BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**1309 of 2018**
Date of filing complaint:	**16.10.2018**
First date of hearing:	**13.02.2019**
Date of decision :	**13.07.2022**

	Kish Exports Limited **R/o**: 6315/C-6/7, Vasant Kunj New Delhi – 110070	**Complainant**
	Versus	
	M/s Orris Infrastructure Private Limited **R/o**: RZ-D-5, Mahavir Enclave, New Delhi – 110045 **C/o**: J-10/5, DLF Phase -2, M.G. Road, Gurgaon – 122002 Haryana	**Respondent**

CORAM:	
Dr. KK Khandelwal	**Chairman**
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Sh. Sukhbir Yadav (Advocate)	Complainant
Sh. S.K Goyal and Animesh Goyal (Advocates)	Respondent

ORDER

1. The present complaint 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 29 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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Aster Court" Sec 85, Gurugram
2.	Project area	25.018 acres
3.	Nature of the project	Group housing project
4.	DTCP License	39 of 2009 dated 24.07.2009 and valid up to 23.07.2024 99 of 2011 dated 17.11.2011 and valid up to 16.11.2024
5.	Name of the licensee	Be Office Automation Products Pvt Ltd and 6 others M/S Radha Estate Pvt Ltd and 2 Ors.
6.	RERA Registered/ not registered	Registered GGM/287/2018/19 dated 13.10.2018 and valid up to 30.06.2020
7.	Unit no.	101, 1st floor, Block 4I [Page 23 of the complaint]
8.	Unit measuring (carpet area)	1900 sq. ft. [Page 23 of the complaint] Revised area- 1952 sq. ft.

		[Page 53 of the complaint]
9.	Date of execution of apartment buyer agreement	05.05.2011 [Annexure P/2 at page no.20 of the complaint]
10.	Sanctions of the plans	Not placed on record
11.	Commencement of construction	25.02.2011 [Annexure P/3 at page no. 48 of the complaint]
12.	Possession clause	**Clause 10.1.** The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said unit **within the period of 36 months plus grace period of 6 months from the date of execution of the apartment buyer's agreement by the company or sanctions of the plans or commencement of construction whichever is later** unless there shall be delay or failure due to reasons mentioned in clauses 11.2, 11.3 and clause 38 or due to failure of allottee to pay in time the price of the said unit.... **(emphasis supplied)**
13.	Due date of possession	**05.11.2014** **Calculated from the date of apartment buyer's agreement** **Grace period of 6 months are allowed**
14.	Total sale consideration	Rs.62,12,700/- [Page 23 of the complaint] Rs.63,70,416/- [Annexure P/8 at page no.57 of the complaint]
15.	Total amount paid by the	Rs.61,34,212/-

	complainant	[As per statement of accounts as on 02.08.2018 at page 58 of the complaint]
16.	Payment plan	Construction linked payment plan [Page 45 of the complaint]
17.	Occupation Certificate	18.10.2018 [As per details mentioned on the website of DTCP, Haryana]
18.	Offer of possession	Not offered Letter of offer of possession - 14.02.2018 (for fit outs)

B. Facts of the complaint:

3. That on date 30.10.2010 complainant / petitioner M/s Kish Exports Limited booked a 4 BHK Flat, bearing No. 4I- 101, area admeasuring 1900 sq. ft. in Orris Aster Court Sector -85, Gurugram and paid Rs. 4,00,000/- for booking amount along with application form. The flat was purchased under the construction linked Plan for a sale consideration of Rs. 62,12,700/-. That complainant issued a cheque of Rs. 5,84,763/- in favour of respondent vide cheque No. 698446 drawn in Canara bank, New Delhi on date 12.03.2011 and the respondent issued a payment receipt vide receipt No. AC/805.

4. That on date 05.05.2011, a pre-printed, arbitrary, unilateral flat buyer agreement was executed between respondent and complainant. As per clause No. 10.1 of flat buyer agreement respondent has to give the possession of flat within 36 months from execution of buyer's agreement i.e. 05.05.2014.

5. That the on date 22.07.2011 respondent raised a demand of Rs. 15,33,574/- as per payment plan "On commencement of

Construction". The complainant issued two cheques of Rs. 14,90,084 /- vide cheque No. 699265 and Rs. 43,490/- vide cheque No. 699266 drawn in Canara Bank, New Delhi in favour of respondent on date 25.07.2011 and issued two payment receipts on the date 26.07.2011.

6. That on date 22.07.2011, respondent sent construction update to complainant on email, showing mechanical excavation completed on project site of tower 4I. That thereafter complainant continued to pay the remaining instalment as per the payment schedule of the builder buyer agreement and have already paid the more than 95% amount i.e. Rs. 61,34,212/- till date 18.03.2014 along with interest and other allied charges of the actual purchase price, but when complainant observed that there is no progress in the construction of subject flat for a long time, he raised his grievance to respondent(s). Though the complainant was always ready and willing to pay the remaining instalments provided that there is progress in the construction of the flat.

7. That on date 14.09.2013, respondent raised a demand of Rs. 1,63,019/- on increase in super area of flat by 52 sq. ft. In spite of several requests, respondent did not provide any calculation about the revision of the area. That since May 2014, complainant (officer bearers) regularly visiting to the office of respondent as well as construction site and making efforts to get the possession of allotted flats, but all in vain, in spite of several visits by the complainant. That on date 10.10.2017, respondent issued a letter for possession for fit-out demanded Rs.13,03,782/- That

thereafter, respondent again raised a demand towards offer for fitouts for flat on date 14.02.2018.

8. That on date 13.08.2018, complainant sent an email to respondent and asked for an updated statement of account against unit 4I-101, an offer letter for possession and occupation certificate and also asked for compensation on delay in handing over the project. After sending a reminder on 13.09.2018, respondent did not reply on email nor provided any information and documents.

C. Relief sought by the complainant:

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

   i. Direct the respondent to refund the amount Rs. 61,34,212/- paid by the complainant to the respondent as instalments towards the purchase of flat along with prescribed interest per annum compounded from the date of deposit.

   ii. Direct to pay an amount of Rs.1,00,000/- as litigation expenses.

D. Reply by respondent:

The respondent by way of written reply dated 11.09.2019 made the following submissions:

10. That without prejudice to the aforementioned submissions, it is submitted that even otherwise the complainant cannot invoke the jurisdiction of the authority in respect of the unit allotted to the complainant, especially when there is an arbitration clause

provided in the flat buyer's agreement, whereby all or any disputes arising out of or touching upon or in relation to the terms of the said agreement or its termination and respective rights and obligations, is to be settled amicable failing which the same is to be settled through arbitration. Once the parties have agreed to have adjudication carried out by an Alternative Dispute Redressal Forum, invoking the jurisdiction of this Ld. Adjudicating Officer, is misconceived, erroneous and misplaced. The apartment buyer's agreement dated 15.05.2013 attached by the complainant himself is containing the arbitration clause No.10.2 as under -

> *"All or any disputes arising out or touching upon or in relation to this agreement including the interpretation and validity of the terms thereof and the respective rights and obligation of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act 1996 or statutory amendments /modifications thereof for the time being in force. The arbitration proceedings shall be held at appropriate location in Delhi by a sole arbitrator who shall be appointed by 3C and whose decisions shall be final and binding upon the parties. The buyer hereby confirms that the buyer(s) shall have no objection to the appointment of the sole arbitrator by 3C.". In view of this specific agreement and Section-5 of the Arbitration & Conciliation Act 1996 the jurisdiction of this Adjudicating Officer is specifically barred to decide the dispute which is squarely covered and required to be decided under the Arbitration & Conciliation Act 1996.*

11. In appreciating the rival contentions of the parties, regard must be placed to the sequence of events, which shall bear out the frivolity of the instant compliant and the one-sided picture which has been given by the complainant to suit their ends and to mislead this Hon'ble Authority:

i. The said project was being developed on a contiguous parcel of land which had been aggregated by the respondent. That the land so aggregated for the above said project was contributed by a consortium of land holders, who contributed around 19 Acres. An entity namely BE Office Automation Products (P) Ltd **("BE")** had also approached the respondent with 5.8 Acres of land which was contiguous with the land already aggregated by the respondent. BE requested the respondent to accept the said 5.8 Acres of land owned by BE a part of the land already aggregated by the respondent. Accordingly, a collaboration agreement dated 22.10.2007 was executed between the respondent and BE setting out the terms and conditions of the collaboration. The said collaboration agreement also provided for the area entitlement of both the parties in the area to be developed on the 25.018 acres and the same was to be calcu ated on basis of saleable area attributable to 5.8 acres as contributed by BE.

ii. As per the collaboration agreement, it was agreed between BE and the respondent that the total saleable area with respect to the said land of 5.8 acres would be shared in the ratio of 1/3: 2/3, i.e. 1/3rd going to BE and 2/3rd going to the respondent. In addition to the collaboration agreement, BE also executed an irrevocable General Power of Attorney dated 22.10.2007 in favour of the respondent for various purposes related to development of the said project.

iii. On January 2011 in pursuance of its contractual obligations invited BE to identify the apartments that BE would accept as its entitlement under the collaboration agreement. Accordingly, the representatives of the respondent and BE met on January 24, 2011 and in pursuance of the same BE identified 82 apartments that would form part of BE's entitlement under the collaboration agreement.

iv. After the aforesaid agreement with BE in the year 2007, the respondent had acquired 4-5 acres additional land by the virtue of which more flats were constructed. BE, by misrepresenting the collaboration agreement raised a claim that it was entitled to proportionate share in the construction on the additional parcel of land which was acquired respondent which had no relation to BE. It moved to court and filed an application under section 9 of the Arbitration and Conciliation Act, 1996 before the Ld. Additional District and Sessions Judge, Gurgaon. The matter was heard, and an Order dated 20.11.2014 was passed by the Ld. ADJ. The Ld. ADJ granted a blanket stay in favour of BE and against the Respondent, whereby the respondent was restrained from creating any third party interest in respect of any apartments, villas and commercial areas till the matter could be decided finally by the arbitrator. The respondent was also restrained from receiving any money in respect of sale of apartments, villas and commercial sites etc. or club membership charges

or in any other form from any person till the adjudication of the dispute.

v. That the abovementioned stay order caused immense hardship to the respondent as the restraint on alienation of the respondent's share of flats in the said project led to shortage of fund as the respondent could not alienate its interest in the said flats nor could it collect money for flats already sold under construction linked plans and the pace of the construction slowed down considerably.

vi. After the above said stay order was passed, the respondent took further legal steps and filed F.A.O. No. 9901 of 2014 (O&M) whereby it was brought to the notice of the Hon'ble Punjab and Haryana High Court that the Ld. ADJ had committed an illegality and misdirected itself in not referring to the minutes of the meeting dated 24.01.2011 whereby the share and number of flats of BE had already been identified and at best the injunction should have been limited to BE's share in the said project. That the Hon'ble High Court on December 03, 2014 was pleased to vacate the stay order and limit the injunction to BE's agreed share in the project.

vii. the respondent made serious efforts to bring the dispute to its logical ending and due to the same a Single Ld. Arbitrator, Hon'ble Mr Justice Chandramauli Kumar Prasad (Retd.), a former judge of the Hon'ble Supreme Court of India was appointed to adjudicate and decide the dispute between the two parties by the Hon'ble Punjab and Haryana High Court

vide order dated 30.01.2015.. The Ld. arbitrator passed interim award dated 19.08.2015 whereby the respondent's stand was upheld and the respondent was permitted to deal with their own share i.e., 2/3 share in the project as relatable to the land contributed by BE.

viii. The arbitration proceedings concluded with Final Award dated 12.12.2016 passed by the Ld. Single Arbitrator, Mr. Justice Chandramauli Kumar Prasad (Retd.), whereby contentions of the Respondent were upheld and the share of BE was restricted to the original 82 flats selected by it. the above mentioned award goes on to show that the respondent was subjected to constant and frivolous litigation by be through the entire construction and development period which caused immense hardship to the opposite and resulted in loss of valuable time and resources which resulted in delay in completion of the said project.

ix. That even after the arbitral award was passed in favour of respondent, BE was not inclined to put an end to the frivolous litigation that it was pursuing against the Opposite Part No. 1. BE challenged the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 and also made a stay application before the competent court. The said stay application of BE was dismissed vide order dated 20.03.2017.

x. BE, upon the dismissal of its stay application on 20.03.2017, approached the Divisional Commissioner, Gurugram by filing an application. The Divisional Commissioner, Gurugram

passed an extra jurisdictional order staying the alienation property in the said project vide order dated 28.03.2017. The respondent challenged the said order before the Hon'ble Punjab and Haryana High Court in CWP No. 9075/2017 wherein vide order dated 01.05.2017, the said impugned order was stayed. Scrutiny of the said application shall make it evident that the petitioner had prior thereto preferred complaint dated 13th of January 2017 before Deputy Commissioner, Gurgaon. By virtue of application dated 13th March 2017, the petitioner had sought stay in respect of registration of apartments forming part of the project till such time the litigation between the parties was conclusively decided. The complainant had initially succeeded in getting passed an order from the Deputy Commissioner, Gurugram that no property or part thereof be alienated.

xi. BE had also filed a contempt petition, C.O.C.P. No. 1851 of 2015, alleging contempt of court of the Additional District Judge, Gurgaon by the respondent. The said contempt petition was eventually dismissed by the Hon'ble High Court of Punjab and Haryana vide judgment dated 15.03.2017.

xii. From the afore mentioned events, the only inference that can be drawn is that BE tried to create multiple hurdles in the way of the respondent in completing its project on time through frivolous litigation. However, the Respondent won in every round of litigation as can be seen from the fact that various judicial forums decided in favor of it. The respondent

further submits that court proceedings certainly took a substantial amount of time during which the respondent was restrained qua the project which resulted in the alleged delay. It is also pertinent to note that the respondent was kept under the constant threat of an adverse legal ruling if the contempt petition were to succeed which further put constraints on alienation of flats in the said project thereby depriving the respondent of valuable capital which was needed to finish the ongoing development and construction of the said projects.

xiii. Further a writ petition was filed in the Hon'ble High Court of Punjab and Haryana titled as "Sunil Singh vs. Ministry of Environment & Forests Parayavaran" which was numbered as CWP-20032-2008 wherein the Hon'ble High Court pursuant to order dated 31 July, 2012 imposed a blanket ban on the use of ground water in the region of Gurgaon and adjoining areas for the purposes of construction.

xiv. That on passing of the abovementioned order by the Hon'ble High Court the entire construction work in the Gurgaon region came to stand still as the water is one of the essential parts for construction. In light of the Order passed by the Hon'ble High Court the Opposite Party had to arrange and procure water from alternate sources which were far from the construction site. The arrangement of water from distant places required additional time and money which resulted in the alleged delay.

12. That it would be wrong to allege that there has been delay in the possession of the apartments as the schedule for possession of the apartments which is 42 months (mentioned in clause 10.1) of the agreement is subject to the rider that it is not applicable in certain circumstances that are not under the control of the respondent i.e. *force majeure* events

13. The actual area when calculated was increased by 52 sq. ft. therefore the demand of the amount of Rs.1,55,116/- has rightly made. The complainant and its officials are well aware of the fact that there was no fault on the part of the respondent in some delay which occurred due to the force majeure beyond the control of the respondent. Since the flat was completely developed therefore the complainant was asked for fit out of its apartment. The occupation certificate was already applied, and the building was complete from all prospects, therefore the letter dated 09.01.2018 was issued to the complainant. The possession was offered but the complainant never complied with the necessary formalities as stated in letter dated 09.01.2018 and 12.09.2018.

14. The various allottees have occupies their respective flats and they are residing in the same even the conveyance deeds of various flats have been executed and got registered to the entire satisfaction of allottees of their respective flats. It is totally wrong and denied that the construction of tower is not completed or that there is any negligence on the part of the respondent as alleged. It is totally wrong and denied that as per project site condition it seems project would take further 1 year in all respects subject to

willing to respondent as alleged. The project is already complete the occupation certificate has been issued and the averments of the complainant are totally false. The flat is complete in all respects and the complainant willfully and knowingly not receiving the possession of the same after completing necessary formalities and payment of remaining sale consideration and other charges. It is pertinent to mention here that the project stands still, and occupation certificate is also received on 18.10.2018 and the respondent has already offered possession to the complainant on 20.10.2018.

15. Copies of all the relevant documents have been filed and placed on 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.

E. Jurisdiction of the authority:

16. The plea 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

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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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)(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.

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.

F. Findings on the objections raised by the respondent:

F.I Objection regarding complainant is in breach of agreement for non-invocation of arbitration.

17. The respondent has raised an objection that the complainant has not invoked the arbitration proceedings as per provisions of Flat Buyer's Agreement which contain a specific provision regard initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated with regard arbitration in the buyer's agreement:

> *50. All or any disputes arising out or touching upon or in relation to this agreement including the interpretation and validity of the terms thereof and the respective rights and obligation of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act 1996 or statutory amendments /modifications thereof for the time being in force. The arbitration proceedings shall be held at appropriate location in Delhi by a sole arbitrator who shall be held at the corporate office of the company alone at Gurgaon stated hereinabove by a sole arbitrator who shall be nominated by the company. The allottee hereby confirms that he/she shall have no objection to this appointment. The courts at Gurgaon and the Punjab and Haryana High Court at Chandigarh alone shall have the jurisdiction.*

18. It is contended on behalf of respondent that as per terms and conditions of the Agreement duly executed between the parties, it was specifically mentioned that in the eventuality of any dispute, the same shall be settled by arbitration proceedings. However, the Authority is of the view that its jurisdiction cannot be fettered by the existence of any arbitration clause in Buyer's agreement. It may be noted that section 79 of the Act, 2016 bars the jurisdiction of civil courts about any matter falling within the purview of the Authority or the Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, Section 88 of the Act says that the provisions of this Act shall be in addition to

and no in derogation of the provision of any other law for the time being in force. Further, the Authority places reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited** Vs **M. Madhusudhan Reddy & Anr(2012) 2 CC 506, Emmar MGF Land and Ors Vs Aftab Singh and Ors in Civil Appeal 23512/23513 of 2017 decided on 10.12.2018** and wherein it was held that the remedies provided under the Consumer Protection Act, 1986 are in addition to and not in derogation of other laws in force. It was also held that under Article 141 of the Constitution of India, the law declared the Supreme Court shall be binding on all the courts within the territory of India. So, in view of law laid down in these cases, the Authority is bound by the same and cannot refer the parties to arbitration, even if the agreement between the parties had an arbitration clause. Thus, the Authority has no hesitation in holding that it has the jurisdiction to entertain the complaint and the dispute does not require to be referred to arbitration.

F.2 Objections regarding the complainant being investors:

19. It is pleaded on behalf of respondent that complainant is investor and not consumer. So, they are not entitled to any protection under the Act and the complaint filed by them under Section 31 of the Act, 2016 is not maintainable. It is pleaded 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 consumers of the real estate sector. It is

settled principle of interpretation that preamble is an introduction of a statute and states the main aims and 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 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 flat Buyer's agreement, it is revealed that the complainant is buyer and paid considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of term allottee under the Act, and the same is reproduced below for ready reference:

> *"Z(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."*

20. In view of above-mentioned definition of allottee as well as the terms and conditions of the flat buyer's agreement executed between the parties, it is crystal clear that the complainant is allottee as the subject unit allotted to them by the respondent/promoter. The concept of investor is not defined or referred in the Act of 2016. As per definition 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) Ltd. 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 an investor are not entitled to protection of this Act also stands rejected.

G. Entitlement of the complainant for refund:

G.1 Direct the respondent to refund of amount of Rs. 61,34,212/- alongwith interest per annum compounded from the date of deposit.

21. The complainant was allotted the subject unit by the respondent for a total sale consideration of Rs. 62,12,700/- against payment of Rs.4,00,000/- as booking amount under the construction linked payment plan. An apartment buyer's agreement dated 05.05.2011 was executed between the parties with regard to that unit. The due date of possession of the subject unit was calculated as per clause 10.1 where the possession of the unit was to be handover **within the period of 36 months plus grace period of 6 months from the date of execution of the apartment buyer's agreement by the company or sanctions of the plans or commencement of construction whichever is later**. The date of commencement of construction of the project is 25.02.2011 (annexure P/3 at page no. 48 of the complaint) and six months of grace period is allowed so the possession of the booked

unit was to be delivered on or before 05.11.2014. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 05.05.2011 executed between the parties. After execution of buyer's agreement, the complainant started depositing various amounts against the allotted unit and paid a sum of Rs.61,34,212/- as evident from statement of accounts as on 02.08.2018 at page 58 of the complaint. That due date of possession has already expired. The respondent had applied for obtaining occupation certificate and the same has been obtained from the competent authority on 18.10.2018 but possession has not been offered till date.

22. So, keeping in view the fact that the allottee- complainant wish to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per agreement for sale as mentioned in the table above is **05.11.2014 and there is delay of more than 3 years** on the date of filing of the complaint on 16.10.2018. The occupation certificate has been obtained from the competent authority on 18.10.2018.

23. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is received after filing of application by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate

24. 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)*** and followed by the Hon'ble High Court of Punjab & Haryana in case ***Ramprashtha Promoters and Developers Pvt Ltd*** *Vs* ***Union of India and Ors. in CWP No.6688 of 2021*** decided on 04.03.2022, and wherein it was observed as under:

> 25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time*

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.2 Legal expenses:

26. The complainant is claiming compensation under the present relief. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainant may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority:

27. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

    i) The respondent /promoter is directed to refund the amount i.e. Rs. 61,34,212/- received by it from the complainant 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 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.

28. Complaint stands disposed of.

29. File be consigned to the Registry.

(Vijay Kumar Goyal)
Member

(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.07.2022