

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

**Complaint no. :** 5380 of 2019  
**First date of hearing:** 11.12.2019  
**Date of decision :** 29.07.2022

Mr. Rakesh Malhotra  
R/o: - M-11, Greater Kailash -II, New Delhi- 110048

**Complainant**

Versus

M/s Ramprashtha Developers Private Limited.  
**Regd. office:** Plot No. 114, Sector-44, Gurugram-  
122002  
**Also, at:** - C-10, C Block, Market, Vasant Vihar, New  
Delhi- 110057

**Respondent**

**CORAM:**

Shri K.K. Khandelwal  
Shri Vijay Kumar Goyal

Chairman  
Member

**APPEARANCE:**

Sh. Sushil Yadav (Advocate)  
Sh. Dheeraj Kapoor (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint dated 13.11.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all



obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name of the project	Cannot be ascertained
2.	Project area	Cannot be ascertained
3.	plot no.	N.A.
4.	Unit area admeasuring	250 sq. Yds. (Page no. 40A of the complaint)
5.	Date of booking application	N.A.
6.	Welcome letter	N.A.
7.	Allotment letter	N.A.
8.	Date of execution of plot buyer's agreement	N.A.
9.	Possession clause	N.A.
10.	Due date of possession	Cannot be ascertained



11.	Basic price of the plot	Rs.21,75,000/- [As per letter dated 03.07.2018 page no. 23 of the complaint]
12.	Amount paid by the complainant	Rs.21,75,000/- [As per receipt information page no. 22 of complaint]

**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- I. That the promoter/developer is a company duly incorporated under the provisions of the Companies Act, 1956 having its registered office at C-10, C Block, Market, Vasant Vihar, New Delhi-110057 and also at plot no. 114, Sector-44, Gurugram, Haryana - 122002 and is engaged in the business of, inter-alia, real estate including residential/commercial projects in Sectors 92, 93, 95 and 37C & 37D, Gurugram Haryana.
- II. That in year July 2006, the complainant was interested in purchasing a residential property for his own use in Gurugram, Haryana. Relying upon the respondent's assurances with respect to quality, timely delivery, availability of all statutory approvals etc. The complainant booked a residential plot admeasuring 250 sq. yards. In the aforesaid project. The complainant paid through cheques in total a sum of Rs.21,75,000/- to the respondent company

towards full and final basic sale price for the plot in the aforesaid project. Thereafter, vide letter/receipt no. 669 dated 23.08.2006, the complainant was allotted a residential plot admeasuring 250 sq. yards. in the said project. The aforesaid payment towards full and final basic price made by him stands duly reflected in letter/receipt dated 23.08.2006 as well as in the letter dated 03.07.2018 issued by the respondent company.

III. That at the time of booking the plot in the aforesaid project, the complainant was informed that the possession of the plot would be given maximum within 3-4 years. However, unfortunately till date, no progress whatsoever has been made in this regard. Needless to mention, whenever, the complainant tried to contact and reach to the respondent company in past several years, it has been making lame excuses and only empty assurances being given time and again and no definite and concrete responses was forthcoming. There is still no definite answer as to when the respondent/promoter propose to give possession of the plot in the aforesaid project to the complainant.

IV. That after numerous visits made by the complainant, the respondent/promoter issued a letter dated 03.07.2018 to the complainant, informing, inter-alia, that the DTCP, Haryana has granted approvals to the respondent company with respect to two plotted licenses viz.



- 44 of 2010 dated 09.06.2010 for the development of plotted colony admeasuring approximately 128 acres in Sectors 92, 93, and 95 Gurugram.
  - 128 of 2012 dated 28.12.2012 for the development of plotted colony admeasuring approximately 108 acres in Sectors 37C and 37D Gurugram.
- V. That the respondent/promoter had applied for other approvals and such approvals were pending at the end of the government departments. It was assured in the aforesaid letter that upon receiving of appropriate sanctions and licences, the respondent would keep the complainant fully informed about start of process of allotment of plot on priority basic.
- VI. That the aforesaid letter dated 03.07.2018 would shows that even after expire of more than 12-13 years, the respondent is still in the process of approvals and there is absolutely no sign or definite indication as to when it is going to hand over the possession of the plot in the aforesaid project to the complainant.
- VII. That the complainant was constrained to write a letter dated 16.01.2019 to the respondent company, requesting to provide a definite time framework/period as to when it was going to give possession of the plot in the said project which he had already paid the full and final basic price in the year 2006 itself i.e., at the time of

booking. It was specifically written by the complainant that in case if he didn't receive a satisfactory response within a period of 15 days from the date of receipt of the aforesaid letter, the complainant would be constrained to initiate legal action. The aforesaid letter dated 16.01.2019, was sent through speed post/courier, which was duly received by the respondent/promoter. However, till date, the respondent company has not even responded to the said letter.

VIII. It is clear that there has been considerable delay in the execution of the project and whatsoever the complainant approached the respondent company by visiting your office and by writing letters, to enquiry about as to why project is getting delayed, no satisfactory answer has been forthcoming from it. Further, timely completion of the said project and delivery/to hand over the possession of the plot to the complainant on time was the essence. However, inspite of making the aforesaid substantial payment, which is the hard-earned money of the complainant, on account of inordinate delay on the respondent/promoter part in the execution of the project, there is no sign as to when the possession was likely to be given.

IX. That in view of the above, the complainant was constrained to send a legal notice through his counsel on 19.06.2009, calling upon the respondent to immediately refund the aforesaid amount of Rs.21,75,000/- which was paid to the respondent/promoter towards full and final basic price for the plot in the aforesaid project,



along with interest @18% on the aforesaid principle amount, from the date on which the said payments were made in the year 2006 to till date of actual payment within 15 days from the date of receipt of the notice. But till date, the respondent had not been even responded to the aforesaid legal notice.

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

4. The complainant has sought following relief(s):

- I. Direct the respondent to refund the entire amount i.e., Rs.21,75,000/- to the complainant along with 18% interest from the date of respective payments till its complete realization.
- II. Grant Rs.5,00,000/- as compensation to the complainant as damages towards mental agony and harassment suffered at the hands of the respondent over the last 13 years.
- III. Direct the respondent to pay litigation cost @ Rs.1,00,000/- to the complainant.

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 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. The complaint filed by the complainant is not maintainable and the adjudicating officer 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 this reply is without prejudice to the rights and contentions of the respondent contained in the said application.
- II. That prior to 12.09.2019, the complaints pertaining to refund, possession, compensation and interest for grievances under section 12, 14, 18 and 19 of the Act, 2016 were 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 complainant has filed the present complaint and is seeking the relief of possession, interest, and compensation u/s 18 of the said Act. Therefore, even though the project in question i.e., Ramprastha City at Sectors 92, 93, and 95 Gurugram and Ramprastha City at Sector 37C and 37D, Gurugram (hereinafter individually referred as to the "said project- I, and said project- II" respectively and collectively referred to the said project) in which the complainant alleged to have booked a plot is covered under the definition of "ongoing projects" and registration certificate has already been obtained for project- I, and RERA registration certificate has already been applied for project- II, and the registration certificate is still awaited (though



the project- II, is deemed to be registered in terms of section 5(2) of the Act of 2016) the complaint, if any, is still required to be filed before the authority under the amended rule 28 of the said rules and before the adjudicating officer under the amended rule- 29 as the adjudicating officer has no jurisdiction whatsoever to entertain such complaint and is liable to be rejected.

- IV. The complaint is highly time barred by limitation as the payment of Rs.21,75,000/-, towards the tentative registration for a 250 sq. yard plot against the future upcoming project, was made in August 2006 and for which a provisional receipt was also issued on 23.08.2006 and the present complaint is filed in November 2019 after a period of more than 13 years and 3 months and is liable to be rejected on this ground alone.
- V. That, the complainant never came forward for furnishing a detailed booking application form for booking a plot or for allotment of plot in the said project or for execution of the plot buyer agreement and is admittedly not even covered under the definition of an "allottee" as provided under Section 2(d) of the said Act, and therefore the adjudicating officer has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.
- VI. That the complaint is not supported by any proper affidavit with a proper verification and also without any vakalatnama in favour of the counsel of the complainant. In the absence of a proper

verified and attested affidavit supporting the complaint and without any vakalatnama, the complaint is liable to be rejected.

VII. That statement of objects and reasons as well as the preamble of the said Act clearly state that the RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "Consumer" as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainant is an investor and not a consumer and nowhere in the present complaint has the complainant pleaded as to how he is a consumer as defined in the Consumer Protection Act, 1986 qua the respondent. The complainant has deliberately not pleaded the purpose for which the complainant invested in the plot in question. The complainant, who is already the owner and resident of house no. M- 11, Greater Kailash -II, New Delhi- 110048 (address mentioned in the present complaint) is an investor, who never had any intention to buy the plot for his own personal use and kept on avoiding the performance of his contractual obligations and has now filed the present complaint on false and frivolous grounds.

VIII. That it is also most respectfully submitted that the adjudicating officer has no jurisdiction to entertain the present complaint as the complainant has not come to the adjudicating officer with clean hands and has concealed the material fact that he wanted to



invest his money and after payment of Rs.21,75,000/-, towards the tentative registration for a 250 sq. yard plot against the future upcoming project, was made in August 2006 for which a provisional receipt was also issued on 23.08.2006, was required to furnish a detailed booking application form for booking a plot/allotment of plot in the said projects and pay the balance dues at the time of allotment. However, the complainant never came forward for furnishing a detailed booking application form for booking a plot or for allotment of plot or for execution of the plot buyer agreement and failed to make the payment of dues and is admittedly not even covered under the definition of an "allottee" as provided under Section 2(d) of the said Act.

- IX. That from the date of payment of Rs.21,75,000/-, towards the tentative registration for a 250 sq. yard plot against the future upcoming project, which was made in August 2006. Till the filing of the present complaint, the complainant never came forward for furnishing a detailed booking application form for booking a plot or for allotment of plot or for execution of the plot buyer agreement and has now concocted a false story to cover up his own defaults of non-execution of documents and has raised false and frivolous issues and has filed the present complaint on false, frivolous and concocted grounds. This conduct of the complainant clearly indicates that he is a mere speculator having invested with a view to earn quick profit. Due to slowdown in the market conditions, the complainant has failed to perform his contractual

obligations of execution of documents and thereafter making timely payments.

- X. Despite several adversities, the respondent has continued with the construction is in the process of completing the development of the project and subject to the force majeure conditions, as detailed hereinafter, should be able to apply the occupation/part completion certificate by 31.12.2024 (as mentioned at the time of registration of project-I) and 31.12.2022 (as mentioned in the application filed for registration of project-II with the authority) or within such extended time, as may be extended by the authority, as the case may be. However, as the complainant is only a speculative investor and not interested in taking over the possession of the plot and because of slump in the real estate market, the complainant failed to execute the requisite documents and thereafter make the payments in time. It is apparent that the complainant is a mere short term and speculative investor who had the motive and intention to make quick profit from sale of the plot. Having failed to resell the plot due to general recession, the complainant could not execute the requisite documents or make the payment in time and has now developed an intention to raise false and frivolous issues to engage the respondent/promoter in unnecessary, protracted, and frivolous litigation. The alleged grievance of the complainant has origin and motive in sluggish real estate market.
- XI. The adjudicating officer is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in

accordance with any plot buyer's agreement, if signed by the complainant. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of said Act or said Rules, has been executed between both the parties. Rather, the provisional receipt dated 23.08.2006 that has been referred to, for the purpose of getting the adjudication of the complaint, is executed much prior to coming into force of said Act or said rules. The adjudication of the complaint for refund, possession, interest, and compensation, as provided under Sections 12, 14, 18 and 19 of said Act, has to be in reference to the agreement for sale executed in terms of said Act and said rules and no other agreement. This submission of the respondent *inter alia*, finds support from reading of the provisions of the said Act and the rules. Thus, in view of the submissions made above, no relief can be granted to the complainant.

- XII. 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 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)(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 31.12.2024 (as mentioned at the time of registration of project- I) and 31.12.2022 (as

mentioned in the application filed for registration of project- II, with the authority) or within such extended time as may be extended by the authority, as the case may be. Thus, no cause of action can be said to have arisen to the complainant in any event to claim possession or refund, along with interest and compensation, as sought to be claimed by them.

XIII. 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.	Skyz	684	OC to be applied
6.	Rise	322	OC to be applied



7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
8. 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.
9. Keeping in view the judgement of Hon'ble Supreme Court in case titled as *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (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**

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**

10. 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**





11. 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.*

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
13. 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."*

14. 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 handing over possession as per declaration given under section 4(2)(I)(C) of RERA Act**

15. 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, 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.



16. 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.
17. 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...."*

18. 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 could 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. II Objections regarding the complainant being investor.**

19. The respondent has taken a stand that the complainant is the investor and not consumer and therefore, he is 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 complainant is a buyer and paid total price of **Rs.21,75,000/-** to the promoter towards purchase of a unit 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 "allottee" as well as all the terms and conditions of the provisional receipt, it is crystal clear that the complainant is an allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the

Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee is being an investor is not entitled to protection of this Act also stands rejected.

**F.III Objection regarding jurisdiction of authority w.r.t. provisional receipt issued prior to coming into force of the Act**

20. 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 will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date

of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (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."*

21. 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."*

22. 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 complainant**

**G.I Direct the respondent to refund the entire amount i.e., Rs.21,75,000/- to the complainant along with 18% interest from the date of respective payments till its complete realization.**

23. The complainant submits that vide receipt dated 23.08.2006, he paid an amount of Rs.21,75,000/- to the respondent /promoter in lieu of which it issued a letter dated 03.07.2018, confirming the amount received and promising the allotment of a plot admeasuring 250 sq. yards. in any of the projects located in Sectors 92, 93 and 95 or 37C and 37D, Gurugram. Thereafter, till date the respondent has miserably failed to specify the project as well as plot number where 250 sq. yards. has been allotted.





On 16.01.2019, the complainant again inquired about the possession of the plot to which the respondent did not respond. The complainant tired of the neglectful behavior of the respondent filed the present complaint pleading for refund along with interest before this authority.

24. The respondent vide reply dated 10.08.2021 submitted that the complaint is barred by limitation as the complainant made the payment in the year 2006, and thereafter he never came forward for and execution of buyer's agreement. Accordingly, the complaint is liable to be rejected. Moreover, the complainant was aware from the very inception that he was making payment w.r.t. future project which is not yet launched.
25. Before coming to the facts of the case, it is to be seen as to the receipt issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of the contract Act, 1872 and which provides that:

*"Every promise and every set of promise forming the consideration for each other is an agreement."*

26. Further, section 10 of the act defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

*"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not herby expressly declared to be void."*

27. There is a large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money

and only issued receipt against the allotment of a plot either in the existing or in its upcoming project at Gurugram. Neither, it issued any allotment letter nor executed any builder buyer's agreement. Even in some cases, the builder accepted more than 50 lacs either in cash or through cheque and promising to allot an apartment/plot in the upcoming or existing projects and then vanishing or not taking any further steps with regard to either allotment of the unit of the property in any project or refunding the amount received. The holders of those receipt/allotments are harassed lot failing to act on the basis of the documents issued by the developer and to initiate any civil or criminal action against the builder. This position existed in Pre- Rera cases as after Act of 2016, a promoter is obligated to comply with the provisions of the Act and follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.

28. But the document/receipt so issued in favour of a person can be termed as an **agreement for sale** to drag the developer before RERA Authority, compelling him to fulfil his obligations against the holder of that document. It is also pertinent to mention in many cases that the allottee has been sleeping over his rights which is evident from the fact that after payment of an amount, he did not make any effort to get the agreement executed; and having no proof of any request or reminder in this regard made by the allottee to the promoter with the complainant. However, the promoter is duty bound to explain the reasons for which



he has kept such a huge amount for so long, considering the fact that the promoter company is not a bank or non-banking financial company (NBFC). In case of failure on the part of promoter to give an explanation, it shall be liable to refund the principal amount deposited by the allottee.

29. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1)(b) of the Act. Sec. 18(1)(b) 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)*

30. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the prescribed rate of interest 18%. However, the allottee is seeking refund of the



amount paid by him 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.*

31. 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.
32. 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%.
33. The definition of term 'interest' as defined under section 2(z) 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:

*"(z) "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;"*

34. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainant is well within his right for seeking refund under section 18(1)(b) of the Act, 2016.

35. The instant matter falls in the category where the promoter has failed to allot a plot in its any of the upcoming project as detailed earlier despite receipt of Rs.21,75,000/- made in the year 2006. So, the case falls under section 18(1)(b) of the Act of 2016.

36. In the instant matter, even after lapse of 13 years from the date of payment till the filing of complaint, no buyer's agreement has been executed inter- se parties. Therefore, the due date of possession cannot be ascertained, and the complainant cannot be expected to wait endlessly for his plot 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....."*

37. 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.
38. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1)(b) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by him 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 Grant Rs.5,00,000/- as compensation to the complainant as damages towards mental agony and harassment suffered at the hands of the respondent over the last 13 years.**
- G.III Direct the respondent to pay litigation cost @ Rs.1,00,000/- to the complainant.**
39. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.
- H. Directions of the authority**
40. 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):
- The respondent/promoter is directed to refund the amount i.e., Rs.21,75,000/- received by it from the complainant 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.

41. Complaint stands disposed of.

42. File be consigned to registry.

V.I-5  
**(Vijay Kumar Goyal)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

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

Chairman

Dated: 29.07.2022