BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 29.07.2022

NAME OF THE BUILDER		RAMPRASTHA PROMOTERS AND DEVELOPERS PRIVATE LIMITED	
PROJECT NAME		THE SKYZ	
S. No.	Case No.	Case title	Appearance
1	CR/1119/2018	Sonal Bhardwaj and Himani Bhardwaj V/S M/s Ramprastha Promoter & Developers Private Limited	Shri Sushil Yadav Shri Dheeraj Kapoor
2	CR/1409/2018	Ritesh Kumar Singh V/S M/s Ramprastha Promoter & Developers Private Limited	Ms. Pooja Sarin Shri Dheeraj Kapoor
3	CR/23/2019	Mohit Bhanot and Ranjana Bhanot V/S M/s Ramprastha Promoter & Developers Private Limited	Shri Sushil Yadav Shri Dheeraj Kapoor
4	CR/6705/2019	Ashutosh Maheshwari V/S M/s Ramprastha Promoter & Developers Private Limited	Shri Abhijeet Gupta Shri Dheeraj Kapoor
5	CR/4777/2020	Allison Pyster V/S M/s Ramprastha Promoter & Developers Private Limited and others	Shri Raghavendra Singh Shri Dheeraj Kapoor
6	CR/483/2021	Rekha Mehta V/S M/s Ramprastha Promoter & Developers Private Limited and others	Shri Pardeep Khatana Shri Dheeraj Kapoor
7	CR/1541/2021	Neelam Choudhary V/S M/s Ramprastha Promoter & Developers Private Limited and others	Shri Hemant Kumar Sagar Shri Shokat Sinha

CORAM:

Dr. K.K. Khandelwal — **Chairman**

Shri Vijay Kumar Goyal — **Member**

ORDER

1. This order shall dispose of all the 7 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, The Skyz at Ramprastha City (group housing complex) being developed by the same respondent/promoter i.e., M/s Ramprastha Promoter & Developers Private Limited. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of Refund the entire amount along with intertest and the compensation.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	**Ramprastha Promoters and Developers Limited "The Skyz" Sector-37C, Village Gadauli Kalan, Gurugram.**
Possession Clause: - 15. (a) Time of handing over the Possession *"Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities,*	

documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over the possession of the Apartment ***by 31.08.2014 the*** *Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace* period of hundred and twenty days (120) days, *for applying and obtaining the occupation certificate in respect of the Group Housing Complex."* **(Emphasis supplied)**
Occupation certificate: - ➢ OC received dated 13.12.2017 for towers/block- U, V, W, X, Y, Z for ground to 13th floor. ➢ OC received dated 13.02.2018 for tower/block- I, J, K, L, M for ground floor to 19th floor and basement-1 (73568.049 sq. meter.) ➢ OC received dated 13.02.2020 for towers/block- H, N, O for ground floor and 19th floor and convenient shopping centre (block-B) and basement- B.
Note: Grace period is not included while computing due date of possession.

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of apartment buyer agreement	Due date of possession	Total Consideration / Total Amount paid by the complainants	Relief Sought
1.	CR/1119/2018 Sonal Bhardwaj and Himani Bhardwaj V/S M/s Ramprastha Promoter & Developers Private Limited. Date of Filing of complaint 28.09.2018	Reply Received on 18.10.2018	1701, 17th floor, tower /block -A [Page no. 19 of the complaint]	17.09.2011 [page 15 of complaint]	31.08.2014 [As per mentioned in the buyer's agreement]	TSC: - Rs.78,10,763/- AP: - Rs.71,08,239/-	Refund the entire amount along with interest
2.	CR/1409/2018 Ritesh Kumar	Reply Received on	702, 7th floor, tower	10.01.2012	31.08.2014 [As per mentioned	TSC: - Rs.70,08,453/-	Refund the entire amount

	Singh V/S M/s Ramprastha Promoter & Developers Private Limited Date of Filing of complaint 25.10.2018	18.08.2021	/block - B (Page no. 29 of the complaint)	(Page no. 25 of the complaint)	in the buyer's agreement]	AP: - Rs.61,19,896/-	along with interest
3.	CR/23/2019 Mohit Bhanot and Ranjana Bhanot V/S M/s Ramprastha Promoter & Developers Private Limited Date of Filing of complaint 03.01.2019	Reply Received on 20.09.2019	402, 4th floor, tower /block - H (Page no. 21 of the complaint)	05.04.2012 (Page no. 16 of the complaint)	31.08.2014 [As per mentioned in the buyer's agreement]	TSC: - Rs.91,15,640/- AP: - Rs.79,99,653/-	Refund the entire amount along with interest
4.	CR/6705/2019 Ashutosh Maheshwari V/S M/s Ramprastha Promoter & Developers Private Limited Date of Filing of complaint 24.12.2019	Reply Received on 10.08.2021	803, 8th floor, tower /block - C (Page no. 13 of the complaint)	26.11.2011 (Page no. 11 of the complaint)	31.08.2014 [As per mentioned in the buyer's agreement]	TSC: - Rs.69,18,700/- AP: - Rs.60,42,457/-	Refund the entire amount along with interest and compensation
5.	CR/4777/2020 Allison Pyster V/S M/s	Reply Received on 08.02.2021	704, 7th floor, tower	12.09.2011 (Page no. 32 of the complaint)	31.08.2014 [As per mentioned in the	TSC: - Rs.70,14,525/-	Refund the entire amount along

	Ramprastha Promoter & Developers Private Limited and others Date of Filing of complaint 23.12.0220		/block - F (Page no. 36 of the compl aint)		buyer's agreement]	AP: - Rs.61,89,642/-	with interest and compen sation
6.	CR/483/ 2021 Rekha Mehta V/S M/s Ramprastha Promoter & Developers Private Limited Date of Filing of complaint 28.01.2021	Reply Received on 19.03.2021	401, 4th floor, tower /block - F (Page no. 38 of the compl aint)	26.08.2014 (Page no. 34 of the complaint)	31.08.2014 [As per mentioned in the buyer's agreement]	TSC: - Rs.68,29,125/- AP: - Rs.61,75,661/-	Refund the entire amount along with interest and compen sation
7.	CR/1541/ 2021 Neelam Choudhary V/S M/s Ramprastha Promoter & Developers Private Limited and others Date of Filing of complaint 13.04.2021	Reply Received on 17.08.2021	1301, 13th floor, tower /block - C (As per allotm ent letter dated 21.12. 2011 page no. 19 of the compl aint)	31.08.2014 *(Possession clause taken from the BBA annexed in complaint no. 4777-2021 of the same project being developed by the same promoter)*	31.08.2014 [As per mentioned in the buyer's agreement]	TSC: - Rs.77,08,967/- AP: - Rs.69,38,070/-	Refund the entire amount along with interest and compen sation

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
TSC	Total Sale consideration
AP	Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s)are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/1119/2018 titled as Sonal Bhardwaj and Himani Bhardwaj V/S M/s Ramprastha Promoter & Developers Private Limited*** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.

A. Project and unit related details

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

CR/1119/2018 titled as Sonal Bhardwaj and Himani Bhardwaj V/S M/s Ramprastha Promoter & Developers Private Limited

S. N.	Particulars	Details
1.	Name of the project	"SKYZ", Sector 37C, Village Gadauli Kalan, Gurugram
2.	Project area	60.5112 acres
3.	Registered area	102000 sq. mt.
4.	Nature of the project	Group housing complex
5.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid upto 18.02.2025
6.	Name of licensee	Ramprastha Builders Pvt Ltd and 11 others
7.	Date of approval of building plans	12.04.2012 [As per information obtained by planning branch]
8.	Date of environment clearances	21.01.2010 [As per information obtained by planning branch]
9.	RERA Registered/ not registered	**Registered vide no. 320 of 2017 dated 17.10.2017**
10.	RERA registration valid up to	31.03.2019
11.	Extension applied on	17.06.2020

12.	Extension certificate no.	**Date**	**Validity**
		In principal approval on 12.06.2019	30.03.2020
13.	Unit no.	1701, 17th floor, tower/block- A (Page no. 19 of the complaint)	
14.	Unit area admeasuring	1725 sq. ft. (Page no. 19 of the complaint)	
15.	Date of application of allotment	26.08.2011 [Page no. 41 of the complaint]	
16.	Allotment letter	12.09.2011 (Page no. 48 of the complaint)	
17.	Date of execution of apartment buyer agreement	17.09.2011 (Page no. 15 of the complaint)	
18.	Possession clause	15. **POSSESSION** **(a) Time of handing over the Possession** Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities,	

		documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over ***the possession of the Apartment by 31.08.2014 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.*** **(Emphasis supplied)** (Page no. 29 of the complaint)
19.	Grace Period	**Not utilized** The promoter has proposed to hand over the possession of the apartment by 31.08.2014 and further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the promoter in the apartment buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 120

		days cannot be allowed to the promoter at this stage.
20.	Due date of possession	31.08.2014 [As per mentioned in the buyer's agreement]
21.	Total sale consideration	Rs.78,10,763/- (As per payment plan page no. 45 of the complaint)
22.	Amount paid by the complainants	Rs.71,08,239/- (As per receipt information page no. 43 of the reply)
23.	Payment plan	Possession linked payment plan [As per schedule of payment page no. 45 of the complaint]
24.	Occupation certificate /Completion certificate	Not received
25.	Offer of possession	Not offered
26.	Delay in handing over the possession till date of filing complaint i.e., 25.09.2018	4 years and 25 days

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -

I. That the respondent gave advertisement in various leading Newspapers about their forthcoming project named Ramprastha "Skyz" in Sector 37C, Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promises and undertakings given by the respondent in the aforementioned, the complainants booked an apartment/flat admeasuring 1725 sq.ft. i.e., in aforesaid project of the respondent for total sale consideration of Rs.78,10,763/- which includes BSP, car parking, IFMS, club membership, PLC etc. They made payment of Rs.71,08,239/- to the respondent vide different cheques on different dates.

II. That as per apartment buyer's agreement, the respondent allotted a unit/flat bearing no A-1701 on 17th floor in Tower-A having super area of 1725 sq. ft. to the complainants. That as per clause no. 15(a) the respondent agreed to deliver the possession of the unit latest by 31.08.2014 as per the date of signing of the apartment buyer's agreement dated 17.09.2011 with an extended period of 4 months.

III. That complainants regularly visited the site but were surprised to see that construction work was not in progress and no one was present at the site to address their queries. It appears that respondent has played fraud upon the complainants. The only intention of the respondent was to take payments for the tower without completing the work. The respondent with mala-fide and dishonest motives cheated and defrauded the complainant. That despite receiving of 85-90% approximately payment of all the demands raised by the

respondent for the said unit and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent failed to deliver the possession of the allotted unit to them within stipulated period.

IV. That it could be seen that the construction of the block in which the complainant's unit was booked with a promise by the respondent to deliver the unit by 31.08.2014 but was not completed within time for the reasons best known and which clearly shows the ulterior motive of the respondent was to extract money from the innocent people fraudulently.

V. That due to this omission on the part of the respondent, the complainants have been suffering from disruption in living arrangements, mental torture, agony and also continue to incur severe financial losses. This could be avoided if the respondent had given possession of the unit on time. That as per clause 17 (a) of the apartment buyer's agreement dated 17.09.2011 it was agreed by the respondent that in case of any delay, it would pay to the complainants a compensation @ Rs.5/- per sq.ft. per month of the super area of the apartment/unit. It is, however, pertinent to mention here that a clause of compensation at a such of nominal rate of Rs.5/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainants by not providing the possession of the unit even after a delay of such a long period from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen

here that the respondent has incorporated the clause in one sided buyer's agreement and offered to pay a sum of Rs.5/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @1% per annum rate of interest whereas the respondent charges 18% per annum interest on delayed payment.

VI. That on the ground of parity and equity, the respondent also be subjected to pay the same rate of interest. Hence, the respondent is liable to pay interest on the amount paid by the complainants @ 18%per annum to be compounded from the promised date of possession.

VII. That the complainants requested several times by making telephonic calls and also personally visiting the office of the respondent either to deliver possession of the unit in question or to refund the amount along with interest @ 18% per annum on the amount deposited by them, but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainants with their hard-earned amount and wrongfully gained itself and caused wrongful loss to them.

VIII. The complainants have taken a loan of Rs.58,58,072/- from HDFC @ 10.15 % for which they are paying EMI per month. The complainants visited the site but were shocked to see that no construction was going on. They are paying so much amount to the bank on account of EMI of loan availed by them.

C. Relief sought by the complainants: -

9. The complainants have sought following relief(s):

   I. Direct the respondent to refund the amount of Rs.71,08,239/- along with 18% interest per annum on compounded rate from the date of booking from the flat in question.

   II. Any other relief which this hon'ble authority deems fit and proper may also be granted in favour the complainants.

10. 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

11. The respondent has filed an application for rejection of complaint on the ground of jurisdiction along with reply. The respondent has contested the complaint on the following grounds.

   I. That the complaint filed by the complainant is not maintainable and the authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has also separately filed an application for rejection of the complaint on the ground of jurisdiction and the reply is without prejudice to the rights and contentions contained in the said application.

   II. That the complaints pertaining to compensation and interest for grievances under section 12, 14, 18 and 19 of the Act, 2016 are required to be filed before the adjudicating officer under rule-29 of the rules, 2017 read with section 31 and section 71 of the said Act and not before this authority under rule-28.

III. The complaint pertains to the alleged delay in delivery of possession for which the complainants have filed the present complaint and are seeking the relief of refund, interest, and compensation u/s 18 of the said Act. Therefore, even though the project of the respondent i.e., "SKYZ" Ramprastha City, Sector-37D, Gurgaon is covered under the definition of "ongoing projects" and registered with this authority, the complaint, if any, is still required to be filed before the adjudicating officer under rule 29 of the said rules and not before this authority under rule 28 as this authority has no jurisdiction whatsoever to entertain such complaint and is liable to be rejected.

IV. That without prejudice to the above, the position is further substantiated by the proviso to section 71 which clearly states that even in a case where a complaint is withdrawn from a Consumer Forum/Commission/NCDRC for the purpose of filing of an application under the said Act and the said rules, the application, if any, can only be filed before the adjudicating officer and not before the authority.

V. That the complaint is not supported by any proper affidavit with a proper verification. In the absence of a proper verified and attested affidavit supporting the complaint, the complaint is liable to be rejected.

VI. That the complainants are investors and not consumers and nowhere in the complaint, the complainants pleaded as to how they are consumers as defined in the Consumer Protection Act, 1986 qua the respondent. The complainants have deliberately not pleaded the

purpose for which the complainants have entered into an agreement with the respondent to purchase the apartment in question. The complainants, who are already the owner and resident of D-504, Sun Tower, Shipra Suncity, Indirapuram, Ghaziabad, U.P. 201014 (address mentioned in the booking application form, apartment buyer's agreement and in the present complaint) are investors, who never had any intention to buy the apartment for own personal use and kept on avoiding the performance of contractual obligations of executing the apartment buyer agreement and making timely payments and have now filed the present complaint on false and frivolous grounds.

VII. That this authority has no jurisdiction to entertain the present complaint as the complainants have not come this authority with clean hands and have concealed the material fact that they are defaulter, having deliberately failed to make the payment of installments within the time prescribed, with delay payment charges, as reflected in the statement of account.

VIII. Despite several adversities, the respondent continued with the construction is in the process of completing the project and should be able to apply the occupation certificate for the apartment in question by 31.03.2019 (as mentioned at the time of registration of the project with this authority). However, the complainants are only short term and speculative investors, and are not interested in taking over the possession of the said apartment. Moreover, due to slump in the real estate market, the complainants failed to make the

payments in time. It is apparent that the complainants had the motive and intention to make quick profit from sale of the said apartment through the process of allotment. Having failed to resell the said apartment due to general recession, the complainants have developed an intention to raise false and frivolous issues to engage the respondent in unnecessary, protracted and frivolous litigation. The alleged grievance of the complainants has the origin and motive in sluggish real estate market.

IX. That this authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement signed by the complainants /allotment offered to them.

X. That the proposed estimated time of handing over the possession of the said apartment i.e., 31.08.2014 plus 120 days, comes to 31.12.2014, and is applicable only subject to force majeure and the complainants having complied with all the terms and conditions and not being in default of any the terms and conditions of the apartment buyer agreement, including but not limited to the payment of instalments. In case of any default/delay in payment, the date of handing over of possession was to be extended accordingly solely at the respondent's discretion, till the payment of all outstanding amounts and at the same time in case of any default, the complainant would not be entitled to any compensation whatsoever in terms of clause 15 and clause 17 of the apartment buyer agreement.

XI. That section 19(3) of the Act provides that the allottee shall be entitled to claim the possession of the apartment, plot, or building, as the case may be, as per the declaration given by the promoter under section 4(2)(l)(C). The entitlement to claim the possession or refund would only arise once the possession has not been handed over as per the declaration given by the promoter under section 4(2)(l)(C). In the present case, the respondent had made a declaration in terms of section 4(2)(l)(C) that it would complete the project by 31.03.2019 and has also applied for a further extension of one year with the revised date as 31.12.2020. Thus, no cause of action can be said to have arisen to the complainants in any event to claim possession or refund, along with interest and compensation, as sought to be claimed by them.

XII. The projects in respect of which the respondent has obtained the occupation certificate are described as hereunder: -

S. No	Project Name	No. of Apartments	Status
1.	Atrium	336	OC received
2.	View	280	OC received
3.	Edge		
	Tower I, J, K, L, M	400	OC received
	Tower H, N	160	OC received
	Tower-O	80	OC received
	(Nomenclature-P)	640	

	(Tower A, B, C, D, E, F, G)		OC to be applied
4.	EWS	534	OC received
5.	Skyz	684	OC to be applied
6.	Rise	322	OC to be applied

12. 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 submission made by the parties.

13. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement ***M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. SPL(Civil) No. (S). 3711-3715 OF 2021)***, 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 was 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.

14. 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. (Supra) 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 pleadings and submissions made by both the parties during the proceedings.

E. Jurisdiction of the authority

15. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

16. As per notification no. ***1/92/2017-1TCP dated 14.12.2017*** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District.

Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

17. 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.*

18. 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 complainants at a later stage.

19. 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. (Supra) 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."*

20. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases 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 Objection regarding the complaint not signed and proper verified.

21. The counsel for the respondent has raised a contention that the complaint is neither signed nor supported by any proper affidavit with a proper verification. The authority observes that the complaint is signed by the

complainants and their counsel, and the affidavit is attested by the Notary Government of India vide Regd. No. 4797, Gurugram on 25.09.2018. So, the plea of the respondent is liable to be dismissed.

F. II Objection regarding handing over possession as per declaration given under section 4(2)(l)(C) of RERA Act.

22. The counsel for the respondent has stated that the entitlement to claim possession or refund would arise once the possession has not been handed over as per declaration given by the promoter under section 4(2)(l)(C). Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act.

23. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.

24. Section 4(2)(l)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(l)(C) of the Act and the same is reproduced as under: -

> *Section 4: - Application for registration of real estate projects*
>
> *(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —.....*
>
> *(l): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: — .....*

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be....."

25. The time period for handing over the possession is committed by the builder as per the relevant clause of apartment buyer agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the apartment buyer agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(l)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as ***Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors***. W.P 2737 of 2017 decided on 06.12.2017 and observed 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..."

F. III Objections regarding the complainants being investors

26. The respondent has taken a stand that the complainants are the investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby 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 consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states 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 complainants are buyers and paid total price of **Rs.71,08,239/-** 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;"*

In view of above-mentioned definition of "allottees" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottee as the subject unit was allotted to them 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 allottees being investors are not entitled to protection of this Act also stands rejected.

F. IV Objection regarding jurisdiction of authority w.r.t. booking application form executed prior to coming into force of the Act.

27. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the booking application form 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 would 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, (Supra)*** 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."*

28. 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."*

29. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer 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 Direct the respondent to refund the amount of Rs.71,08,239/- along with 18% interest per annum on compounded rate from the date of booking from the flat in question.

30. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them 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)*

31. Clause 15(a) of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

> ***"15. POSSESSION***
> ***(a). Time of handing over the possession***
> *Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over the possession of the Apartment by 31/08/2014 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120)*

days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."

32. The authority has gone through the possession clause and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.

33. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. 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 fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement 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 mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

34. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 31.08.2014 and further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the promoter in the apartment buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 120 days cannot be allowed to the promoter at this stage.

35. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the rate of 18%. However, the allottees intend to withdraw from the project and are seeking refund of the amount paid by them 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.

36. 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.

37. 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., 29.07.2022 is **7.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **9.80%**.

38. The definition of term 'interest' as defined under section 2(za) of the Act provides that 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. The relevant section is reproduced below:

"(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;"

39. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 15(a) of the agreement executed between the parties on 17.09.2011, the possession of the subject apartment was to be delivered within stipulated time i.e., by 31.08.2014. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 31.08.2014.

40. Keeping in view the fact that the allottees/complainants wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.

41. The due date of possession as per agreement for sale as mentioned in the table above is **31.08.2014** and there is delay of **4 years and 25 days** on the date of filing of the complaint.

42. Except for complaint no. ***23 of 2019*** case titled as ***Mohit Bhanot and Ranjana Bhanot V/S M/s Ramprastha Promoter & Developers Private***

Limited the occupation certificate has yet not been obtained by the respondent/promoter. Despite receipt of occupation certificate dated 13.02.2020 in above mention case, the respondent/promoter had failed to offer the possession.

43. 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 allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have 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....."*

44. Further, 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. (Supra)*** observed as under: -

> 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."

45. 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 allottees 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 allottees, as they wish 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.

46. 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 complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 9.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 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 Compensation

47. The complainants are 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 complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the authority

48. 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 received by it from the complainants along with interest at the rate of 9.80%

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.

49. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

50. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter. There shall be separate decrees in individual cases.

51. Files be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.07.2022