and proper under the facts and circumstances of the case.

4. REPLY SUBMITTED ON BEHALF OF RESPONDENTS-

Respondents filed the reply on 17.04.2025, wherein it is pleaded that-

- That the respondents deny each and every contention, statement, allegation and/or averment made, which is in any manner contrary to or inconsistent with any submission made in the present reply on behalf of the respondents.
- That in the present complaint, the complainant had applied for the allotment of a flat pursuant to an advertisement published by the

respondents, whereby applications were invited for multi-storeyed flats for serving and ex-defence personnel and para-military personnel of Haryana up to the rank of JCOs and equivalent, as well as their widows and orphans, on a hire-purchase basis at various stations. In the present case, the complainant had applied for a flat in District Rohtak on a hire-purchase basis.

- That, as per the averments made in the present complaint, the complainant deposited an amount of ₹1,57,000/- on 01.07.2014 and thereafter ₹2,36,000/- on 27.03.2015, thereby depositing a total sum of ₹3,93,000/-.
- That the said scheme of the respondents was scrapped on 13.02.2023, and the respondents refunded the entire amount of ₹3,93,000/- deposited by the complainant along with interest. The details of the amount refunded by the answering respondents to the complainant is as under:

1.	Registration amount deposited with application form	₹1,57,000/-
2.	Interest w.e.f. 01.07.2014 to 15.06.2023 for 3271 days @3.2% p.a.	₹54,023/-
3.	Amount received after draw of successful applicants	₹2,36,000/-
4.	Interest w.e.f. 27.03.2015 to 15.06.2023 for 3271 days @3.2% p.a.	₹62,113/-

5.	Total	₹5,00,136/-
6.	Less 10% TDS on interest amount	₹4,89,422/-
	Net Amount refunded to the complainant	₹4,89,422/-

- The details and reasons for scrapping of various defence and other schemes launched by the Housing Board Haryana are attached as Annexure R-1.
- That the present complaint filed by the complainant before this Hon'ble Authority is not maintainable, as the jurisdiction of the Real Estate Regulatory Authority, Panchkula is barred where the project is not an ongoing project.
- That in a similar case, the Hon'ble Punjab and Haryana High Court at Chandigarh, vide its order dated 30.05.2022 passed in CWP No. 19124 of 2021 titled "*Raj Pal Singh Gahlaut Versus Housing Board Haryana and another*", along with other connected cases, observed that where the scheme for allotment of multi-storeyed flats has been scrapped, the following directions were issued:

"...That being so, and with there being no challenge to the regulation itself in these petitions, they are disposed of with a direction to the respondents to refund, in the case of each petitioner, the entire amount of money deposited by him/her in the year 2013/2014 (as the case may be), along with the mean savings bank interest of the State Bank of India, running from the date of the closing of the registration in respect of each scheme, by 30.06.2022 in the case of the Defence Scheme Type-A Sampla, and till

31.10.2022 in the case of the Employees Scheme, Jind Road, Rohtak."

A copy of the order dated 30.05.2022 passed by the Hon'ble Punjab and Haryana High Court, Chandigarh is annexed herewith as Annexure R-2.

- That the Housing Board Haryana has been constituted under the Haryana Housing Board Act, 1971. The aim and object of the Haryana Housing Board Act is to ease the housing problem by constructing more houses. The Haryana Housing Board Act received the assent of the President of India on 14.05.1971 and was published in Haryana Government Gazette on 18.05.1971. The Housing Scheme is defined in Section 2(h) of Haryana Housing Board Act, 1971.
- That Chapter III of the Haryana Housing Board Act, 1971 prescribes the Housing Scheme. Section 20 casts a duty on the Board to undertake housing schemes. Therefore, it is clear that the Appellant Board has to execute the housing scheme as may be entrusted to it by the State Government.
- That the annual housing programme, budget and establishment schedule is prepared under Section 23 of the Housing Board Act, 1971. That Section 24 empowers the state government to sanction programme/ budget and establishment schedule and section 25 provides publication of sanctioned programmes. That Section 28 provides for the sanctioned housing scheme to be executed. That Section 29 provides that the

Housing Scheme has to be published in the Official Gazette. That in view of the provisions of Section-18, requirement of completion certificate is not required.

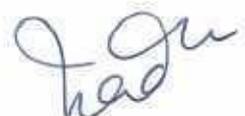
- That from the aforesaid provisions of Haryana Housing Board Act, 1971, it is clear that Housing Scheme by appellant is launched/framed strictly as per the provisions of Haryana Housing Board Act, 1971. The State Government has been empowered to grant sanction of the housing scheme. Therefore, the Haryana Housing Board cannot be acquired by the private developer, as the allotment of flats as per the scheme in the present case was to be made as per the housing scheme made under the provisions of the Housing Board Act, 1971.
- That while exercising powers under Section 74 of the Haryana Housing Board Act, 1971, the State of Haryana framed Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulation, 1972.
- That definition of an allottee is prescribed in Section 2(b) of Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulation, 1972.
- That it is clear from the application submitted by the complainant and the scheme that the flats were to be allotted on Hire Purchase Basis. The Hire Purchase is defined in Section 2(g) of the Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulations, 1972. From the perusal of the definition of hire purchase, it is clear that the

participants under the scheme can become the Allottee/ owner only after payment of all dues.

- That the allotment of tenements is provided in Regulation 3 of Housing Board Haryana (allotment, management and sale of tenements), Regulation, 1972. It prescribes that allotment has to be made as soon as the building is ready for occupation.
- That Regulation 4 of the Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulation, 1972 prescribes procedure of issuing notice for inviting applications and power of board to allot tenement (Houses).
- That the allotment of tenements (houses) is provided in Regulation 8 of Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulation, 1972. Said Regulation 8 provides allotment of tenements as per the terms of allotment and as per the provisions of these Regulations.
- That the allotment letter, condition of allotments are provided under Regulation 10 of the Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulation, 1972. From the perusal of Regulation 10, it is clear that the possession has to be given after the allotment is finalised by the Estate Manager. Therefore, unless and until the allotment is not issued, an applicant cannot be termed as an allottee. Hence, the complainant is not the allottee as per the definition of Housing

Board Haryana (Allotment, Management and Sale of Tenements), Regulation, 1972.

- That the complaint is liable to be dismissed on the ground that the complainant is not an allottee as per the definition of HRERA Act, 2016, which prescribes that an allottee does not include a person whom such plot, apartment or building, as the case may be given on rent. In the present case also, the complainant was neither given any allotment letter nor became the purchaser till the time all the installment are deposited by the complainant in pursuance to the scheme. However, as a matter of record, the housing scheme was scrapped and the amount, i.e., 25% deposited by the applicant was refunded along with the interest at the rate of 3.20% p.a.
- That due to technical reasons, the construction of the flats was not started. The complainant had requested for refund on 06.02.2019. Apart from this, many other allottees also requested to refund the entire amount paid by them. Some of the allottees cancelled the allotments and due to this reason, the appellant was not able to start the construction.
- That the important condition of the advertisement was specifically made clear to the complainant to the effect that Housing Board preserves the right to withdraw, amend, cancel the scheme at its discretion without assigning any reason. That the complainant while submitting the



application for flat specifically gave an undertaking to abide by the terms and conditions of the scheme.

- That the scheme of Type-A and Type-B for Sector-05, Rohtak was launched during the year 2014-2015 for which registration period was from 17.02.2014 to 15.05.2014. Due to insufficient applicants, the Board decided to scrap such scheme which is not viable and such scheme cannot be taken up for execution. That the Board reserves the right to withdraw/amend/cancel the scheme at its discretion without assigning the reasons. The scheme was scrapped vide letter dated 13.02.2023 and the details along with the reasons for scrapping of various Defence and other schemes launched by Housing Board Haryana is hereby attached as Annexure R-1.
- That as per Clause 5 of the Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulation, 1972, vide which it is mentioned that “where the Board fails to allot houses within a period of two years from closing date of registration, interest on amount paid with the application at the time of registration shall be payable for the period after the expiry of two years from the closing date of registration to the date of allotment or date of refund, whichever is earlier, at the rate applicable in the case of saving bank accounts of the nationalized banks.
- That it is pertinent to mention here that due to technical reasons, the construction of the same did not start due to non-approval of the project.

Hence, respondents have not been at fault and have acted genuinely, fairly, unarbitrarily, based on uniform approach and natural justice. That the respondents have started the refund to the applicants as per rules and regulations. Complainant has requested for refund on 06.02.2019.

- That the respondents have no profit motive, rather have made the mode of allotment easy for the public at large whether it is in terms of payment of installments or application for obtaining the flat under the scheme. Further, the respondents have completed the construction of the flats under the project spending their own money and have only taken the token/earnest money from the applicants who applied for the purchase of the flats and have not taken any money over and above the earnest money till the time of the allotment/offer of possession.
- That the complainant has not made the present complaint in accordance with the provisions contained in RERA Act.
- That the jurisdiction of RERA is barred as the Haryana Housing Board Act, 1971 is constituted by the Act of State Legislature which has received the assent of President of India. Article 254 of the Constitution provides that the Legislations passed by the State Legislature which has received the assent of the President of India has to prevail until and unless the State Legislature is repealed by the Parliament.
- That the complainant has portrayed the respondent as a Developer of Real Estate whereas Housing Board Haryana (hereinafter 'the Board) is an

establishment of Government of Haryana under the Haryana Housing Board Act, 1971 (Haryana Act No. 20 of 1971). Hence, the answering respondent is a statutory body and not a mere Real Estate Developer.

- That the relevant Regulations relating to refund as provided in Housing Board Haryana (Allotment, Management and Sale of Tenements), Regulation, 1972 are provided under Section and Section 13 of the said Act, which are reproduced as under-

"12. Refund of Amount of Initial Payment-

If the applicant withdraws his application till the date of offer of houses by the Board, 10% of the amount deposited with application at the time of registration shall be forfeited to the Board and balance refunded to him without any interest. This clause has been amended vide notification dated 14.01.2019 "if the applicant withdraws his application till the date of offer of houses by the Board, 50% of the amount deposited with application at the time of registration shall be forfeited to the Board and balance refunded to him without any interest."

"13. Compensation on Failure of allottee to take possession-
Where any applicant is allotted a tenement under those regulations but he fails to take possession of the same within a period of 30 days from the date of receipt of the allotment letter issued to him or surrenders the same at any time, his name shall be removed from the allotment register and 50% of the amount deposited with the application at the time of registration shall be forfeited to the Board and Balance refunded to him without interest."

- That the complaint is not maintainable under RERA Act because above said project was advertised in the year 2014. The RERA Act 2016 comes into effect from 25.03.2016. The Haryana Real Estate (Regulations and Development) Rules 2017 comes into the effect from 28.07.2017. It is



clearly mentioned in the rule that they shall come into force from the date of publication in the official gazette.

5. DETAILS OF ADDITIONAL DOCUMENTS FILED BY RESPONDENTS-

- i. Respondents on 09.01.2026 have placed on record proof of the refunded amount, i.e., ₹4,89,422/- to the complainant by the respondent.
- ii. Respondents on 04.02.2026 have filed written submissions in compliance with the order dated 12.01.2026. In this application, respondent reiterated that the present case is covered by the judgment passed by the Hon'ble Punjab and Haryana High Court in CWP No. 11163 of 2022 titled as "*Mahinder Singh @ Mohinder Singh V. State of Haryana and another*". In similar circumstances, Hon'ble High Court has passed the directions to refund the amount deposited in the year 2013-2014(as the case may be) along with the mean saving bank interest of SBI, running from the date of closing of the registration in respect of each scheme, by 30.06.2022 in case of the Defence Scheme Type-A Sampla, and till 31.10.2022 in the case of Employees Scheme, Jind Road, Rohtak. It is further stated that the said scheme being scrapped on 13.02.2023, the respondents have refunded the total amount of ₹3,93,000/- deposited by the complainant along with interest. The amount has been refunded in accordance with the law laid down by Hon'ble Punjab and Haryana



High Court in *Rajpal Gehlaut Case* (supra) and therefore, there is no coercion or forcible transfer of the amount.

6. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

During the course of hearing Ld counsel for the complainant and the respondent reiterated the pleadings mentioned in the written statements.

6. ISSUE FOR ADJUDICATION

- i. Whether the present complaint is maintainable under RERA Act 2016 in view of principle of *res judicata* under Section 11 of the CPC?
- ii. Whether the reliefs sought by the complainant can be granted to the complainant?

7. OBSERVATIONS OF THE AUTHORITY

- i. **Firstly, whether the present complaint is maintainable before the Authority or not?** The respondent has raised an objection regarding the maintainability of the present complaint on the ground that the issue involved in the present matter has already been adjudicated by the Hon'ble Punjab and Haryana High Court in *CWP No. 19124 of 2021* titled "*Raj Pal Singh Gahlaut Versus Housing Board Haryana and another*", wherein directions were issued to refund the amount deposited by the allottees along with mean savings bank interest of the State Bank of India after the scheme for allotment of multi-storeyed flats was scrapped. It has been submitted by the respondent that the refund to the



complainant has already been made in compliance with the directions issued by the Hon'ble High Court.

- Perusal of the said judgment reveals that the Hon'ble High Court had specifically referred to only two schemes, namely "Defence Scheme Type-A Sampla" and "Employees Scheme, Jind Road, Rohtak", which were stated to have been scrapped. The directions issued by the Hon'ble High Court for refund of the deposited amount along with mean savings bank interest of the State Bank of India were in the context of those schemes and the petitioners before the Hon'ble Court. Relevant part of the said judgment is reproduced below-

"...That being so, and with there being no challenge to the regulation itself in these petitions, they are disposed of with a direction to the respondents to refund, in the case of each petitioner, the entire amount of money deposited by him/her in the year 2013/2014 (as the case may be), along with the mean savings bank interest of the State Bank of India, running from the date of the closing of the registration in respect of each scheme, by 30.06.2022 in the case of the Defence Scheme Type-A Sampla, and till 31.10.2022 in the case of the Employees Scheme, Jind Road, Rohtak."

- In the present case, the complainant had applied under the scheme meant for "Serving/Ex-Defence and Para-Military Personnel of Haryana up to the rank of JCO & equivalent and their widows or orphans on Hire Purchase Basis at Rohtak Sector-5". The said scheme is distinct from the schemes specifically referred to in the aforesaid judgment of the Hon'ble High Court. In view of the above, this Authority is of the considered



opinion that the judgment relied upon by the respondent pertains to specific schemes and cannot automatically be extended to govern the present complaint. Consequently, the contention of the respondent that the refund already made in terms of the said judgment fully satisfies the claim of the complainant cannot be accepted.

- During the course of proceedings, learned counsel for the respondent had also contended that the complainant was a party in the aforesaid writ petition and therefore the present complaint is hit by the principle of res judicata. The complainant, however, denied the said contention and submitted that the Balwan Singh who was party in the said writ petition was son of Mange Ram, whereas the present complainant is Balwan Singh, son of Ramchandar. In view of this objection, the respondent was directed vide order dated 15.09.2025 to place on record material to substantiate that the present complainant was a party in the aforesaid writ petition. No conclusive material has been placed on record by the respondent to establish that the present complainant was a party to the said writ proceedings. In these circumstances, the plea that the present complaint is strictly barred by the principle of res judicata cannot be conclusively sustained.
- ii. **Secondly, findings on the objection raised by the respondent with respect to respondent not being a promoter and complainant not**



being an allottee. Respondent has taken another objection that it is a statutory body and not mere a real estate developer/promoter and the complainant is not an allottee of the project of the respondent. In this regard the Authority observes, it needs to be examined whether respondent (Housing Board Haryana) falls under the definition of promoter provided in RERA Act, 2016 and whether there exists a relationship of allottee and promoter between the complainant and respondent. For this purpose, the definition of “promoter” under section 2(zk) needs to be perused. Definition is provided below:

(zk) “promoter” means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

*(iii) any **development authority** or any other public body in respect of allottees of—*

*(a) **buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or***

*(b) **plots owned by such authority or body or placed at their disposal by the Government,***

for the purpose of selling all or some of the apartments or plots;
or



(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

- Plain reading of the definition given under section 2(zk) makes it clear that any development authority in respect of allottees of building/apartment, as the case may be, constructed by such authority for sale is a promoter in respect of allottees of those buildings/apartments. Here, Housing Board Haryana is a Development Authority and has issued an allotment letter to complainant on 12.02.2015 and issued provisional registration number 36/RTK05/T-B/HGB and final registration number 120 at Rohtak Sector-5. Hence, Housing Board is covered under the definition of promoter under section 2(zk).
- The flat was allotted by the respondent to the complainant-allottee. As per Section 2(d) of the RERA Act, "allottee" is defined as follows:

(d) "allottee" in relation to a real estate project, means the person to whom a plot apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or



otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given. on rent:

- As per Section 2(zj) & (zn) of the RERA Act. "project" & "real estate project" are defined respectively as follows:

(zj) "project" means the real estate project as defined in clause (zn):

(zn) "real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

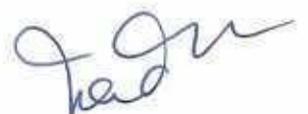
- A conjoint reading of the above sections shows that Housing Board Haryana is a promoter in respect of allottees of flats sold by it in its real estate project and therefore, there exists a relationship of an allottee and promoter between the parties. Since, the relationship of an allottee and promoter between complainant and respondent is established and the issues deals with real estate project developed by respondent, hence, provisions of RERA Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter.

Furthermore, the preamble of RERA Act, 2016 provides as under.

An Act to establish the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions,

directions or orders of the real estate regulatory authority and the adjudicating officer and for matters connected therewith or incidental thereto;

- The RERA Act, 2016 basically regulates relationship between buyer (i.e., allottee) and seller (i.e., promoter) of real estate, i.e., plot, apartment or building, as the case may be and matters incidental thereto. Hon'ble Bombay High Court in the case **Neelkamal Realtors Suburban Pvt. Ltd. and Ors. v. Union of India and Ors.** 06.12.2017 - BOMHC, observed: *"In my opinion RERA does not fall under Entry 42 in List III- Concurrent List of the Seventh Schedule, namely, Acquisition and requisitioning of property. RERA fall under Entry 6, namely, Transfer of property other than agricultural land; registration of deeds and documents, Entry 7-contracts, including partnership, agency, contracts of carriage and other special forms of contracts, but not including contracts relating to agricultural land and Entry 46, namely, jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in List III-Concurrent list of the Seventh Schedule".*
- The scope of this Act is limited to contracts between buyers and promoters and transfer to property. Both these items fall within the concurrent list III: Entry-6 and Entry-7 read with Entry-46. This Act regulates the transactions relating to the sale of above-mentioned real estate products, for an orderly growth of real estate market, by



protecting the interests of different stake holders in a balanced manner and facilitating the consumer/buyer to make informed choice. Therefore, the Authority has jurisdiction to decide the present matter.

iii. **Third issue arises with respect to jurisdiction of Authority being hit by the Article 254 of the Constitution of India.** Authority observes that the Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e., allottee) and seller (i.e., promoter) of real estate, i.e., plot, apartment or building, as the case may be and matters incidental thereto. The scope of this Act is limited to contracts between buyers and promoters and transfer to property. Both these items fall within the concurrent list III: Entry-6 and Entry-7 read with Entry-46. This Act regulates the transactions relating to the sale of above-mentioned real estate products, for an orderly growth of real estate market, by protecting the interests of different stakeholders in a balanced manner and facilitating the consumer/buyer to make informed choices. In support of the same, Hon'ble Bombay High Court in the case **Neelkamal Realtors Suburban Pvt. Ltd. and Ors. v. Union of India and Ors.** 06.12.2017 - BOMHC, observed: *"In my opinion RERA does not fall under Entry 42 in List III- Concurrent List of the Seventh Schedule, namely, Acquisition and requisitioning of property. RERA fall under Entry 6, namely, Transfer of property other than agricultural*

land; registration of deeds and documents, Entry 7- contracts, including partnership, agency, contracts of carriage and other special forms of contracts, but not including contracts relating to agricultural land and Entry 46, namely, jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in List III-Concurrent list of the Seventh Schedule"

iv. Next issue is whether the complainant is entitled for refund or not?

In this regard, it is an admitted fact that complainant had applied for allotment of flat under a scheme floated by respondent in 2014. Said scheme was aimed at providing houses to Serving/Ex-Defence and Para-Military Personnel of Haryana up to the rank of JCO & equivalent and their widows or orphans on Hire Purchase Basis at Rohtak Sector-5. The complainant after adjudging his own financial position and capability to purchase a house had applied in response to respondent's advertisement. The respondent within a reasonable time of booking was expected to complete all necessary steps for delivering possession of the purchased unit. After collecting money from the complainant, the respondent was not expected to prolong the completion of the project unreasonably because such conduct on his part was bound to frustrate the very benevolent purpose with which the scheme was formulated.



- The respondent in the present case has not completed the project within a reasonable time and has been utilizing an amount of ₹3,93,000/-, already paid by the complainant, for all these years without paying any interest. Such conduct of the respondent being unreasonable and unconscionable cannot be legally sustained.
- 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."

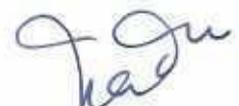
The decision of the Hon'ble Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking



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 a fit case for allowing refund in favour of complainant.

- It is not disputed that the complainant had deposited an amount of ₹1,57,000/- dated 30.06.2014 and ₹2,36,000/- dated 09.03.2015 towards the allotment of the flat under the aforesaid scheme. Respondent has been utilizing an amount of ₹3,93,000/-, already paid by the complainant for all these years without paying any interest and the complainant was never offered the possession of the allotted unit. In such circumstances, where the allottee has deposited the considerate amount, the allottee becomes entitled to refund of the amount deposited along with interest in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 and the rules framed thereunder. However, it is an admitted fact that the respondent has refunded the total amount of ₹3,93,000/- deposited by the complainant along with interest with the mean saving bank interest of SBI, i.e., @3.20% which becomes ₹4,89,422/-.

v. **Complainant in his complaint has sought refund of paid amount with interest @18%.** The definition of term 'interest' is defined under Section 2(z) 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 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".

- It is pertinent to mention here that the legislature in its wisdom in the subordinate legislation under the provisions 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.



- 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 16.03.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% , i.e., 10.80.
- 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 along with interest. Thus, respondent will be liable to pay the complainant, interest from date of payments till the date of refund, i.e., 23.06.2023. Further, as respondent had already refunded an amount of ₹4,89,422/- to the complainant on 23.06.2023, thus, respondent is liable to refund the balance principal amount, and interest w.r.t said amount from date of refund till the actual realization of the amount. Authority has got calculated the total amount along with interest as per detail given in the table below:

Sr.no.	Principal amount	Date of payments	Date of refund	Interest from date of payments till date of refund
1.	₹1,57,000/-	30.06.2014	23.06.2023	₹1,52,418/-
2.	₹2,36,000/-	09.03.2015	23.06.2023	₹2,11,515/-
	Total= ₹3,93,000/-			Total= ₹3,63,933/-

Total amount = (₹3,93,000/-) + (₹3,63,933/-) = ₹7,56,933/-

Paid = ₹4,89,422/-

Balance Amount = (₹7,56,933/-) - (₹4,89,422/-) = ₹2,67,511/-

Sr.no	Balance Amount	Date of refund	Date of order	Interest from date of refund till date of order
1.	₹2,67,511/-	23.06.2023	16.03.2026	₹78,996/-

Total amount to be refunded to the complainant =

$$(\text{₹}2,67,511/-) + (\text{₹}78,996) = \text{₹}3,46,507/-$$

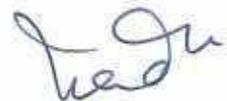
- vi. Further, the complainant is seeking compensation on account of mental harassment caused to the complainant and litigation expenses. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & 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 of litigation expenses.



8. DIRECTIONS OF THE AUTHORITY-

Hence, the Authority hereby passes this order in the present complaint 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) As respondent had already refunded an amount of ₹4,89,422/- to the complainant on 23.06.2023, thus, respondent is liable to refund the balance principal amount of ₹2,67,511/- alongwith interest from date of refund till the actual realization of the amount. However, for the purpose of calculation, interest of ₹78,996/- has been calculated by the Authority on balance amount of ₹2,67,511/- from 23.06.2023 till the date of this order. Therefore, the respondent is directed to refund the total amount of **₹3,46,507/-** to the complainant. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.



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



.....
NADIM AKHTAR
[MEMBER]

