

**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		Ramprastha City" Sectors-92, 93, & 95 Gurugram	
S. No.	Case No.	Case title	Appearance
1	CR/1380/2018	Gagan Manchanda and Anu Manchanda through power of attorney holder Mr. Hemant Anand V/S M/s Ramprastha Promoter & Developers Private Limited	Shri Mukul Kumar Sanwariya Shri Dheeraj Kapoor
2	CR/2041/2019	Vandana Gupta V/S M/s Ramprastha Developers Private Limited	Shri Sushil Yadav Shri Dheeraj Kapoor
3	CR/2042/2019	M/s United Finsec Private Limited (Formerly Known as United Hanware Private Limited) V/S M/s Ramprastha Developers Private Limited	Shri Sushil Yadav Shri Dheeraj Kapoor
4	CR/2043/2019	M/s United Finsec Private Limited (Formerly Known as United Hanware Private Limited) V/S M/s Ramprastha Developers Private Limited	Shri Sushil Yadav Shri Dheeraj Kapoor

CORAM:Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal**Chairman**
Member**ORDER**

1. This order shall dispose of all the 4 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 Ramprastha City (residential colony) being developed by the same respondent/promoter i.e., M/s Ramprastha 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 interest and 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 "Ramprastha City" Sectors-92, 93, & 95 Gurugram.
Possession Clause: - 11. (a) Schedule for Possession <i>"The company shall endeavour to offer possession of the said plot, within thirty (30) months from the date of this Agreement subject to timely payment by the intending Allottee(s) of Total Price, stamp duty, registration charges and any other charges due and payable according to the payment plan."</i> (Emphasis supplied)	
Part completion certificate/ completion certificate: -	yet not been received till date.

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit/plot No.	Date of apartment buyer agreement	Due date of possession	Total Consideration / Total Amount paid by the complainant(s)	Relief Sought
1.	CR/1380/2018 Gagan Manchanda and Anu Manchanda through power of attorney holder Mr. Hemant Anand V/S M/s Ramprastha Promoter & Developers Private Limited Date of Filing of complaint 01.11.2018	Reply Received on 20.12.2018	A-31 (Page no. 61 of the reply)	29.01.2015 (Page no. 58 of the reply)	29.07.2017 (Note: - 30 months from date of agreement i.e., 29.01.2015)	TSC: - Rs.1,47,46,000/- AP: - Rs.1,02,17,200/-	Refund the entire amount along with interest and compensation and others
2.	CR/2041/2019 Vandana Gupta V/S M/s Ramprastha Developers Private Limited Date of Filing of complaint 20.05.2019	Reply Received on 13.08.2021	D-105 (Page no. 40A of the complaint)	29.01.2014 (Page no. 39 of the complaint)	29.07.2016 (Note: - 30 months from date of agreement i.e., 29.01.2014)	TSC: - Rs.41,64,999/- AP: - Rs.35,83,000/-	Refund the entire amount along with interest

3.	CR/2042/ 2019 M/s United Finsec Private Limited (Formerly Known as United Hanware Private Limited) V/S M/s Ramprastha Developers Private Limited Date of Filing of complaint 20.05.2019	Reply Received on 13.08.20 21	A -196 (Page no. 49 of the compl aint)	18.01.2014 (Page no. 39 of the complaint)	18.07.2016 (Note: - 30 months from date of agreement i.e., 18.01.2014)	TSC: - Rs.38,87,5 00/- AP: - Rs.34,02,5 00/-	Refund the entire amount along with interest
4.	CR/2043/ 2019 M/s United Finsec Private Limited (Formerly Known as United Hanware Private Limited) V/S M/s Ramprastha Developers Private Limited Date of Filing of complaint 20.05.2019	Reply Received on 13.08.20 21	A -195 (Page no. 45A of the compl aint)	18.01.2014 (Page no. 44 of the complaint)	18.07.2016 (Note: - 30 months from date of agreement i.e., 18.01.2014)	TSC: - Rs.38,87,5 00/- AP: - Rs.34,02,5 00/-	Refund the entire amount along with interest

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 plot 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/1380/2018 titled as Gagan Manchanda and Anu Manchanda 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/1380/2018 titled as Gagan Manchanda and Anu Manchanda V/S M/s
Ramprastha Promoter & Developers Private Limited**

S. N.	Particulars	Details
1.	Name of the project	"Ramprastha City", Sectors 92, 93 & 95, Gurugram, Haryana
2.	Project area	128.594 acres
3.	Nature of the project	Residential Colony
4.	DTCP license no. and validity status	44 of 2010 dated 09.06.2010 valid upto 08.06.2016
5.	Name of licensee	Ramprastha Housing Pvt. Ltd. and others
6.	Date of environment clearances	10.05.2019 [as per information obtained by planning branch]
7.	RERA Registered/ not registered	Registered vide no. 13 of 2020 dated 05.06.2020
8.	RERA registration valid up to	31.12.2024
9.	plot no.	A-31 (Page no. 61 of the reply)
10.	Unit area admeasuring	250 sq. Yds. (Page no. 61 of the complaint)
11.	Welcome letter	03.01.2014

		(Page no. 53 of the reply)
12.	Allotment letter	03.01.2014 (Page no. 54 of the reply)
13.	Date of execution of plot buyer's agreement	29.01.2015 (Page no. 58 of the reply)
14.	Possession clause	<p>11. Schedule for possession</p> <p>(a). "The company shall endeavour to offer possession of the said plot, within thirty (30) months from the date of this Agreement subject to timely payment by the intending Allottee(s) of Total Price, stamp duty, registration charges and any other charges due and payable according to the payment plan."</p> <p>(Page 64 of the reply).</p>
15.	Due date of possession	29.07.2017 (Note: - 30 months from date of agreement i.e., 29.01.2015)
16.	Total sale consideration	Rs.1,47,46,000/- [As per payment plan page no. 72 of the reply]
17.	Amount paid by the complainant	Rs.1,02,17,200/- [As per ledger account page no. 77 of the reply]

18.	Payment plan	Possession linked payment plan [As per payment plan page 72 of the complaint]
19.	Occupation certificate /Completion certificate	Not received
20.	Offer of possession	Not offered
21.	Delay in handing over the possession till date of filing complaint i.e., 01.11.2018	1 years 3 months and 3 days

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -
- I. That the complainants are working and residing outside India, so they have appointed their authorized representative to represent their case before the authority. The complainants authorized Mr. Hemant Anand, through power of attorney which is authenticated by Embassy of India at Muscat.
 - II. That the respondent/promoter is in the business of real estate development business. Thus, in its usual course of business, purchase the land, enter into joint ventures, enter in collaboration agreement, marketing and development agreements etc. with various stakeholders including but not limited to landowners.
 - III. That the project namely "Ramprastha City" is a residential colony being developed by respondent/promoter, situated in the revenue

estate of village Wazirpur and Meoka in Sectors-92, 93 and 95 Tehsil and District Gurgaon, Haryana wherein the complainants had booked a plot of 250 sq. yard in the said project. The Director, Town and Country Planning (DTCP), Haryana granted licence No.44 dated 09.06.2010 to develop and construct in favour of the owners.

- IV. The respondent gave advertisement in newspapers as well as through their channel partners and showed a rosy picture about the project. The complainants relied upon the advertisements and visited the project site. The respondent representative made promise and commitments at the time of site visit and solicit the complainants to invest their hard earned in respondent's project.
- V. That the complainants relied heavily on the representations, affirmations and commitments made by the respondent staff and representatives and only on their asking, has approached by it for purchase of plot having an approximate 250 sq. yards. The complainants have made payment to the tune of Rs.15,00,000/- through RTGS at the time of making application form to the respondent. Thereafter, the respondent issued a welcome letter and allotment letter dated 03.01.2014 through which it allotted residential plot no. A-0301 of 250 sq. yards (approx.) in the said project.
- VI. The respondent has also executed a plot buyer agreement with the complainants vide agreement dated 29.01.2015, wherein, plot no. 31, block A, admeasuring 250 sq. yards has been allotted. Moreover, such buyer's agreement consist of general terms and conditions of

allotment were prescribed. That the total consideration of the plot was Rs.1,35,46,000/- towards the sale price for purchase of the said plot **excluding** EDC, IDC, IFMS, PLC, CMC, car parking, maintenance charges etc.

- VII. That the respondent also issued a payment schedule plan, which mentioned the time and payment to be remitted to the respondent by the complainant. That payment plan issued by the respondent was time linked plan i.e., the complainants were supposed to pay as per the timelines and development work to be carried on by the respondent, for the allotted plot. The agreement was construction linked plan. So, strict timelines were to be observed by both the parties to fulfil their liabilities as per the terms and conditions as stipulated in the agreement.
- VIII. The complainants have paid Rs.1,02,17,200/- i.e., nearly 95% of payment out of total consideration agreed at the time of execution of buyer's agreement. That as per the timelines given in clause 11(a) of the plot buyer's agreement, the possession of the plot was committed to be delivered within 30 months from the date of execution of buyer's agreement. So, the committed date of delivery expired on 29.07.2017 and now in month of October 2018 i.e., delay of 1 years and 3 months from date of commitment, only 40% project is completed thus delaying the possession of deliberately or for reasons known best to them. Such uncalled act is leaving complainants in a lurch where they have been left with no option but to be an aggrieved person/victim in the hands of the respondent.

- IX. The complainants have suffered losses or damages by reasons false and incorrect statement or commitment made by the respondent for delivering the possession of plot within stipulated time. The said project has been abandoned by the respondent. Thus, the respondent is liable to cancel the booking of the plot and return the amount along with interest under Section 12 Act, 2016.
- X. That the complainants inquired about the status of construction and other development work to be carried out by the respondent, but never shared any such information in gross violation of Section 19(2) of Act, 2016.
- XI. That the respondent has not registered the said project under Section 3 of the Act 2016 and further gave advertisements and make promotions through the channel partners and various other sources, utterly in violation of Section 3 of the Act, 2016.
- XII. That the complainants booked the unit in aforesaid project to own a house matching to their standard and taste but have been cheated by the respondent as it has failed to fulfill their promise of giving the possession of the property on time.
- XIII. That the respondent had taken the consideration amount from the complainant on the basis of the impressive pictures and false promises due to which they have drained out from hard-earned savings and by this way, cheated the complainants.

C. Relief sought by the complainants: -

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

- I. To give necessary directions to the respondent for return of the payment made in lieu of unit/till date along with prescribed rate of interest from the date of allotment of said plot till realization as per the provisions of Section 18 and Section 19(4) of the Act 2016.
 - II. To impose penalty upon the respondent as per the provisions of Section 60 of the Act for wilful default committed by them.
 - III. To direct the respondent to refund the amount collected from the complainant in lieu of interest, penalty for delayed payments under rule 21(3)(c) of the rules, 2017.
 - IV. To issue directions to make liable every officer concerned i.e., Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Section 69 of the Act 2016 to be read with the rules, 2017.
 - V. To recommend criminal action against the respondent for the criminal offence of cheating, fraud, and criminal breach of trust under Sections 420, 406 and 409 of the Indian Penal Code.
 - VI. To issue direction to pay the cost of litigation.
 - VII. To issue direction to pay the compensation to complainants for compensation for his mental agony, pain, and harassment.
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., Ramprastha City, at Sector- 92, 93 and 95, Gurgaon in which the complainants have booked a plot, is covered under the definition of "ongoing projects" and registration has already been applied on 31.07.2017 and the registration certificate is still awaited (through the project is deemed to be registered in terms of section 5(2) of the Act), the complaints, 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 GPA, alleged to have been executed and attested in Muscat, Oman, on the basis of which the present complaint has been filed is neither properly executed (as the date of execution is not mentioned in the GPA) nor is it notarized and at the same time it is not franked/ stamped by the collector of Stamps/Deputy Commissioner, Gurgaon, Haryana and therefore, it is not a valid GPA and the present complaint, having been filed without any authorization, is liable to be rejected on this ground alone.
- VI. 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.
- VII. That the complainants are investors and not consumers and nowhere in the complaint, they 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 House no. 874, B-20, Durga Colony, Rohtak (address mentioned in the passport and in the plot buyer's agreement) 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.

- VIII. Despite several adversities, the respondent continued with the construction and is in the process of completing the project and should be able to apply the occupation/part completion certificate for the plot in question by 31.12.2025 (as mentioned at the time of registration of the project with this authority) which date is also now being revised to 31.12.2020 in the revised application to be filed for registration of the said project with the 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 payment 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 plot was 30 months + 6 months from the date of execution of the plot buyer's agreement i.e., 29.01.2015 plus 6 months grace period, comes to 29.07.2018 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 complainants would not be entitled to any compensation whatsoever in terms of clause 11 of the plot 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)(I)(C). The entitlement to claim 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)(I)(C). In the present case, the respondent had made a declaration in terms of section 4(2)(I)(C) that it would complete the project by 31.12.2025 and which date is also now being revised to 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	OC to be applied
	(Tower A, B, C, D, E, F, G)		
4.	EWS	534	OC received
5.	Skycz	684	OC to be applied

6.	Rise		322	OC to be applied
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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. 2021-2022 (1) RCR (C), 357* 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.
21. The respondent has also filed an application under section 33 of the Indian Stamp Act, 1899 for Impounding of the power of attorney filed by the complainant. The authority observes that rule 28(2) of the rules provides that the authority shall follow summary procedure for the purpose of deciding any complaint. As per settled law, objection to the document sought to be produced relating to the deficiency of stamp duty must be taken when the document is tendered in evidence and such objection must be judicially determined before it is marked as exhibit. However, while

exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the court can always work out its own modality depending upon peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the party to protract litigation. The authority will not go into these technicalities as the authority follows the summary procedure, therefore, the rules of evidence are not followed in letter and spirit. Further, it would be appropriate to consider the objects and reasons of the Act which have been enumerated in the preamble of the Act and the same is reproduced as under: -

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

22. From the above preamble, the intention of the legislature is quite clear that the legislation is enacted to protect the interests of the consumer in real estate sector and to provide a mechanism for a speedy dispute redressal system. It is also pertinent to note that the present Act is in addition to another law in force and not in derogation.

F. Findings on the objections raised by the respondent

- F.1 Objection regarding the complaint not signed and proper verified.**

23. 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 Oath Commissioner, Gurugram on 31.08.2021 (Amended CAO dated 0109.2021). So, the plea of the respondent in this regard is liable to be dismissed.

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

24. 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)(I)(C). Therefore, the 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.

25. 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.

26. Section 4(2)(I)(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)(I)(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: —.....

(1): -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...."

27. 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)(I)(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.

28. 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.1,02,17,200/- 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.

29. 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."

30. 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."

31. 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 To give necessary directions to the respondents for return of the payment made in lieu of unit/ till date along with prescribed rate of interest from the date of allotment of said plot till realization as per the provisions of Section 18 and Section 19(4) of the Act 2016.**
- G. II To direct the respondents to refund the amount collected from the complainant in lieu of interest, penalty for delayed payments under rule 21(3)(c) of the Rules, 2017.**
32. 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)

33. Clause 11(a) of the plot buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"11. Schedule for possession

(a) *"The company shall endeavour to offer possession of the said plot, within thirty (30) months from the date of this Agreement subject to timely payment by the intending Allottee(s) of Total Price, stamp duty, registration charges and any other charges due and payable according to the payment plan.*

(b)

(c)

(d) **Failure of Company to offer possession and payment of compensation.**

In the event the Company fails to offer of possession of the said plot, within thirty (30) months from the date of execution of this Agreement then after the expiry of grace period of 6 months from the said 30(thirty) months subject to the intending Allottee(s) having made all payments as per the payment plan and subject to the terms, conditions of this Agreement and bring force majeure circumstances, the company shall pay compensation to the intending Allottee(s) calculated at the rate of Rs.90/- per sq. yard. Per month on the full area of the Said Plot which both parties have agreed is just and equitable estimate of the damages that the intending Allottee(s) may suffer and the intending Allottee(s) agrees that he/they shall not have any other claims/rights whatsoever. The adjustment of compensation shall be done at the time of execution of the conveyance deed."

34. 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.

35. **Due date of handing over of possession and admissibility of grace period:** The respondent has submitted that the proposed estimated time of handing over the possession of the said plot was 30+6 months i.e., 36 months from the date of execution of plot buyer agreement dated 29.01.2015 which comes out to be 29.07.2017 and not 30 months from the date of the agreement. As per clause 11 of the plot buyer's agreement, the promoter has proposed to hand over the possession of the plot within 30 months from the date of execution of this agreement subject to timely payment by the intending allottee(s) of total price, stamp duty, registration charges, and any other charges due and payable according to the payment plan. The authority observes that in the said clause, the respondent has failed to mention any expression w.r.t entitlement of grace period for calculating due date of possession, therefore, the promoter/respondent is not entitled to any grace period.

36. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with prescribed rate of interest. 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.

37. 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.
38. 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%**.
39. 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;"*

40. 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 11 of the agreement executed between the parties on 29.01.2015, the possession of the subject plot was to be delivered within a period of 30 months from the date of execution of this agreement which comes out to be 29.07.2017. 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 29.07.2017.

41. 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.

42. The due date of possession as per agreement for sale as mentioned in the table above is **29.07.2017** and there is delay of **1 years 3 months and 3 days** on the date of filing of the complaint.
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. and 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. III To impose penalty upon the respondents as per the provisions of section 60 of the Act for willful default committed by them.

47. The project is now registered with the authority vide registration no. 13 of 2020 dated 05.06.2020, valid upto 31.21.2024. No details have been provided to haul up the respondent for violations of the provisions of section 4 of the Act, 2016.

G. IV To issue directions to make liable every officer concerned i.e., Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Section 69 of Act, 2016 to be read with the rules, 2017.

48. In the absence of particulars for proceeding under section 69 of the Act 2016, no directions can be issued.

G. V To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420, 406 and 409 of the Indian Penal Code.

49. In the absence of any particulars for initiating for criminal proceedings, no direction as sought by the complainants can be issued.

G. VI To issue direction to pay the cost of litigation.

G. VII To issue direction to pay the compensation to complainant for compensation for his mental agony, pain, and harassment.

50. 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

51. 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.

52. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
53. 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.
54. Files be consigned to registry.


(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram


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

Dated: 29.07.2022