



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

**Complaint no. : 3187 of 2021**  
**First date of hearing: 12.11.2021**  
**Date of decision : 12.07.2022**

M/s Yeti Knowledge Partners LLP through its authorized representative/signatory Mr. Nitin Kumar Gupta  
**Office at: - 302, Rasvilas District Center, Market, New Delhi- 110058**

**Complainant**

Versus

M/s Raheja Developers Limited.  
**Regd. Office at: W4D, 204/5, Keshav Kunj, Cariappa Marg, Western Avenue, Sainik Farms, New Delhi- 110062**

**Respondent**

**CORAM:**

Shri K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Sh. Gaurav Rawat (Advocate)  
Sh. Udayan Yadav  
Sh. Yash Sharma (A.R's)

Complainant

Respondent company

**ORDER**

1. The present complaint dated 27.08.2021 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 provision of the Act or the Rules and regulations made there under 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:

S. N.	Particulars	Details
1.	Name of the project	"Raheja's Aranya City", Sectors 11&14, Sohna Gurugram
2.	Project area	107.85 acres
3.	Nature of the project	Residential Plotted Colony
4.	DTCP license no. and validity status	i. 25 of 2012 dated 29.03.2012 valid up to 28.03.2018
5.	Name of licensee	Ajit Kumar and 22 Others
6.	Date of approval of building plans	29.01.2016
7.	RERA Registered/ not registered	Registered vide no. 93 of 2017 dated 28.08.2017
8.	RERA registration valid up to	27.08.2022
9.	Unit no.	Plot No. D-102 (Page no. 22 of the complaint)
10.	Unit area admeasuring	354.330 sq. yds. (Page no. 22 of the complaint)



11.	Allotment letter	20.11.2012 (Page no. 48 of the complaint)
12.	Date of execution of agreement to sell	20.11.2012 (Page no. 19 of the complaint)
13.	Possession clause	<b>4.2 Possession Time and Compensation</b> <i>That the Seller shall sincerely endeavor to give possession of the plot to the purchaser <b>within</b> thirty-six (36) months <b>from the date of the execution of the Agreement to sell</b> and after providing of necessary infrastructure specially road sewer &amp; water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. <b>However, the seller shall be entitled for compensation free grace period of six (6) months in case the development is not completed within the time period mentioned above.</b> In the event of his failure to take over possession of the plot, provisionally and /or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be lie at his/her risk and cost the purchaser shall be liable to pay @ Rs.50/- per sq. Yds. of the plot area per month as cost</i>



		<p><i>and the purchaser shall be liable to pay @ Rs.50/- per sq. Yards. Of the plot area per month as holding charges for the entire period of such delay..... "</i></p> <p>(Page no. 27 of the complaint).</p>
14.	Grace period	<p><b>Allowed</b></p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the part completion certificate by November 2015. As per agreement to sell, the construction and development work of the project is to be completed by November 2015 which is not completed till date. <b>Accordingly, in the present case the grace period of 6 months is allowed.</b></p>
15.	Due date of possession	<p><b>20.05.2016</b></p> <p><b>[Note: 36 months form the date of agreement to sell i.e., 20.11.2012 + six months grace period]</b></p>



16.	Complainant is subsequent allottee	The respondent has acknowledged the complainant as allottee vide nomination letter dated 18.04.2017 (Page 29 of reply) in pursuance of agreement to sell dated 22.10.2016 (Page 109 to 112 of reply) executed between the complainant and the original allottee.
17.	Basic sale consideration as per BBA at page 37 of complaint	Rs.1,18,66,486/-
18.	Total sale consideration as per applicant ledger dated 20.11.2017 at page 50 of complaint	Rs.1,24,05,382/-
19.	Amount paid by the complainant as per applicant ledger page no. 32 of reply	Rs.1,24,05,296/-
20.	Payment plan	Installment payment plan (Page no. 37 of the complaint).
21.	Occupation certificate /Completion certificate	Not received
22.	Offer of possession without obtaining part CC	17.11.2016 [Page no. 57 of reply]
22	Delay in handing over the possession till date of filing complaint i.e., 27.08.2021	5 years 3 months and 7 days



**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- I. That the complainant came across the advertisement in respect of the respondent company being already launched in the year 2012 and also discussed with the family members regarding the project specifically known as "Raheja Aranya Phase -II" situated in Sector 11 and 14 of Sohna, Gurugram. Pursuant to discussion regarding the project among the family members, complainant decided to enquire about the project from the telephone numbers provided in the advertisement.
- II. That the consequent to placing of the call for the purposes of the enquiring about the above project, customer care of the respondent company represented that the complainant is one of the largest real estate companies in India established in the year 1990. The company has always maintained path breaking status and has pioneered various firsts in India. From trend setting luxury housing to providing homes for the poorest section of Indian society, India's tallest skyscrapers to 165 acres of plotted township, changing the way people shop to changing the way people work, respondent achieved it all. It was further represented that in dynamic journey of last 30 years, respondent has collaborated with several top-notch names in the field of construction, innovation, design, architecture, cinema, and hotels



for e.g. The Leela Hotel, Tata Housing, L&T, Best Western, Ginger hotel to name a few of national alliances of respondent company. It was further represented that respondent has always been endeavouring the best and delivered the best, creating value for money for everyone.

- III. That respondent has further represented that the project namely Raheja Aranya City- The First Smart Green Township is spread over 153.6 acres. Every facet of the township is sheer symphony with nature's bounty, be it the never-ending Aravalli facing views or the amazing landscape of greenery with vast open spaces. It was further represented that with high standards of amenities and conveniences, the plotting township is all set to become the most demanding address of the area and the mega township is strategically located at South of Gurugram in Sec-11 & 14 in Sohna Development Plan-2031. The infrastructure of the city is being developed by Larsen & Toubro. It was specifically stated that project being Aranya city is a mega city with a complete integrated social infrastructure & facilities one need and aspire to enjoy a comfortable lifestyle. It was further represented that the project is strategically located adjacent to the Aravalli's making it a nature's paradise and the best township in Sohna. It was specifically represented that the township comprises of plots, premium apartments, schools & colleges, hospitals, dispensaries & nursing



homes, retail spaces, community activities, and recreational centres. It was further represented that it is Haryana's first integrated township planned in accordance with India's vision of creating smart cities with features like solar power generation, rainwater harvesting, solar street lighting, waste management systems, water recycling systems designed for zero discharge, Wi-Fi hotspot etc. and thus the complainant should not miss the opportunity to book a plot in the project.

- IV. That believing the representation of the official of the respondent, complainant has decided to book a plot in the project vide its application dated 04.08.2012, which had been duly conceded by both the parties and accordingly a plot bearing No. D 102 admeasuring 354.330 sq. yards.
- V. That the agreement to sell contemplated terms and conditions with respect to the consideration, payment plan, possession, maintenance charges, obligations of the respective parties etc. and according to the article 3 clause 3.1 the rate of Rs.28575/- per sq. yards being fixed as the basic sale price and which for the area of the plot of the complainant comes to be Rs.1,01,24,980/- excluding other charges.
- VI. That as clause 3.6 of the same very article 3 provides for the consequences to arise out of the delay to incur in remitting the demanded payment of the respondent and provides for levying of





an interest @18% per annum for the period of delay vis a vis right to vest in the respondent to cancel the plot and such additional action as deems fit. The respondent in exercise of its dominant position has devised clause 3.12 articulating the same being time is the essence only with malafide intention to fetch payments from the gullible customers. Further, as per Article 4 of the agreement to sell provides for the possession and clause 4.2 specifically contemplate that promoter shall sincerely endeavour to give possession of the plot within a period of 36 months from the date of the execution of the agreement to sell and respondent in exercise of its dominant position further arbitrarily kept 6 months grace period.

- VII. That consequences of failure in handing over possession of the plot within 36 months excluding grace period of 6 months is also envisaged in clause 4.2 which provides for the simple unequitable compensation @ Rs.50/- per sq. yards. of the plot area per month to be payable to the complainant.
- VIII. That the complainant further submitted that 4.4 sub para contemplates an eventuality wherein it was undertaken by the promoter that if abandon the said project for any other reason not being stated in the agreement to sell, the promoter shall be liable to refund the amount to the purchaser/complainant with an interest @10% p.a.



- IX. That the complainant with bonafide intention to perform its obligations set forth in the agreement to sell, had also availed loan facility to the tune of Rs.85,00,000/- from the ICICI bank and made the payment according to terms and conditions/annexure w.r.t. plan for payment. That complainant has also repaid the loan to the bank and obtained the no dues letter.
- X. That the with malafide intention and ulterior motives has syphon the payment to some other things and abandoned the project without having any hope to the customers of its being completed. The malafide intention of the respondent was manifest from the letter of offer of possession being issued in 2016 without having requisite formalities complied for the same and only to fetch the hard-earned money of the customers.
- XI. That the complainant had no trust in the promoter, and it is beyond imagination that respondent is going to complete the project the in near future, leaving no alternative respite to complainant except to seek refund of the payment made from time to time along with interest @18% p.a. from the date of payment till its actual realisation.
- XII. Therefore, the complainant most respectfully prays to allow the present complaint for refund of the amount paid till date with interest at the prevailing rate of interest.



**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s).
  - i. For the refund of the amount of Rs.1,01,11,047/- paid till date along with interest @18% per annum in view of the equity and natural justice.
  - ii. Be directed to pay a sum of Rs.20,00,000/- as damages/compensation on account of mental harassment and torture suffered by the complainant in the hands of the respondent.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent contested the complaint on the following grounds: -
  - I. That the present complaint, so preferred under the Act of 2016, is not maintainable as the complainant has failed to disclose any maintainable cause of action under the said provisions of the Act as alleged. That section 19 of the Act of 2016 clearly prescribes the rights and duties of the allottees.
  - II. That the complainant after checking the veracity of the project namely, 'Raheja Aranya City' had applied for allotment of the unit in the said project. That the complainant being the subsequent allottee subsequently purchased the said plot in the said project



after checking the veracity of the project from the original allottee, which was affirmed by the respondent dated 18.04.2017 by the subsequent allottee i.e., the complainant. As per clause 7.4 of the agreement to sell, the original allottees (Neera Tiwari and Chander Prakash Tiwari) endorsed the unit in favour of the complainant which was affirmed by the respondent. Confirming them with all rights and duties to the agreement to sell for the sum of Rs.70,00,000/-. In view of application form subsequent to the issuance of the nomination letter by the respondent was allotted the plot no. D-102, admeasuring 354.33 sq. yards. Sector- 11 & 14, Sohna, Gurugram for the total sale consideration of Rs.1,22,01,556/-.

- III. That booking of the said allotted unit was done prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA 2016") and the provisions laid down in the said Act cannot be applied retrospectively. Although the provisions of the Act of 2016 are not applicable to the facts of the present case in hand yet without prejudice and in order to avoid complications later on, the respondent has registered the project with the authority. The said project is registered under the Act of 2016 vide registration no. 93 of 2017 dated 28.08.2017.
- IV. That the complainant was very well aware of the fact that the "Raheja's Aranya City" completed the project within the stipulated

period of time i.e., 2016 and subsequent to which in the year 2016, the respondent received the occupational certificate. It is further to note that the complainant had the knowledge that the original allottee received the letter of possession dated 17.11.2016 from the respondent before the complainant purchased the said plot from the original allottee.

- V. That, the original allottee transferred the said unit to the complainant vide letter dated 14.12.2016 in the form of "letter from the transferor/current allottee". The said letter of intent to transfer the rights was duly accepted making the complainant legally binding to accept the possession of the unit dated 17.11.2016 which was sent much prior to the transfer.
- VI. That on the same day i.e., dated 14.12.2016, the respondent issued a letter to the complainant in the name of "letter from the transferee" wherein the complainant duly acknowledged the same waiving the rights to question or to receive any compensation for any delay. While entering the agreement with the respondent, the complainant was duly satisfied and convinced that the original allottees received the possession letter meaning that the said unit was ready to use. It is pertinent to note that complainant in the present situation exhausted all its remedies i.e., "Doctrine of Waiver" especially under section 63 of the Contract Act, 1872.

- VII. That, even otherwise the complainant being well aware of the status of the project and more particularly the status of the delivery of the plot that the original allottee received the letter of possession, the complainant took a conscious call in seeking the assignment/endorsement/substitution of the allotment rights in the specific plot. Also, before lodging their application for the due assignment/endorsement/substitution of the allotment rights in the specific plot, the subsequent purchaser had executed various documents and had also visited the office of the respondent to understand the contractual obligations and rights and now when the possession has been offered, the complainant cannot assert his/her/their rights independent of the various deeds, documents, affidavits, undertakings, bonds, declarations etc. and is bound by the covenants as agreed to and as set out therein. It is submitted that such voluntarily and consciously executed indemnity cum undertaking should be held to be binding upon the transferee with full force and effect.
- VIII. That, furthermore, in cases where physical possession has been delivered and marketable title of the apartment has been transferred validly and legally by them in favour of the complainant, the respondent stands absolved of all claims which can be voiced by the allottee against the respondent. The invoking of jurisdiction of this authority pursuant to the letter of possession



as well as after receiving of the occupational is absolutely illegal and tantamount to misuse of process of law.

- IX. Therefore, it would not be out of place to state that the complainant has no cause of action to file the present complaint as the complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the agreement to sell dated 20.11.2012 and in pursuant to which, both the i.e., the original allottees and the subsequent allottee executed a supplement/fresh agreement to sell dated 22.10.2016 which enunciated the supplement rights and liabilities of the subsequent allottee i.e., the complainant.
- X. That the complainant is an investor and booked the unit in question to yield gainful returns by selling the same in the open market, however, due to the ongoing slump in the real estate market, the complainant has filed the present complaint to wriggle out of the agreement. The complainant does not come under the ambit and scope of the definition an allottee under section 2(d) of the Act, as the complainant is an investor and booked the unit in order to enjoy the good returns from the project.
- XI. That the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in short period. However, it appears that the calculations have gone down on account of severe slump in the real estate market and the



complainant is now raising untenable and illegal pleas on the highly flimsy and baseless grounds. Such mollified tactics of the complainant cannot be allowed to succeed.

- XII. That the complainant, thus, has approached the authority with unclean hands and has suppressed and concealed material facts and proceedings which have a direct bearing on the very maintainability of the complaint and if there had been disclosure of these material facts and proceedings, the question of entertaining the complainant would not have arisen.
- XIII. That it is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
- XIV. That with the issuance of possession letter and acquiring of the occupational certificate, the respondent has completely fulfilled all its obligation and compliances to the agreement to sell.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.
8. The application/complaint filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the





judgement quoted above, the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.5.2022 in **CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP** and observed that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.

9. Keeping in view the judgement of Hon'ble Supreme Court in case titled as **M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. 2021-2022(1) RCR(c), 357** the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/CRA. Both the parties want to proceed further in the matter accordingly. The Hon'ble Supreme Court in case of **Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019** decided on 01.03.2019 has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the facts



mentioned in the pleading and submissions made by both the parties during the proceedings.

**E. Jurisdiction of the authority**

10. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

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

**Section 11**

.....

(4) The promoter shall-

*(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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees 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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

13. 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
14. 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. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** 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."*

15. 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 objections raised by the respondent**

**F.I. Objections regarding the complainant being investor.**

16. The respondent has taken a stand that the complainant is an investor and not a consumer, therefore, it is not entitled to the protection of the Act and thereby is not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is a settled principle of interpretation that the preamble is an introduction of a statute and states its main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and has paid a total price of **Rs.1,24,05,296/-**



to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(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;"*

17. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement cum provisional allotment letter executed between promoter and complainant, it is crystal clear that it is an allottee(s) as the subject unit allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

**F. II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.**



18. Objection raised the respondent that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having



*a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

19. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

20. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of



any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

**G. Findings on the relief sought by the complainants.**

**G.I Complainant most respectfully prays for the refund of the amount of Rs.1,01,11,047/- paid till date along with interest @18% per annum in view of the equity and natural justice. The relief the present clause is sought under section 18 read with section 12 of the Act of 2016.**

21. The complainant is a subsequent allottee. The subject plot was originally allotted to Neera Tewari. A flat buyer's agreement was executed in this regard on 20.11.2012. As per clause 4.2 of the agreement to sell, the respondent was to handover the possession of the allotted unit within a period of 36 months from the date of execution of agreement to sell plus six months grace period. Therefore, the due date for handing over of possession comes out to be 20.05.2016. The respondent has offered the possession of the subject plot vide letter dated 17.11.2016 to the original allottee but without obtaining part completion certificate of the project. Vide nomination letter dated 18.04.2017, the original allottee transferred all the rights and liabilities in relation to subject unit in the favour of present allottee i.e., M/s Yeti Knowledge Partners LLP.

The authority in complaint bearing no. **5137 of 2019 titled as Dr. Ashok Kumar Vaid and anr. Versus Emaar MGF Land Ltd.**, has comprehensively dealt with the components of valid offer of possession and the same as follow:





- I. The possession must be offered after obtaining part CC/CC;
- II. The subject plot should be in habitable condition;
- III. The possession should not be accompanied by unreasonable additional demands.

In the present complaint, the respondent has offered the possession of the subject unit vide possession letter dated 17.11.2016 without obtaining part/completion certificate of the project to the original allottee. Therefore, the said offer of possession dated 17.11.2016 is not valid in the eyes of law.

22. Considering the above-mentioned facts and according to clause 4.2 of the agreement to sell dated 20.11.2012, the developer was liable to offer the possession, within a period of 36 months from the date of execution of agreement to sell plus six months grace period. Therefore, the due date for handing over of possession comes out to be 20.11.2015. The authority has decided this issue in the complaint bearing no. **4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that in cases where subsequent allottee has stepped into the shoes of original allottee after the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to refund of the entire amount paid by him from the date of each payment paid by the allottee (either original or subsequent) till the actual date of refund of the amount.
23. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided 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)*

24. Article 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

**4.2 Possession Time and Compensation**

*That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser **within** thirty-six (36) months in respect of 'TAPAS' Independent Floors **and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell** and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. **However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above.** The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser*



*for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay.....”*

25. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such a clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.



26. **Due date of handing over possession and admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by November 2015. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay in completion of the project. Accordingly, in the present case the grace period of 6 months is allowed.

27. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by her at the rate of 18%. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by her in respect of the subject unit with 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.*

28. 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.

29. 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., 12.07.2022 is **7.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **9.70%**.
30. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1)**, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement to sell dated form executed between the parties on 20.11.2012, the possession of the subject unit was to be delivered within a period of 36 months from the date of execution of buyer's agreement which comes out to be 20.11.2015. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 20.05.2016. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottee intends to withdraw from the project and is



well within its right to do the same in view of section 18(1) of the Act, 2016.

31. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

*"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

32. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. it was observed

*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."*

33. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as 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 the unit with interest at such rate as may be prescribed.
34. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by it at the prescribed rate of interest i.e., @ 9.70% 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 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.



**G.II The respondent may also be directed to pay a sum of Rs.20,00,000/- as damages/compensation on account of mental harassment and torture suffered by the complainant in the hands of the respondent.**

35. 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**H. Directions of the authority**

36. 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 the amount i.e., Rs.1,24,05,296/- received by it from the complainant along with interest at the rate of 9.70% p.a. as prescribed under rule 15





of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

- 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.

37. Complaint stands disposed of.

38. File be consigned to registry.

*V.K. Goyal*  
**(Vijay Kumar Goyal)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

*[Signature]*  
**(Dr. K.K. Khandelwal)**

Chairman

Dated: 12.07.2022