



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

**Complaint no. : 6772 of 2019**  
**First date of hearing: 09.03.2020**  
**Date of decision : 25.07.2022**

1. Ankur Maheshwari
  2. Renu Maheshwari
- Both RR/o: - 1132, Tower no. 9A, GH-7, Crossing  
Republic, Ghaziabad

**Complainants**

Versus

M/s Revital Reality Private Limited.  
**Regd. Office at:** 1114, 11<sup>th</sup> Floor, Hemkunt Chamber, 89,  
Nehru Place, New Delhi- 110019

**Respondent**

**CORAM:**

Shri K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Sh. M.K Maheshwari (A.R)  
Sh. Bhriugu Dhami (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint dated 26.12.2019 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 allottees 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 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	"Supertech Basera" sector-79&79B, Gurugram	
2.	Project area	12.11 area	
3.	Nature of project	Affordable Group Housing Project	
4.	RERA registered/not registered	Registered vide no. 108 of 2017 dated 24.08.2017	
5.	RERA registration valid upto	31.01.2020	
6.	RERA extension no.	14 of 2020 dated 22.06.2020	
7.	RERA extension valid upto	31.01.2021	
8.	DTPC License no.	163 of 2014 dated 12.09.2014	164 of 2014 dated 12.09.2014
	Validity status	11.09.2019	11.09.2019
	Name of licensee	Revital Reality Private Limited and others	



9.	Date of approval of building plans	of	19.12.2014 [as per information obtained by the planning branch]
10.	Date of grant of environment clearance	of	22.01.2016 [as per information obtained by the planning branch]
11.	Unit no.		1103, 11 <sup>th</sup> floor, tower/block- 15, (Page no. 27 of the complaint)
12.	Unit measuring		473 sq. ft [carpet area] 73 sq. ft. [balcony area]
13.	Allotment letter		19.09.2015 (Page no. 24 of the complaint)
14.	Date of execution of flat buyer's agreement		23.12.2015 (Page no. 26 of the complaint)
15.	Possession clause		<b>3.1 Possession</b> <i>Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement,</i>



		<p>including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date") , whichever is later.</p> <p>(Page no. 30 of the complaint).</p>
16.	Due date of possession	<p>22.01.2020</p> <p>[Note: - the due date of possession can be calculated by the 4 years from approval of building plans (19.12.2014) or from the date of environment clearance (22.01.2016) whichever is later.]</p>
17.	Total sale consideration	<p>Rs.19,28,500/-</p> <p>(As per payment plan page no. 29 of the complaint)</p>
18.	Total amount paid by the complainants	<p>Rs.7,48,800/-</p> <p>(As per receipt information page 45 and 46 of the complaint)</p>
19.	Payment plan	<p>Time linked payment plan</p> <p>[Page no. 29 of the complaint]</p>



20.	Offer of possession	Not offered
21.	Occupation certificate	Not obtained
22.	Cancellation letter	26.03.2019 [Page no. 57 of the complaint]

**B. Facts of the complaint**

3. The complainants have made the following submissions: -

- I. That the complainants applied for allotment of 2 BHK 473 sq. ft. 2 BHK unit in Supertech Basera, Sector 79/79B, Gurugram on 20.12.2014 along with cheque no 040637 dated 20.12.2014 amounting Rs.96,425/- (5% of total amount). The total cost of the unit was Rs. 19,28,500/-.
- II. That the respondent issued allotment letter no. Basera/ GGN/AL/01298 Dated 19.09.2015 along with demand of Rs.4,02,575/- while allotting unit no. 1103, tower 15. The same was deposited vide cheque no 040638 dated 26.09.2015 amounting Rs.4,02,575/-. Thereafter, flat buyer agreement was executed between complainant and respondent on dated 23.12.2015.
- III. That the demand letter dated 03.03.2016 for deposition of call money amounting Rs.2,49,800/- (12.5 % of total amount) was issued by the respondent and the same was deposited vide cheque



no 040633 dated 11.03.2016. Thus, the total amount deposited with the respondent was Rs.7,48,799/- i.e., 37.5% of total cost of the unit.

- IV. That the complainants apprised to the respondent vide letter dated 10.02.2017, to send the progress of construction of allotted unit no Tower 15/1103, which was not done. The respondent was also intimated that while visiting the site, the complainants found that only pile foundation work was being done for allotted unit. Thus, against deposit of 37.5% money, the progress of construction was almost nil.
- V. Thereafter, collecting 37.5% money from complainants, the respondent did not make any progress in allotted property in tower no 15 and diverted deposited money elsewhere. They further issued demand letters for deposition of 12 monthly and 18 monthly installments amounting Rs.2,41,063/- each @12.5 % of total amount, intentionally without doing any work on site. The respondent made sole demand of Rs.17,52,524.38/- including previous payments as on 02.04.2018, while the progress was merely 5% in tower no. 15 as per progress posted by them on their website as on 11.04.2018. This was with the sole intention of diversion of complainant's money else ware, as 37.5% of money was already deposited with them. Thereafter, the complainants issued notices to the respondent regarding redressal of their



grievances vide letters dated 08.04.2017, 29.04.2017, 09.05.2017, and 15.06.2017, and the respondent did not reply even a single letter.

- VI. That as per clause 3.1, dated 23.12.2015 of the respondent, possession of unit will to be given to allottees within a period of 4 (four) years from the date of approval of building plans i.e., 19.12.2014 i.e., upto 18.12.2018. With only 5% progress of work as on 11.04.2018 (i.e., 8 months' time remaining as per agreement) and defaults of respondent in the most of projects, the complainants were forced not to take any risk of payment of any further installments to the respondent.
- VII. Thereafter, the respondent issued cancellation letter no Basera/GGN/FN/00154 dated 26.03.2019 regarding complainant's unit, unilaterally without clarifying the points raised with them. Also, the respondent did not attach any refund amount with the cancellation letter with an ill intention. The complainants replied vide letter dated 15.04.2019 to the respondent, stating that letter as illegal and not acceptable.
- VIII. That as per clause 5 (iii b) of the Haryana Affordable Housing Policy 2013 "*Any person interested to apply for allotment of flat in response to such advertisement by a colonizer may apply on the prescribed application form along with 5% amount of the total cost of the flat. All such applicants shall be eligible for an interest at the rate of 10%*



*per annum on the booking amount received by the developer for a period beyond 90 days from the close of booking till the date of allotment of flat or refund of booking amount as the case may be".* As such complainants were entitled the adjustment of interest @10% per annum on the booking amount of Rs.96,425/- w.e.f. 24.12.2014 (date of closing of application) till date of allotment, which was not done by the respondent. Therefore, the respondent is liable for payment of interest at the rate of 10% per annum on the booking amount of Rs.96425/- w. e. f. 24.12.2014 till date.

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

4. The complainants have sought following relief(s).
  - i. To refund the entire amount of Rs.7,48,799/- along with interest at such rate as may be prescribed in this behalf including compensation in the manner provided under the Act.
  - ii. To refund the entire amount received by it as per Affordable Group Housing Policy, 2013 within a period of 90 days from the closing of booking till the actual realization of the amount.
  - iii. To pay compensation for mental torture amounting to Rs.50,000/-
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent contested the complaint on the following grounds: -





- i. The complainants approached the respondent making enquiries about the project and after complete information being provided to them, sought to book a unit in the said project.
- ii. That on 04.09.2015, the complainants in the presence of officials of DGTCP/DC vide draw, were allotted unit bearing no.1103, 11<sup>th</sup> floor, in tower- 15.
- iii. That consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainants executed the flat buyer agreement dated 23.09.2015.
- iv. In the interregnum, the pandemic of Covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extended the timeline of handing over possession of the apartment to the complainant.
- v. That the construction of the project is in full swing, and the delay if at all, has been due to the Government-imposed lockdowns which stalled any sort of construction activity. Till date, there are several embargos qua construction at full operational level.
- vi. That the 'possession' clause itself provided a 'commencement date' from which point, the respondent had delivered the possession of the apartment within 4 years thereof. It would be apposite to note that the respondent received sanction for its building plans on



12.09.2014 from the Directorate of Town and Country Planning, Haryana and the environment clearance on 22.01.2016. Therefore, the commencement date as per agreement is 22.01.2016 and 4 years from that date would mean that the respondent had to give possession of the apartment by 21.01.2020. However, due to extraneous and force majeure conditions not within the powers and control of the respondent company, the development of the said project was delayed.

- vii. That in view of the force majeure clause, it is clear that the occurrence of delay in control of it, including but not limited to the dispute with the construction agencies employed by the respondent for completion of the project is not a delay on account of th respondent for completion of the project.
- viii. That the timeline stipulated under the buyer's agreement was only tentative, subject to force majeure reasons which were beyond the control of the respondent. The respondent in an endeavour to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required. Evidently, the respondent had availed all the licenses and permits in time before starting the construction.
- ix. It is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the



demonetisation of the Indian economy, on the real estate sector. The real estate sector is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector and whereby the respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the after effects of demonetisation, which caused a delay in the completion of the project. The said delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.

- x. That the complainants have not come with clean hands before this authority and have suppressed the true and material facts from this authority. It would be apposite to note that the complainants are mere speculative investors who have no interest in taking possession of the apartment.
- xi. That the enactment of Real Estate (Regulation and Development) Act, 2016 is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate market sector. The main intention of the respondent is just to complete the project within stipulated time submitted before this authority. According to the terms of the builder buyer agreement also, it is mentioned that all



the amount of delay possession would be completely paid/adjusted to the complainant at the time final settlement on offer of possession.

- xii. That the respondent further submitted that the Central Government has also decided to help bonafide builders to complete the stalled projects which were not constructed due to scarcity of funds. The Central Government announced Rs.25,000 Crore to help the bonafide builders for completing the stalled/ unconstructed projects and deliver the homes to the homebuyers. It is submitted that the respondent/ promoter, being a bonafide builder, has also applied for realty stress funds for its Gurgaon based projects.
- xiii. That compounding all these extraneous considerations, the ***Hon'ble Supreme Court vide order dated 04.11.2019***, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'Basera' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay orders have been passed during winter period in the preceding years as well, i.e., 2017-2018 and 2018-2019. Further, a complete ban on construction activities at site invariably resulted in long-term halt. As with a complete ban, the concerned labor was let off and they travelled to their native villages or look for work in other states,



the resumption of work at site became a slow process and a steady pace of construction as realized after long period of time.

- xiv. The respondent has further submitted that graded response action plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.
- xv. That the pandemic of covid-19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July 2020. In fact, the entire labour force employed by the respondent was forced to return to their hometowns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such, the respondent has not been able to employ the requisite labour necessary for completion of its projects. The Hon'ble Supreme Court in the seminal case of *Gajendra Sharma v. UOI & Ors, as*



*well Credai MCHI & Anr. V. UOI & Ors* has taken cognizance of the devastating conditions of the real estate sector and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. In view of the same, the pandemic is clearly a 'force majeure' event, which automatically extends the timeline for handing over of possession of the apartment.

- xvi. That as per admission of the complainants, they want to cancel the booking for them own reasons, and not on the basis of any deficiency in service, or delay construction by the respondent. The cancellation of the booking is governed by the clause 2.3 of the buyer's agreement, whereby the respondent is contractually entitled to forfeit the forfeitable amount as per terms of the agreement and affordable group housing policy. Therefore, without prejudice to the fact that the complainant would be in brazen breach of the agreement, in the event that this authority grant the relief so claimed, the respondent is not mandated to refund any monies with interest.
- xvii. That the project is an ongoing project and orders of refund at a time when the real estate sector is at its lowest point, would severally prejudice the development of the project which in turn would lead to transfer of funds which are necessary for timely completion of the project. That any refund order at this stage would severally prejudice the interest of the other allottees of the project as the



diversion of funds would severally impact the project development. Thus, no order of refund may be passed by this authority in lieu of the present prevailing economic crisis and to safeguard the interest of the other allottees at large.

- xviii. That the complainants cannot unilaterally cancel/withdraw from the affordable group housing project at a late stage as the same would fly in the face of numerous judicial pronouncements as well as the statutory scheme as proposed under the Act of 2016.
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.
8. The application for refund was filed in the form CAO with the adjudicating officer. After taking reply and presuming the case file, the application was allowed vide order dated 07.04.2021, with a direction to the respondent "To refund the amount of Rs.7,48,799/- minus Rs.25,000/- to the complainants within a period of 90 days and failing which it would be liable to pay interest @ 9.30% per annum from that upto the date of actual realization and." Felling aggrieved with the same, the order was challenged by the complainants before the Haryana Real Estate Appellate Tribunal, Chandigarh and who vide order dated 05.05.2022, set aside the same with a direction to the authority for fresh decision of the compliant in accordance with law. So, in pursuant to



those direction, both the parties put in appearance before the authority. Therefore, the complaint is being deal with the authority. Now, 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 10.05.2022 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. (2021-2022 (1) RCR (C), 357**, 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 basis of proceedings and submissions made by both the parties.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

11. 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**

12. 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.*

13. 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.
14. 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*** and 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."*

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

**F. Findings on the objections raised by the respondent**

**F.I Objection regarding the project being delayed because of force majeure circumstances and contending to invoke the force majeure clause.**

16. From the bare reading of the possession clause of the flat buyer agreement, it becomes very clear that the possession of the apartment was to be delivered by **22.01.2020**. The respondent in its reply pleaded the force majeure clause on the ground of Covid- 19. The Hon'ble High Court of Delhi in case no. **O.M.P (I) (COMM.) No. 88/2020 & I.As. 3696-3697/2020 title as M/S HALLIBURTON OFFSHORE SERVICES INC VS VEDANTA LIMITED & ANR. 29.05.2020** held that *the past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself.* Thus, this means that the respondent/promoter has to



complete the construction of the apartment/building by 22.01.2020. It is clearly mentioned by the respondent/promoter for the same project, in complaint no. 4341 of 2021 (on page no. 73 of the reply) that only 42% of the physical progress has been completed in the project. The respondent/promoter has not given any reasonable explanation as to why the construction of the project is being delayed and why the possession has not been offered to the complainants/allottees by the promised/committed time. The lockdown due to pandemic in the country began on 25.03.2020. So, the contention of the respondent/promoter to invoke the force majeure clause is to be rejected as it is a well settled law that ***"No one can take benefit of his own wrong"***. Moreover, there is nothing on the record to show that the project is near completion, or the developer applied for obtaining occupation certificate. Thus, in such a situation, the plea with regard to force majeure on ground of Covid-19 is not sustainable.

**F. II Objections regarding the complainants being investors.**

17. The respondent has taken a stand that the complainants are investors and not consumer, 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 consumers 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 the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyers and have paid total price of **Rs.7,48,800/-** towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement cum provisional allotment letter executed between promoter and complainants, it is crystal clear that they are allottee(s) as the subject unit 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.

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

**G. I To refund the entire amount of Rs.7,48,799/- along with interest at such rate a may be prescribed in this behalf including compensation in the manner provided under the Act.**

**G. II To refund the entire amount received by it as per Affordable Group Housing Policy, 2013 within a period of 90 days from the closing of booking till the actual realization of the amount.**

19. The complainants were allotted unit no. 1103 on 11<sup>th</sup> floor, in tower/block- 15, in the project "Supertech Basera" by the respondent/builder for a total consideration of Rs.19,28,500/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed on 23.12.2015. The possession of the unit was to be offered with 4 years from approval of building plans (19.12.2014) or from the date of environment clearance (22.01.2016) and whichever is later which comes out to be 22.01.2020. The complainants paid a sum of Rs.7,48,800/- up to 12.03.2016. Further, the complainants submitted that the respondent failed to carry out the construction of the project and issued illegal demands against the said unit. The complainants also



sent letters dated 08.04.2017, 29.04.2017, 09.05.2017, 15.06.2017 raising his concern in this regard.

20. It is observed that the complainants failed to pay the remaining amount as per schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 26.03.2019 after issuance of notice in the newspaper. The complainants also withdraw from the project on 07.05.2019. But in response the respondent requested the complainants to continue with the project as the refund was not viable to the respondent at the time.
21. Now, the question before the authority is whether this cancellation is valid or not. According to clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 which produce as under:

*"If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".*

22. It is to be noted that as per the schedule of collection of payment provided under section 5(iii)(b) of Affordable Group Housing Policy 2013, it is time linked payment plan instead of construction linked payment plan.



23. On 13.07.2018, the respondent published a list of defaulters for payments in the daily Hindi newspaper Rashtriya Sahara. Finally, the cancellation letter has been issued by the respondent on 26.03.2019. The respondent has cancelled the unit as per the provisions of the policy and is valid one. But there is nothing on record to show that the respondent has refunded the balance amount after deduction of Rs.25,000/- as per the provisions of clause 5(iii)(i) of the policy.

**G.III Compensation for mental torture amounting to Rs.50,000/-**

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

**H. Directions of the authority**

25. 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 is directed to cancel the said unit and refund the balance amount of complainants after deduction of Rs. 25000/- as per clause 5(iii)(I) of the Policy 2013. The respondent has been using the amount paid by the complainants even after cancellation of subject unit. Therefore, the respondent is further directed to return the amount paid by the complainants with an interest @9.80% per annum from the date cancellation of allotment i.e., 26.03.2019 till the actual realization of the 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.


26. Complaint stands disposed of.

27. File be consigned to registry.

V.1 -   
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Dr. K.K. Khandelwal)

Chairman

Dated: 25.07.2022