

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

Complaint no. : 2584 of 2021  
First date of hearing: 09.08.2021  
Date of decision : 13.07.2022

Gaurav Choudhary  
RO: - House no. 3, First Floor,  
Hauz Khas Village, Delhi-110016

**Complainant**

Versus

M/s Pareena Infrastructures Private Limited  
Office: C7A 2<sup>nd</sup> Floor, Omaxe City Centre Mall,  
Sohna Road, Sector 49, Gurugram, Haryana.

**Respondent**

**CORAM:**

Shri K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Ms. Ankur Berry (Advocate)  
Sh. Prashant Shoeran (Advocate)

**Counsel for Complainant  
Respondent**

**ORDER**

1. The present complaint dated 29.06.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations

made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S.N.	Particulars	Details
1.	Name and location of the project	"Micasa", sector-68, Gurgaon
2.	Nature of the project	Group Housing
3.	Project area	12.25085 acres
4.	DTCP license no.	111 of 2013 dated 30.12.2013 valid up to 12.08.2024 (area 10.12 acre) 92 of 2014 dated 13.08.2014 valid up to 12.08.2019 (area 0.64 acre) 94 of 2014 dated 13.04.2014 valid up to 12.08.2024 (area 2.73 acre)
5.	RERA Registered/ not registered	<b>Registered vide no. 99 of 2017 issued on 28.08.2017 up to 30.06.2022</b>
6.	Unit no.	T5-1604, 16th Floor, Tower T5 [page no. 60 of complaint]
7.	Unit admeasuring area	1245 sq. ft. of super area [page no. 60 of complaint]
8.	Allotment letter	04.05.2016 [page no. 52 of complaint]
9.	Date of builder buyer agreement	[Un-signed BBA on page 54 of complaint]
10.	Possession clause	<b>13 POSSESSION</b> <i>"That the developer shall, under normal conditions subject to the force majeure, complete construction of tower/ building in which the said flat is to be located with 4 years of the start of construction or execution of this agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee. ...."</i>

11.	Date of start of construction	Not Provided
12.	Due date of possession	N/A
13.	Cancellation of booking letter	N/A
14.	Total sale consideration	Rs.83,13,880/- {Excluding taxes} [As per Schedule of payment page 83 of complaint]
15.	Total amount paid by the complainant	Rs.14,04,390/- [as alleged by the complainant page 11 of complaint]
16.	Occupation certificate	Not obtained
17.	Email w.r.t to refund	23.05.2021 (Followed by reminders 01.06.2021 & 13.06.2021)

## B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. The respondent informed the complainant that advance booking amount if paid by the complainant, would ensure an allotment as low price. That believing the representations and inducements of the representatives of the respondent, he signed the 'application towards provisional booking of space'. The booking was made through the agent of the respondent namely axiom land base pvt. ltd. Gurugram. That accordingly, a payment of Rs. 10,00,000/- was made as 'advance booking amount' vide cheque no. 905320 dated 30.01.2013.
- II. That on 30.07.2013 the respondent informed about allotment being made in favour of the complainant in its project "Coban Residence" in sector 99 a, Gurugram, Haryana and accordingly, an application for registration for allotment was got signed from the complainant. As per

- the application, 4 BHK plus servant of super area 2352 sq. ft. with two parking space at the basic sale price of Rs. 4896/- per square feet of super area was to be allotted to the complainant.
- III. Thereafter, the complainant suffered from personal problems resulting in requesting the respondent for transfer of the booking to a smaller unit in other (cheaper) project of the respondent. The complainant also requested that the booking amount be adjusted for the transferred apartment.
- IV. That the respondent agreed to transfer the booking to unit no. 1604, Tower 5, Micasa, Sector 68, Gurugram, with super area 1245 sq. ft. and also issued approval note dated 10.06.2014. The respondent further directed the complainant to make a payment of Rs. 1,70,123/- to make the booking amount of 20% of BSP. Thus, the complainant made the due payment of booking amount making a total amount of Rs. 11,77,123/- (inclusive of applicable taxes). It is submitted that the basic sale price, for the apartment in the project Micasa, communicated to the complainant at the time of transfer was Rs. 4700/- per sq. ft. of the super area.
- V. Thereafter on 03.05.2016, an application form was got signed and submitted by the respondent. However, the complainant was shocked to see that the respondent intended to cheat the complainant by mentioning the basic sale price to be Rs. 5405 sq. ft. whereas at the time of allowing transfer and issuing the approval note, the respondent had

informed that the basic sale price to be charged would be @ Rs. 4700/- per sq. ft. of super area. The complainant became wary of the malpractice of the respondent since the basic sale price of the apartment was increased by Rs.705/- per sq. ft., resulting in escalation of price by Rs. 8,77,725/-.

- VI. That after submission of the application form, the respondent immediately issued the allotment letter dated 04.05.2016 for a 2BHK, Type-II, unit no. 1604, 16<sup>th</sup> floor tower 5, with super area 1245 sq. ft, in Project. That along with the allotment letter, the respondent provided a standard format builder buyer agreement and directed the complainant to sign and submit. However upon reading the terms of the BBA, the complainant could not believe the unfair trade practices indulged by the respondent. Even though it had taken large sums of money way back in the year 2013 yet as per Clause 13 of the BBA, the time for delivery of possession would begin from the date of signing of the BBA.
- VII. The complainant thereafter filed complaint RERA-GRG-554-2018 before the authority, praying for refund. However due to deficiency in facts and documents, the said complaint was withdrawn with liberty to file afresh. That the start of construction being on 08.06.2016, the construction ought to have been completed and the project be completed on 07.06.2020, (i.e. within 4 years). However till date, the project is incomplete. Interestingly from the images available on the website of the respondent, the status of construction since October 2019 to June 2021,

it is clear that the project has come to a standstill and thus the complainant cannot be made wait forever.

VIII. The complainant has been sending emails to the respondent requesting for refund along with interest. However, the respondent has chosen to not respond at all. That an email requesting for refund was sent by the complainant on 23.05.2021. However the same was ignored by the respondent. Thus, the complainant sent reminders to the same on 01.06.2021 and again on 13.06.2021 but all in vain.

IX. That till date, the complainant has paid an amount of **Rs. 14,04,390/-** to the respondent in hope of getting a house for his family. However after waiting for over more than 8 years the complainant has no option but to get refund of his hard earned money.

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

4. The complainant has sought following relief(s).
  - I. **Direct the respondent to refund the paid amount along with interest for the entire period till the date of payment.**
  - II. **Direct the respondent to pay compensation for mental agony and harassment to the tune of Rs. 10,00,000/-.**
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds.
  - a. That the present complaint is barred by limitation. That without admitting contents of complaint and for the limited purpose of limitation

is the it is submitted that as per complainant own version, he intended to revoke booking in the year 2016 itself. Thus, the starting date of limitation would be 2016 and same will end in year 2019. It is also admitted by the complainant the earlier complaint filed him in the year 2018 was withdrawn in the year 2019 as duly proved from annexure C-10. That though the authority had permitted the complainant to file afresh but said permission cannot in any manner construed as extension of limitation. That since the period of limitation was already lapsed in the year 2019 itself, thus filing of complaint in the year 2021 is grossly barred by limitation. That in similar case RERA authority Punjab in complaint no. GCNo17692020TR has already held that such case cases are barred by limitation.

- b. That the present complaint is not maintainable in the eyes of law. That the hon'ble forum has no jurisdiction to entertain present complaint. That Hon'ble supreme court has already held in the case titled as **M/s Newtech Promoters and Developers Pvt. Ltd vs State of UP and Ors** that power of refund only vests with regulatory authority and power of Adjudication officer is only for compensation. Thus in view thereof, this complaint is not maintainable. That even, the date of possession is yet to arrive and tentatively the date of possession will be in year 2023.
- c. That the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "MICASA" at Sector 68. The construction of the said project is at an advanced stage



and the construction of various towers has already been completed and remaining work is endeavored to be completed as soon as possible.

- d. That the respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of installments by various allottees. This clearly shows unwavering commitment on the part of the respondent to complete the project. Yet, various frivolous petitions, such as the present one seriously hampers the capability of the respondent to deliver the project as soon as possible. The amounts which were realized from the complainant has already been spent in the development work of the proposed project. On the other hand the respondent is still ready to deliver the unit in question of this due completion to the complainant, of course, subject to payment of due installments and charges.
- e. That as per apartment buyer agreement, the date of delivery of possession was not absolute and was subject to terms and conditions of agreement itself. That admittedly it has been written in the clause 13 that the company would endeavor to complete the construction within period of 4 years from start of construction or execution of this agreement, whichever is later but said time period of 4 years are not absolute. That further extension of 6 months was also agreed between the parties at the discretion of respondent. However, said period of 4 years 6 months is also not absolute and it is subject to several reasons beyond the control of respondent. It was also agreed by the complainant that if the project



gets delayed due to force majeure circumstances, than the said period consumed during concerned circumstances shall stand extended. That in the present case duly signed agreement was never returned by complainant, thus technically the date of possession can't be calculated from date of signing of agreement. However as admitted by complainant, the date of possession can be calculated either from date of signing of agreement or from date of start of construction. That it is admitted fact by both the parties that construction started on 08.06.2016. Thus, the starting dated for calculation of date of possession would be 08.06.2016 and final date of possession shall be calculated after considering all the relevant circumstances.

- f. That the prescribed period of 4.6 years is subject to force majeure circumstances. It is submitted that there were a number of judicial orders, notifications and other circumstances which were completely beyond the reasonable control of the respondent and which directly impeded the ability and even the intention of the respondent to continue with the development and construction work of the said project. It would be detailed hereinafter that on account of various notifications and judicial orders the development and construction work of the said project was impeded, stopped and delayed. That the total number of days for which despite of their being an absolute willingness on the part of respondent, it could not raise construction.

- g. That completion of the project would be considered as 4 years after addition of force majeure circumstances. Similarly on account of corona virus pandemic HRERA granted additional time of six months for completion of project in year 2020 and additional 3 months in year 2021 from 01.04.2021 to 30.06.2021.
- h. It is further submitted that whenever construction was stopped due to any reason either because of lockdown or any interim orders of Hon'ble Supreme court/MCG/Environment pollution control boards of state of Haryana and separately of NCR, it created a hurdle in pace of construction and after such period was over, it required considerable period of time to resume construction activity. It is submitted that whenever construction activity remains in abeyance for a longer period of time, then the time required gathering resources and re-commence construction; also became longer, which further wasted considerable time. That longer the construction remains in abeyance due to circumstances discussed herein, longer the time period required to start again.
- i. That above stated orders are absolute and beyond the control of developers. That there are several others order and notifications which cases delay in the construction of project and are beyond the control of developer.
- j. That though the matter in issue is beyond the jurisdiction of Hon'ble Adjudication officer, yet in order to properly appreciate the matter in

issue. That project is not only delayed due to force majeure events but also get delayed due to non-payment of allottees and in the present case complainants himself admitted the fact that he had only paid an amount of Rs. 14,04,390/- against total sale consideration.

- k. That the complainant booked a unit in Coban residences in sector 99A on 30.07.2013, where by an application for registration of allotment of a unit in Coban residences in sector 99 A Gurgaon Haryana was signed by him, and on execution of the said application an amount of Rs. 10,00,000/- which was paid by him on 30.01.2013 towards provisional booking. The complainant executed an application form for a unit comprised of four bedroom plus servant quarter having 2352 sq. ft. of super area and 2 parking space. The basic sale price and for a total sale consideration of rupees **1,38,37,824 + taxes**. That the complainant applied the said unit through an agent namely Axiom land base private limited.
- l. That against booking in the Coban residences, the respondent raised first demand letter dated 03.08.2013 and whereby it demanded an amount of Rs. 13,88,476. It is submitted that the due date for payment was 05.09.2013. That on 06.09.2013, respondent received a mail from the complainant whereby he requested to grant 10 more days to make that payment on the ground that he was out of town then. That in the said mail, the complainant specifically admitted the fact that he had booked a unit in the project and his customer ID is COB-266/2013.

- m. That thereafter, respondent issued first reminder to the complainant vide letter dated 10.10.2013, whereby he was requested to deposit an amount of ₹ 13,88,476/-.
- n. That upon receiving the said reminder, the complainant approached the respondent in the month of January 2014 and requested that due to some personal reasons, he was not in a position to continue further with the booking and he again requested to book a new unit in the upcoming project of the respondent at sector 68. That thereupon, the complainant signed a substitution letter so as to change the unit from sector 99A to sector 68. That the said fact is also admitted by the complainant in its complainant in Para 4 and annexure C-3. That the said request was duly approved by the respondent and an approval note in this regard was issued bearing reference number CMD/71/06/2014 dated 10.06.2014. It is submitted that when the complainant approached the respondent for booking in their project at sector 68, it was specifically made aware to him that the respondent has only received a license dated 27.12.13 and the building plans were yet to be sanctioned. It was also told to the complainant that unless and until the building plans were sanctioned and the respondent gets the environment clearance from the concerned authority, the construction cannot be legally started. It was also made clear that the period for offering possession would commence only from the date of starting of construction or signing of builder buyer agreement, whichever is later. It is submitted that the building plans

were sanctioned on 28.04.15 and the environment clearance against project at sector 68 was obtained by respondent on 20.05.2016. As it was already stated above that it was specifically made clear to the complainant that the building plans were yet to be sanctioned. Thus he could be allotted any specific unit or floor unless and until the plans were sanctioned. That the complainant agreed and assured that he had no objection qua the same and to show his gratitude to allow change of unit from one project to another. It is submitted that he promised to wait till the building plans were sanctioned. It is further submitted that the building plans were sanctioned on 28.04.2015 and thereafter the complainant was specifically intimated through Axiom Land Base Pvt. Ltd in first week of July 2015 that building plans were sanctioned and a unit comprising of 2 bedrooms with one parking admeasuring 1245 sq. ft. on 16<sup>th</sup> floor will be allotted to him. That initially, the complainant was not ready to get allotment on 16<sup>th</sup> floor and requested to allot a unit on lower floor. That an email was sent to the respondent by complainant in this as well. That there upon, the respondent apprised him that on lower floor rates would be on higher side and as the complainant earlier withdrew from project due to financial crunch, thus it might not be possible for him to keep up with payment of lower floors. That after discussion over a period of time, the complainant again approached the respondent through agent axiom properties and filed an application form dated 03.05.2016. That in the said application form, 2 BHK flat in tower



no. five bearing unit number 1604 having super area (tentative) of 1245 sq. ft. with one parking space was applied by the complainant. That at that point of time, the complainant even paid an amount of Rs. 2,27,252/- vide Cheque bearing no. 284964 dated 03.05.2016. That an allotment letter was also issued to the complainant on 04.05.2016 along with a builder buyer agreement. That after signing of application form further payment of Rs. 2,27,252/- vide cheque bearing no. 284964 dated 03.05.2016 is due acknowledgment of the facts that complainant had duly accepted newly allotted unit on price so stated in application form, since the as per request of complainant newly allotted unit is nearly Rs. 55,00,000/-. It is submitted the said builder buyer agreement is yet to be delivered by the complainant.

- o. That after issuance of allotment letter, the respondent raised certain demands against the ongoing construction. However, the complainant failed to pay the same. That even after receiving of these demand letters, the complainant opted for not to pay. Rather in the year 2018, the complainant filed a false and frivolous complaint, which was later on withdrawn in the year 2019. That after withdrawal of earlier complaint, the respondent even offered to pay only principal amount vide demand letter/reminder dated 05.09.2019 but even complainant did not pay even principal amount. That respondent always adjusted for complainant but he kept on making defaults and filed present false and frivolous complaint.

p. That since the complainant failed to pay amount demanded by respondent, even after several reminders, it is entitled to forfeit the earnest money as well as the interest and other charges thereon, as there is no fault on the part of respondent. That Hon'ble NCDRC has already held that in such circumstances if the allottee has to pay even after reminders and failed to return duly signed agreement, the builder has right to forfeit earnest money.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

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

**E.II Subject-matter jurisdiction**

9. 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.*

10. 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.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** 2021-2022(1) RCR,357 and followed in case of ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others*** dated 13.01.2022 in CWP bearing no. 6688 of 2021 wherein it has been laid down as under:

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



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

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

**F. Findings on the relief sought by the complainant.**

**F. I Direct the respondent to refund the paid amount along with interest for the entire period till the date of payment.**

13. The complainant submitted that he booked a residential unit by making a payment of Rs. 10,00,000/-. Thereafter he suffered from personal problems and requested the respondent for transfer of the booking to a smaller unit in other cheaper project of it and also requested that the booking amount be adjusted for the transferred apartment and the same was approved by the respondent by giving approval note dated 10.06.2014 and also raised a demand of Rs. 1,70,123 which were paid by him. Thereafter on 03.05.2016, an application form was got signed and submitted by him. However, he was shocked to see that the respondent intended to cheat him by mentioning the BSP to be Rs. 5405 sq. ft. whereas at the time of allowing transfer and issuing the approval note, the respondent had informed that the BSP to be charged would be @Rs. 4700/- per sq. ft. of super area. After the delay of more than 1.5 years, he requested for refund along with interest but the same was

ignored by the respondent. Thus, the complainant sent reminder to the same on 01.06.2021 and again on 13.06.2021 but all in vain.

14. Upon perusal of above-mentioned submissions and facts, the complainant wishes to withdraw from the project and is demanding return of the amount received by the respondent. The complainant submitted that he wrote an email on 23.05.2021, for seeking refund.
15. Keeping in view of the above-mentioned facts, the authority observes that the allottee approached the authority for refund before the cancellation of the unit. The respondent has cancelled the unit on account of non-payment. It is pertinent to mention here that the respondent failed to give possession on time and also not obtained the OC till date. In this situation, the project was delayed and after the due date of possession, it is the right of the allottee to seek withdrawal from the project and return of the amount paid by him along with interest at the prescribed rate.
16. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021 :**

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

17. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P.**

**and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed that :**

*"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"*

18. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
19. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for

adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

20. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 14,04,390/- with interest at the rate of 9.70% (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*.

**E. II. Direct the respondent to pay compensation for mental agony and harassment to the tune of Rs. 10,00,000/-.**

21. The complainant is also seeking relief w.r.t litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**F. Directions of the authority**

22. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund to return the amount received by him i.e., Rs. 14,04,390/- with interest at the rate of 9.70% (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.
- 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.

23. Complaint stands disposed of.

24. File be consigned to registry.

  
**(Vijay Kumar Goyal)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
**(Dr. K.K. Khandelwal)**

Chairman

Dated: 13.07.2022