



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

Complaint no. : 3159 of 2021
First date of hearing: 12.11.2021
Date of decision : 12.07.2022

1. Mr. Shammi Moza
S/o Sh. Pushkar Nath Moza
2. Ms. Purnima Moza
W/o Mr. Shammi Moza
Both RR/o: - Plot No. A- 117, Sector- 30, Noida-
201301

Complainants

Versus

1. M/s Raheja Developers Limited.
Regd. office: W4D, 204/5, Keshav Kunj, Western
Avenue, Sainik Farma, New Delhi- 110062

Respondent

CORAM:

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Karan Nagpal (Advocate)
Sh. Udayan Yadav
Sh. Yash Sharma (A.R's)

Complainants

Respondent Company

ORDER

1. The present complaint dated 10.08.2021 has been filed by the complainants/allottees 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Raheja Revanta", Sector 78, Gurugram, Haryana
2.	Project area	18.7213 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no. and validity status	49 of 2011 dated 01.06.2011 valid up to 31.05.2021
5.	Name of licensee	Sh. Ram Chander, Ram Sawroop and 4 Others
6.	Date of approval of building plans (revised)	24.04.2017 [As per information obtained by the planning branch]
7.	Date of environment clearances (revised)	31.07.2017 [As per information obtained by the planning branch]
8.	RERA Registered/ not registered	Registered vide no. 32 of 2017 dated 04.08.2017



9.	RERA registration valid up to	31.07.2022 5 Years from the date of revised Environment Clearance
10.	Unit no.	C-014, 1 st floor, Tower/block- C (Page no. 40 of the complaint)
11.	Unit area admeasuring	1621.390 sq. ft. (Page no. 40 of the complaint)
12.	Allotment letter	12.09.2014 (Page no. 34 of the complaint)
13.	Date of execution of agreement to sell	12.09.2014 (Page no. 36 of the complaint)
14.	Possession clause	4.2 Possession Time and Compensation <i>That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser within thirty-six (36) months in respect of 'TAPAS' Independent Floors and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not</i>



		<p><i>completed within the time period mentioned above. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and/or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."</i></p> <p>(Page no. 50 of the complaint)</p>
15.	Grace period	<p>Allowed</p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by September 2018. As per agreement to sell, the construction of the project is to be completed by September 2018 which is not completed till date.</p>



		Accordingly, in the present case the grace period of 6 months is allowed.
16.	Due date of possession	12.03.2019 Note: 48 months plus six months from the date of execution of BBA dated 12.09.2014
17.	Basic sale consideration as per BBA at page 138 of reply.	Rs.1,44,91,237/-
18.	Total sale consideration as per applicant ledger dated 22.02.2020 at page 119 of the complaint	Rs.1,50,52,045/-
19.	Amount paid by the complainant as per applicant ledger dated 22.02.2020 page no. 119 of the complaint	Rs.1,50,51,738/-
20.	Payment plan	Construction linked payment plan [Page no. 70 of the complaint]
21.	Occupation certificate /Completion certificate	Not received
22.	Offer of possession	Not offered
23.	Delay in handing over the possession till date of filing complaint i.e., 10.08.2021	2 years 4 months and 29 days

B. Fact of the complaint

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

- I. That the respondent/promoter approached and represented to the complainants that it is a renowned builder company having vast experience of real estate development and enjoys enormous goodwill in the market having successfully completed various projects & the investments made in its upcoming '**Raheja Revanta**' Situated at, Sector-78, Shikohpur, Haryana.
- II. That without suspecting any mala fide & foul play and the believing the representations to be true & correct, the complainants agreed to invest their hard-earned money for the purchase of residential flat bearing no. C-014 on 1st floor of tower-C, admeasuring super built-up area of 1621.39 sq. ft. which includes a built-up area of 1226.34 sq. ft. situated at Sector-78, Gurugram, Haryana for a total sale price consideration of Rs. 1,50,70,278/- inclusive of EDC/IDC charges, maintenance deposit, power backup, car parking charges & taxes.
- III. That on 11.07.2014, the complainants paid a booking amount of Rs. 13,24,190/- through cash to the respondent. Further, in order to make the complete payment, the complainants opted for a subvention scheme for payment and approached ICICI bank for availing loan facility of Rs.1,06,00,000/- for the purpose of making payment of the said unit. The ICICI bank sanctioned the loan for the aforesaid amount under CLP subvention scheme.
- IV. In furtherance of the purchase of the aforesaid unit, the complainants executed the agreement to sell with the respondent

on 12.09.2014 for a total sale price consideration of Rs. 1,44,91,321/- inclusive of PLC, EDC/IDC charges, IFMS, club membership charges, car parking charges. Further, as per clause 4.2 of the agreement, the respondent had undertaken to deliver the possession of the unit to the complainants within 48 months from the date of execution of the agreement i.e., by 12.09.2018. Also, in terms of clause 4.2 of the agreement, if the promoter fails to complete the construction of the said building/unit within 48 months plus aforesaid grace period of 6 months from the date of execution of the agreement to sell then the seller would be liable to pay to the purchaser compensation at the rate of Rs. 7/-sq. ft. of the super area per month for the entire period of such delay to compensate for the rental income for the similar property in the area or average rental of equivalent sized unit in the vicinity, whichever is higher.

- V. Thereafter, the tripartite loan agreement was executed between the complainants, respondent, and the bank in lieu of loan amount disbursed into the account of the respondent under CLP subvention scheme.
- VI. That on 24.09.2014, a disbursement letter was issued by the ICICI bank to the complainants & the respondent issued a receipt dated 24.09.2014 in their favor for a sum of Rs.57,61,905/-. Further, the complainants in furtherance of the purchase of the said unit paid total amount of Rs.1,50,51,738.44/- inclusive of taxes to them. It is

- noteworthy to mention here that the said amount includes the loan amount procured from the ICICI bank which was disbursed directly into their account under the CLP subvention scheme.
- VII. That on 22.02.2017, the respondent issued a letter informing that the project has been delayed & a new tentative completion date was given to the complainant.
- VIII. Thereafter, the respondent issued a letter dated 08.05.2018 wherein it promised that the pre-EMI amount of Rs.82,177/- would be credited into the account of the complainants till the time possession was not handed over to them along with the fact that the pre-EMI's paid by them between September 2017 till March 2018 would be refunded and credited in their bank account within next 20 working days from the date of issuance of letter. It was further assured that since the unit was sold to the complainants at an exorbitant price & unable to finish the project on the due date; the respondent offered to credit Rs.1600/- sq. ft. into the account of the complainants as a discount if they decided to retain the aforesaid unit.
- IX. That the respondent also failed to handover the possession of the unit after the completion of the period given in the agreement dated 12.09.2014 i.e., by 12.09.2018. In order to keep the complainants in confidence, the respondent reimbursed the pre-EMI's for the period between October 2017 to May 2018 & from



May to December 2018 that too after repeated reminders by the complainants.

- X. Further, the respondent assured to the complainants that the respondent would handover the possession of new unit by 31.12.2019 and if there is a delay in handing over of the possession of the new unit by them, the promoter would pay delayed interest with effect from 01.01.2020 till the date of actual possession to be given to the complainants. Hence, the offer of the respondent was accepted by the complainants; thereby, the respondent issued a letter dated 10.09.2019 regarding the change in unit bearing no. C-014 to unit no. A-021. Further, vide another letter dated 10.09.2019; the respondent confirmed that the amount paid by the complainants for the unit bearing no. C-014 admeasuring area 1621.39 sq ft would be further adjusted towards the sale consideration for unit bearing no. A-021 admeasuring area 2189.07 sq ft. Hence, as per the letter dated 10.09.2019; the cost of the new unit was determined to be Rs. 1,41,24,666/- whereas the cost of the old unit was Rs. 1,45,82,538/-.
- XI. That the respondent has been changing the possession date for handing over of the unit as per its whims and wishes and has not only caused great financial loss to the complainants but has also increased their mental agony. The respondent has turned a deaf ear towards the pleas of the complainants who have spent their life savings for the purchase of the unit. Hence, the complainants are

left with no other option than to file the present complaint for refund of the amount paid to the respondent with interest.

- XII. That the complainants have been trying to contact to know the status of their unit, but the respondent has turned his ears deaf towards their pleas, who is now running from pillar to post to get justice against the errant actions of them. That the respondent's unlawful actions of breaching the agreement to sell, misusing the money of the complainants, delaying the delivery of the possession of the unit, amounts not only to the defiance of law and order but also amounts to the prejudice to the rights of the complainants.
- XIII. That there is a delay of more than 19 months in handing over the possession of the said flat to the complainants as per the agreement to sell dated 12.09.2014.
- XIV. That in furtherance and without prejudice to the grounds mentioned herein above, the refund of the amount shall be paid with interest for the period between the date when the respondent received the amount or any part thereof from the complainants.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- i. That the complainants wish to withdraw from the said project and are seeking refund of the entire amount paid till date i.e., Rs. 1,50,51,738.44/- along with interest @18 % p.a. to be applied from when the respondent received the first installment & till realization as provided under section 18(1) of the Act.



- ii. Refund of Rs. 2,18,600.44/- lying extra with the respondent as per the ledger account statement shared by the respondent with the complainants along with interest @18% p.a. from the date on which this extra amount got credited to the respondent till its realization.
 - iii. Refund of Rs.6,22,889/- paid by the complainants as pre-EMI's which was supposed to be paid by the respondent along with interest @18% p.a. to be applied from when the complainants made the payment to the Bank & till realization of the same from the respondent.
 - iv. To pay compensation of Rs. 10,00,000/- towards litigation cost and mental agony/harassment caused to the complainants by the willful, brazen and malicious conduct of the respondent.
5. On the date of hearing, the authority explained to the respondent/promoter on the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent contested the complaint on the following grounds:
- I. That the complainant after checking the veracity of the project namely, 'Raheja Revanta' has applied for allotment of the apartment in the said project. In view of application form dated 30.06.2014, the complainants were allotted unit bearing no. C-014, in 1st floor, admeasuring 1621.39 sq. ft. for the total sale

consideration of Rs.1,44,91,321/-. The complainants agreed to be bound by the terms and conditions of the booking application form. In the aforesaid project vide provisional allotment letter dated 12.09.2014 unit no. C-014, 1st floor, which was later change to A- 021 on the request of the complainant in the said project vide letter dated 10.09.2019 after issuance of the allotment letter dated 12.09.2014. The complainants consciously and willfully opted for an installment payment plan for remittance of the total sale consideration for the subject unit and further, represented that he shall remit every installment on time as per the payment schedule. The respondent has no reason to suspect the *bonafide* of the complainant and proceeded to allot the subject unit in their favor.

- II. That the complainant has no cause of action to file the present complaint as the present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the agreement to sell dated 12.09.2014 entered between the respondent and the complainants. It is further submitted that the complainant is investor and booked the unit in question to yield gainful returns by selling the same in the open market. The complainant has filed the present purported complaint to wriggle out of the agreement. The complainant does not come under section 2(d)



of the Act, as the complainant is investor and booked the unit in order to enjoy the good returns from the project.

III. That despite the respondent fulfilling all its obligation as per the provision laid down by law, the government has failed miserably to provide essential basic infrastructure facilities such as roads, sewerage lines, water, and electricity supply on the sector where the said project is being developed. The development of roads, sewerage, laying down off water and electricity supply lines has to be undertaken by the concerned governmental authorities and is not within the power and control of the respondent. The respondent cannot be held liable on account of non-performance by the concerned governmental authorities. The respondent company has even paid all the requisite amounts including external development charges (EDC) to the concerned authorities. However, yet, necessary infrastructure facilities like 60 meters sector road including 24 meters wide road connectivity, water and sewage which was supposed to be developed parallelly with HUDA has not been developed.

IV. That the time period for calculating the due date of possession shall start only when the necessary infrastructure facilities will be provided by the government authorities. It is submitted that non available process structure facilities beyond the control of the respondent and the same also falls within the ambit of

definition of force majeure conditions as stipulated in clause 4.4 of the builder buyer agreement to sell.

- V. That the respondent also filed RTI application for seeking information about the status of the basic services such as roads, sewerage, water, and electricity. Thereafter, the respondent received reply from HSVP wherein, it was clearly stated that no external infrastructure facilities have been laid down by the concerned governmental agencies. The respondent cannot be blamed in any manner on account of inaction and failure on the part of the governmental authorities.
- VI. That furthermore two high tension (HT) cables lines were passing through the project site which were clearly shown and visible in the zoning plan dated 06.06.2011. The respondent required to get these HT lines removed and relocate such the opposite party proposed the plan of shifting the overhead HT wires to underground and submitted building plan to DTCP, Haryana for approval, which was approved by DTCP, Haryana. The HT lines have been put underground in the revised zoning plan. The fact that two 66KV HT lines were passing over the project land was intimated to all the allottees as well as the complainants. The respondent requested to M/s KEI Industries Ltd for shifting of the 66 KV S/C Gurgaon to Manesar line for overhead to underground Revanta Project Gurgaon vide letter dated 01.10.2013. That the HVPL took more than one year in



giving the approval and commissioning of shifting of both the 66KV HT lines. It was certified by HVPL Manesar that the work of construction for laying of 66 KV S/C & D/C 1200, XLPE cable (aluminium) of 66 KV S/C Gurgaon-Manesar line and 66 KV D/C Badshapur-Manesar line has been converted into 66 KV underground power cable in the land of the opposite party's project which was executed & completed successfully by M/s KEI Industries Ltd and 66 KV D/C Badshapur-Manesar line was commissioned on 29.03.2015. Thereafter, HVPNL, Gurgaon issued the performance certificate for the same to the opposite party dated 14.06.2017.

- VII. That the respondent got the overhead wires shifted underground at its own cost and only after adopting all necessary processes and procedures and handed over the same to the HVPNL and the same was brought to the notice of District Town Planner vide letter dated 28.10.2014. Multiple government and regulatory agencies and their clearances were involved/required and frequent shut down of HT supplies was involved, it took considerable time/efforts, investment and resources which falls within the ambit of the force majeure condition. The respondent has done its level best to ensure that the complex is constructed in the best interest and safety of the prospective buyers.

- VIII. That without prejudice to aforesaid submissions, if any, in the project has been due to the delay in grant of the necessary approvals by the competent authorities that were beyond the control of the respondent. The respondent has made best possible endeavour and all efforts at every stage to diligently follow with the competent authorities for the concerned approvals. In fact, it is in the interest of the respondent too to complete the project as early as possible and handover the possession to the complainants. However, much against the normal practice and expectations of the respondent, at every stage, each division of the concerned authority has taken time, which was beyond normal course and practice. That the construction of the structure in which the apartment is located is complete and all the block work and the gypsum has also been completed. As per the RERA, Haryana (Real Estate Regulatory Authority) the completion date of the project is June,2022.
- IX. That the construction of the tower in which the floor is allotted to the complainant is allocated already complete and the respondent shall hand over the possession of the same to the complainants after getting occupational certificate subject to the complainants making the payments of the sue instalments amounts as per the terms of the application and agreement to sell.



- X. That the said project is one of the most iconic skyscraper in the making, a passionately designed and executed project having many firsts and is the tallest building in the Haryana with highest infinity pool and club in India. The scale of the project required a very in-depth scientific study and analysis, be it earthquake, fire, wind tunnelling façade solutions, landscape management, traffic management, environment sustainability, services optimization for customer comfort and public health as well, luxury and iconic elements that together make it a dream project for customers and the developers alike. The world best consultants and contractors were brought together such as Thornton Tomasetti (USA) who are credited with dispensing world's best structure such as Petronas Towers (Malaysia), Taipei 101 (Taiwan), Kingdom Tower Jeddah (world's tallest under construction building in Saudi Arabia) and Arabtec makers of Burj Khalifa, Dubai (presently tallest in the world), Emirates palace etc.
- XI. That the compatible quality infrastructure (external) was required to be able to sustain internal infrastructure and facilities for such an iconic project requiring facilities and service for over 4000 residents and 1200 cars which cannot be offered for possession without integration of external infrastructure for basic human life be it availability and continuity of services in terms of clean water, continued fail safe quality electricity, fire safety, movement of fire tenders, lifts, waste and sewerage

processing and disposal, traffic management etc. Keeping every aspect in the mind this iconic complex was conceived as a mixture of tallest high-rise tower & low-rise apartment blocks with a bonafide hope and belief that having realized all the statutory changes and license, the government will construct and complete its part of roads and basic infrastructure facilities on time. Every customer including the respondent cannot develop external infrastructure as land acquisition for roads, sewerage, water, and electricity supply is beyond the control of the respondent. Therefore, as an abundant precaution, the respondent company while hedging the delay risk on price offered made an honest disclosure in the application form itself in clause no.5 of the terms and conditions.

- XII. That the complainants are real estate investors and they have booked the unit in question with a view to earn quick profit in a short period. However, it appears that its calculations have gone wrong on account of severe slump in the real estate market, and they are now raising untenable and illegal pleas on highly flimsy and baseless grounds. Such malafide tactics of the complainant cannot be allowed to succeed.
- XIII. That the possession of the unit is supposed to be offered to the complainants in accordance with the agreed terms and condition of the buyer's agreement.



- XIV. That the use of expression 'endeavour to give the position' in clause 4.2 of the buyer's agreement clearly shows that the company has nearly held out a hope that it will try to give the possession to the complainant within the specified time. However, no unequivocal promise was made to the prospective buyers the possession of the unit will be delivered at the end of a particular period.
- XV. Therefore, in the view of the aforesaid clauses, it is evident that period of 48 months for completion of the construction of the said unit was contingent on providing of the necessary infrastructure in the sector by government and subject to force measure conditions.
- XVI. That the time period for calculating the due date of possessions and start only when the necessary approvals will be provided by the government authorities and the same was known to the complaint from the very inception. It is submitted that non availability of the occupational certificate is beyond the control of the respondent and the same also falls within the ambit off the definition force majeure condition as stipulated in clause 4.4 of the agreement to sell.
- XVII. That is pertinent to mention herein that the construction of the tower is which the unit allotted to the complainant is located is 80% complete and the respondent will hand-over the position of the same to the complainants after its completion subject to

making the payment of the instalments amount and on availability of infrastructure facilities such as sector roads and laying providing basic external infrastructure as per the terms of the application and agreement to sell. It is submitted that due to the above-mentioned conditions which were beyond the reasonable control of the respondent, the construction of the project is not completed, and the respondent cannot be held liable for the same. The respondent is also suffering unnecessarily without any fault on its part. Due to these reasons the respondent has to face cost overruns without its fault. Under these circumstances passing any adverse order respondent at this stage would amount to complete travesty of justice.

- XVIII. That GMDA, Office of Engineers-VI, Gurugram vide letter date 03.12.2019 has intimated to the respondent company that the land of sector dividing road 77/78 has not been acquired and sewer line has not been laid.
- XIX. That the respondent has written on several occasions to the Gurugram Metropolitan Development Authority (GMDA) to expedite the provisioning of the infrastructure facilities at the project site so that the possession can be handed over to the allottees. However, the authorities paid no heed or request till date.
- XX. That it was not only on account of following reasons which led to the push in the proposed possession of the project but because



of other several factors also as stated below for delay in the project:

- Time and again various orders has been passed by the NGT staying the construction.
- The sudden surge requirement of labour and then sudden removal has created a vacuum for labour in the NCR region. That the projects of not only the respondent but also of all the other developers have been suffering due to such shortage of labour and has resulted in delays in the project is beyond the control of any of the developers.
- Moreover, due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for labours at their hometown even though the NCR region was itself facing a huge demand for labour to complete the projects. Even today in current scenario where innumerable projects are under construction all the developers in the NCR region are suffering from the after-effects of labour shortage on which the whole construction industry so largely depends and on which the respondent has no control whatsoever.
- Shortage of bricks in region has been continuing ever since and the respondent had to wait many months after placing

order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.

- In addition, the current government declared demonetization on 08.11.2016 which severely impacted the operations and project execution on the site as the labours in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labours not accepting demonetized currency after demonetization.
- In July 2017, the Government of India further introduced a new regime of taxation by the name of Goods and Service Tax which further created chaos and confusion owing to lack of clarity in its implementation. Ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.



- That there was a delay in the project on account of violations of the terms of the agreement by several allottees and because of the recession in the market most the allottees have defaulted in making timely payments and this accounted to shortage of money for the project which in turn also delayed the project.
 - Then the developers were struck hard by the two consecutive waves of the covid-19, because of which the construction work completely came to halt. Furthermore, there was shortage of labour as well as the capital flow in the market due to the sudden lockdown imposed by the government.
 - Lately, the work has been severely impacted by the ongoing farmers protest in the NCR as the farmers protest has caused huge blockade on the highway due to which ingress and egress of the commercial vehicles carrying the raw materials has been extremely difficult, thereby bringing the situation not in the control of the developers and thus, constitutes a part of the force majeure.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

9. 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

10. 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.

11. 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.

12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the

jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent

F.I Objections regarding the complainants being investors.

14. The respondent has taken a stand that the complainants are the investors and not consumers, 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 consumer 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 preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, 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 the promoter 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 buyer's agreement, it is revealed that the complainants are buyers, and they have paid total price of **Rs.1,50,51,738/-** to the promoter towards purchase of an apartment in its project. 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;"

15. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainants, it is crystal clear that the complainant is allottee(s) 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. II Objection regarding the delay in payment

16. The objection raised by the respondent regarding delay in payment by many customers is totally invalid because the allottees are already pay the amount of Rs.1,50,51,738/- against the total sale consideration of Rs.1,44,91,237/- to the respondent. The complainants have opted construction linked payment plan and already paid more than 100% of the basic sale consideration. The fact cannot be ignored that there might

be certain group of allottees that defaulted in making payments but upon perusal of documents on record it is observed that no default has been made by the complainants in the instant case. Section 19(6) of Act lays down an obligation on the allottee(s) to make timely payments towards consideration of allotted unit. As per documents available on record, the complainants have paid all the installments as per payment plan duly agreed upon by the complainants while signing the agreement and the same is evident from statement of account dated 22.02.2020 on page no. 119 of the complaint. The respondent has not gone through the facts of the complaint carefully. Moreover, the stake of all the allottees cannot put on stake on account of non-payment of due installments by a group of allottees. Hence, the plea advanced by the respondent is rejected.

G. Findings on the relief sought by the complainant.

- G. I** That the complainants wish to withdraw from the said project and are seeking refund of the entire amount paid till date i.e., Rs. 1,50,51,738.44/- along with interest @18 % p.a. to be applied from when the respondent received the first installment & till realization as provided under section 18(1) of the Act;
- G. II.** Refund of Rs. 2,18,600.44/- lying extra with the respondent as per the ledger account statement shared by the respondent with the complainants along with interest @18% p.a. from the date on which this extra amount got credited to the respondent till its realization.

17. 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)

18. As per clause 4.2 of the agreement to sell dated 12.09.2014 provides for handing over of possession and is reproduced below:

4.2 Possession Time and Compensation

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

30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay.....”

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

20. **Due date of handing over possession and admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 6 months of grace period, in case the construction is



not complete within the time frame specified. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by September 2018. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay in completion of the project. Accordingly, in the present case the grace period of 6 months is allowed.

21. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with 18% 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.

22. 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.

23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.07.2022 is **7.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **9.70%**.
24. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1)**, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement to sell dated form executed between the parties on 12.09.2014, the possession of the subject unit was to be delivered within a period of 48 months from the date of execution of buyer's agreement which comes out to be 12.09.2018. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 12.03.2019.
25. Keeping in view the fact that the allottee/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 plot 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.
26. The due date of possession as per agreement for sale as mentioned in the table above is **12.03.2019** and there is delay of 2 years and 14 days on the date of filing of the complaint.



27. 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....."

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

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for

interest for the period of delay till handing over possession at the rate prescribed."

29. 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 allottees, as the allottees 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.

30. 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 him at the prescribed rate of interest i.e., @ 9.70% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.III Refund of Rs.6,22,889/- paid by the complainants as pre-EMI's which was supposed to be paid by the respondent along with interest @18% p.a. to be applied from when the complainants made the payment to the Bank & till realization of the same from the respondent.



31. The respondent is directed that the outstanding loan amount paid by the bank/payee be refunded to the concerned financial institution and the balance amount with the respondent after paying to the financial institution be refunded to the complainant along with interest at the prescribed rate.

G.IV To pay compensation of Rs. 10,00,000/- towards litigation cost and mental agony/harassment caused to the complainants by the willful, brazen and malicious conduct of the respondent.

32. The complainants are also 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 compensation.

H. Directions of the authority

33. 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 9.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- ii. The respondent/promoter is further directed that the outstanding loan paid by the bank be refunded to the financial institution.
- iii. The balance amount with the respondent/promoter after paying the financial institution be refunded to the complainants along with interest at the prescribed rates.
- iv. 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.


34. Complaint stands disposed of.

35. File be consigned to registry.

V.I - 3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)

Chairman

Dated: 12.07.2022