

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

Date of decision: 12.07.2022

<b>NAME OF THE BUILDER</b>		<b>ANSAL HOUSING &amp; CONSTRUCTION LTD.</b>	
<b>PROJECT NAME</b>		<b>ANSAL HEIGHTS 92</b>	
<b>S. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>APPEARANCE</b>
1	CR/2460/2018	Monga Developers Pvt. Ltd. V/s Ansal Housing & Construction Ltd.	Shri Sumit Mehta Smt. Meena Hooda
2	CR/836/2020	Achla Gulati V/s Ansal Housing & Construction Ltd.	Smt. Arun Kumar Smt. Meena Hooda

**CORAM:**Dr. K.K. Khandelwal  
Shri Vijay Kumar Goyal**Chairman**  
**Member****ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ansal Heights 92" (group housing colony) being developed by the

same respondent/promoter i.e., M/s Ansal Housing & Construction Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	<b>ANSAL HOUSING &amp; CONSTRUCTION LTD. "Ansal Heights 92" situated at Sector 92, Gurugram, Haryana</b>
<b>Possession Clause: - 29</b>	<i>"The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 30. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit."</i> <b>(Emphasis supplied)</b>
<b>Occupation certificate: - Not obtained</b>	
<b>Note:</b> Grace period is allowed being unqualified & included while computing due date of possession.	

Sno.	Complaint No. & Case Title	CR/2460/2018 Monga Developers Pvt. Ltd. V/s Ansal Housing & Construction Ltd.	CR/836/2020 Achla Gulati V/s Ansal Housing & Construction Ltd.
1.	<b>Reply status</b>	Reply received on 05.02.2019	Reply received on 12.10.2020

2.	<b>Unit no.</b>	<b>B-1005</b> [ annexure G, pg. 26 of complaint]	<b>E-1006</b> [annexure P1, pg. 20 of complaint]
3.	<b>Date of apartment buyer agreement</b>	07.09.2012 [annexure G, pg. 23 of complaint]	28.06.2012 [annexure P1, pg. 17 of complaint]
4.	<b>Due date of possession</b>	07.03.2016 <b>(Note: 36 months from date of agreement i.e., 07.09.2012 being later + 6 months grace period allowed being unqualified)</b>	28.12.2015 <b>(Note: 36 months from date of agreement i.e., 28.06.2012 being later + 6 months grace period allowed being unqualified)</b>
5.	<b>Total Consideration / Total Amount paid by the complainant(s)</b>	TSC: ₹ 52,47,720/- AP: ₹ 73,66,492.15/-	TSC: ₹ 43,36,010/- AP: ₹ 38,93,724.11/-
6.	<b>Relief sought</b>	1. Refund entire amount paid by the complainant along with the interest.	1. Refund entire amount paid by the complainant along with the interest. 2. Compensation of ₹ 10,00,000/-

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the

authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case *CR/836/2020 Achla Gulati V/s Ansal Housing & Construction Ltd.* are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.

**A. Project and unit related details**

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

**CR/836/2020 Achla Gulati V/s Ansal Housing & Construction Ltd.**

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Heights, 92", Sector-92, Gurugram
2.	Total area of the project	10.563 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	76 of 2010 dated 01.10.2010 valid up to 30.09.2020
5.	Name of licensee	JSG Builders Pvt. Ltd. & anr.
6.	Registered/not registered	Not registered
7.	Unit no.	E-1006 [annexure P1, pg. 20 of complaint]

8.	Area of the unit	1320 sq. ft. [annexure P1, pg. 20 of complaint]
9.	Date of execution of buyer's agreement	28.06.2012 [annexure P1, pg. 17 of complaint]
10.	Possession clause	<p><b>29.</b></p> <p><i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 30. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit."</i></p> <p><i>(Emphasis supplied)</i></p> <p><i>[page 26 of complaint]</i></p>
11.	Date of start of construction as per demand raised by the respondent upon commencement of construction	14.06.2012 [annexure P2, pg. 40 of complaint]
12.	Due date of possession	28.12.2015  (Note: 36 months from date of agreement i.e., 28.06.2012 being later + 6 months grace period allowed being unqualified)

13.	Delay in handing over possession till the date of filing of this complaint i.e., 11.03.2020	4 years 2 months 12 days
14.	Basic sale consideration as per BBA at page 20 of complaint.	₹ 31,32,360/-
15.	Total sale consideration as per customer ledger dated 23.02.2019	₹ 43,36,010/- [annexure P2, pg. 34 of complaint]
16.	Total amount paid by the complainant as per customer ledger dated 23.02.2019	₹ 38,93,724.11/- [annexure P2, pg. 38 of complaint]
17.	Offer of possession	Not offered

#### B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- That the complainant i.e. Ms. Achla Gulati had booked a flat bearing unit no. E-1006admeasuring 1320 sq. ft. in the project namely "Ansal Heights 92" developed by the respondent Ansal Housing & Construction Limited in Sector 92, Gurgaon for a booking amount of Rs.4,59,954/- (Rupees four lakh fifty nine thousand nine hundred fifty four only) and an earnest money of Rs.6,13,272/- (Rupees six lakh thirteen thousand two hundred seventy two only). The total basic sale price of the flat in question was Rs.31,32,360/- (Rupees thirty-one lakh thirty-two thousand three hundred sixty only) and a flat-buyer agreement dated 28.06.2012 was executed between the complainant and the respondent.
  - That as per clause 29 of the flat-buyer agreement, the possession of the aforesaid flat was to be handed over by the respondent to the

- petitioners within 36 months from the date of execution of flat buyer agreement dated 28.06.2012 with a grace period of 6 months if the respondent fails to deliver the possession within 36 months.
- c. That though the petitioners had paid more than 96% of the sale price, still the possession which was to be delivered by 28.06.2015 i.e., 36 months or thereafter by 28.12.2015 i.e., a further grace period of 6 months after 36 months, the same has not been delivered till date by the respondent to the petitioners.
  - d. That the complainant vide letters dated 09.07.2018, 18.06.2019, 04.07.2019 sent through Asian Contec Ltd. (other flat buyer) requested the respondent to deliver the possession of the said flat/house. However, the respondent failed to deliver the possession of the said flat.
  - e. Aghast by the failure of the respondent, the petitioners had, vide letter dated 28.08.2019 called upon the respondent to refund the total amount paid by the petitioners i.e., Rs. 38,93,724.55/- (Rupees thirty-eight lakh ninety-three thousand seven hundred twenty-four and fifty-five paise only) along with interest.
  - f. That the project supposed to be completed till 28.12.2015 (including the 6 months grace period), but till now the project is not completed. That without completing the project the respondent had fraudulently extracted payments from the complainant and also charged interest on the payments made by the complainant.
  - g. That the respondent herein is liable to pay the total outstanding amount aggregating to the tune of Rs.38,93,724.55/- (Rupees thirty-eight lakh ninety-three thousand seven hundred twenty-four and fifty-

- five paisa only) as on 09.01.2019 excluding the applicable interest from the due date of the defaults, which is further accruing on a day-to-day basis until the debt owed to the petitioners is fully discharged.
- h. That the respondent has even failed to comply with clause 34 of the flat buyer agreement and committed default in payment of Rs. 5 per sq. ft. per month for the delay in delivering possession as agreed by it in terms of clause 29 of the flat buyer agreement. That the said charges are one of the many examples of one-sided clauses inserted in the flat buyer's agreement which are in favor of the builder, in this regard that it is further stated the Hon'ble Supreme Court in "*Pioneer Urban Land and Infrastructure Ltd. vs. Govindan Raghavan and Ors. (02.04.2019 - SC): MANU/SC/0463/2019*" has clearly held that the said clause cannot be enforced by the builder.
- i. That the respondent till now neither have completed the project nor have given the possession of the flat in accordance with the terms of the flat buyer agreement. Therefore, the respondent is liable by virtue of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA') to be read with Section 19(4) of the RERA, 2016 to be read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 to return the entire amount paid by the petitioners along with interest of 18%.

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

9. The complainant has sought following relief(s)
- a. Direct the respondent to refund the amount paid along with prescribed rate of interest per annum on compounded rate from the date of booking from the flat in question.



b. Compensation of ₹ 10,00,000/-.

10. 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**

11. The respondent has contested the complaint on the following grounds.

a. That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this Hon'ble Authority. The complainant has filed the present complaint seeking refund, interest and compensation. It is respectfully submitted that complaints pertaining to interest, compensation and refund are to be decided by the Adjudicating Officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "Act" for short) read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as the "Rules") and not by this Hon'ble Authority. The present complaint is liable to be dismissed on this ground alone.

b. That even otherwise, the complainant has no locus-standi and cause of action to file the present complaint. 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 buyer's

agreement dated 28.06.2012, which is evidentiary from the submissions made in the following paragraphs of the present reply.

- c. That the respondent is a public limited company registered under the Companies Act, 1956 having its registered office at 606, Indraprakash, 21 Barakhamba Road, New Delhi - 110001. The present reply is being filed by the respondent through its duly authorized representative named Mr. Vaibhav Chaudhary whose authority letter is appended hereto with this reply. The above said project relates and pertains to licence no.76 of 2010 dated 01.10.2010, which was received from the Director General, Town & Country Planning, Chandigarh over the land measuring 10.563 acres details of the same are given in builder buyer agreement, situated within the revenue estate of Village Wazirpur, Gurugram, which falls within the area of Sector-92, Gurugram-Manesar Urban Development Plan. The building plan of the project has been approved by the DTCP; Haryana vide memo No. ZP-671/JD (BS)/2012/7441 dated 03.05.2012. Thereafter, the respondent herein was granted the approval of firefighting scheme from the fire safety point of view of the housing colony measuring 10.563 acres by the Director, Haryana Fire Service, Haryana, Chandigarh.
- d. That the relief sought in the complaint by the complainant is based on false and frivolous grounds and he is not entitled to have any discretionary relief from this Hon'ble Authority as the person not

coming with clean hands should be thrown out forthwith without going onto the merits of the case. However, the true facts of the case are that the land of the project is owned by M/s JSG Builders Pvt. Ltd., having its registered office at 297-A/4, Mehrauli, New Delhi which owns a part of land of 43 Kanal 14 Marla bearing rectangle no.81, Killa No.3/2 Min (2-10), 3/1/2 Min (1-9), 7 (7-7), 8/1 (6-8), 13/2 (7-0), 14/1 (4-0), 16/2 (3-0) 17 (8-0), 14/2 (4-0) and M/s NCC Urban Infrastructure Ltd., having its registered office at 41, Nagarjuna Hills, Hyderabad -500082 which owns the remaining/balance area of 40 Kanal and 16 Marla comprising in rectangle no.81, Killa Nos.6 (7-7), 16/1 (5-0), 25/1 (5-2), 15 (8-0) and rectangle no.82, Killa Nos.10 (7-7) and 11 (8-0) falling in Village Wazirpur of Gurugram. The landowners have under an agreement agreed to grant, convey and transfer all their rights, entitlements and interests in development, construction and ownership of the total permissible FSI on the land aforesaid to M/s Samyak Projects Pvt. Ltd., having its registered office at 111, 1<sup>st</sup> Floor, Antriksh Bhawan, 22, Kasturba Gandhi Marg, New Delhi.

- e. That since the Real Estate (Regulation of Development) Act, 2016 and the Haryana Real Estate (Regulation of Development) Rules, 2016 came into force, the respondents have decided and have already been applied for the registration of the project named Ansals Heights with the Hon'ble Authority.

- f. That the complainants approached the respondent sometime in the year 2011 for the purchase of an independent unit in its upcoming residential project "ANSAL HEIGHTS" (hereinafter be referred to as the "project") situated in Sector-92, Village Wazirpur, Gurugram. It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was being fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same and the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner.
- g. The complainant, in pursuant to the aforesaid application form, was allotted an independent unit bearing no. E-1006, type of unit - 2 BHK, sales area 1320 sq. ft. (122.63 Sq. mtrs.) in the project named ANSALS HEIGHTS situated at Sector-92, Gurugram. The complainants consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant should remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant. The complainant further undertaken to be bound by the terms and conditions of the builder buyer's agreement.

- h. It is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period as given by the respondent to the authority.
- i. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal thereby restraining the excavation work causing air quality index being worst, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments

especially to workers to only by liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana Government.

- j. That, it is submitted that the complaint is not maintainable or tenable under the eyes of law as the complainant has not approached this Hon'ble Authority with clean hands and has not disclosed the true and material facts relates to this case of complaint. The complainant, thus, has approached the Hon'ble Authority with unclean hands and also has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as *S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page-1* in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the Hon'ble Authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as *Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012 decided on 25.09.2013.*

- k. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which registered with the Authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant seeking refund, interest and compensation cannot be called into aid in derogation and ignorance of the provisions of the builder buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the builder buyer's agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in case titled as Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298, the liberty to the promoter /developer has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of Section 3 of RERA Act as it was opined that the said Act named RERA is having prospective effect instead of retrospective. Para

no.86 and 119 of the above said citation are very much relevant in this regard.

- l. That without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by limitation. The complainant has alleged that due date of possession in respect of the said unit was in June 2015; therefore, no cause of action is arisen in favour of the complainant, if any, the same was in the month of June 2015; thus, the present complaint is barred by law of limitation and the Hon'ble Authority lacks jurisdiction.
- m. It is submitted that several allottees, including the complainant, have defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is further submitted that the respondent had applied for registration with the Authority of the said project by giving afresh date



for offering of possession, and complainant would be offered for the possession soon. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

- n. The Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause -7 & 8 of the builder buyer's agreement, vide which complainant was agreed to pay in addition to basic sale price of the said unit. She is liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainant further agreed to pay his proportionate share in any future enhancement /additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.
- o. It would be relevant to mention here in case titled as Mr. Abhishek Mohan Gupta Vs. M/s Ireo Grace Realtech (Pvt.) Ltd., Complaint No.2044 of 2018, date of first hearing 12.03.2019, decided on 12.03.2019 by the Hon'ble Authority, in para no.36, it was held by the Hon'ble Authority that *the authority came across that as per clause 13.3 the respondent has agreed to offer the possession of the said apartment*

*within a period of 42 months from the date of approval of building plans and/or fulfillment of preconditions imposed thereunder + 180 days grace period. The building plan for the project in question was approved on 23.07.2013 which contained a precondition under clause 17(iv) that respondent should obtained clearance from Ministry of Environment and Forest, Government of India before starting construction of project. The said environment clearance for the project in question was granted on 12.12.2013 containing a pre-condition of obtaining fire safety plan duly approved by fire department before starting construction. The respondent obtained the said approval on 27.11.2014. Therefore, the due date of possession comes out to be **27.11.2018** and the possession has been delayed by **3 months and 13 days** till the date of decision...."*

12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
13. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. SLP(Civil) No(s). 3711-3715 OF 2021*), the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been

deliberated in the proceedings dated 10.5.2022 in **CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP** and was observed that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.

14. Keeping in view the judgement of Hon'ble Supreme Court in case titled as **M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra)** the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/CRA. Both the parties want to proceed further in the matter accordingly. The Hon'ble Supreme Court in case of **Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019** has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the pleading and submissions made by both the parties during the proceedings.

#### **E. Jurisdiction of the authority**

15. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E.1 Territorial jurisdiction**

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

#### **E. II Subject matter jurisdiction**

17. 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.*

18. 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.

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

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

20. 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 relief sought by the complainants**

**F.I Refund entire amount paid by the complainant along with the interest**

21. In the present complaints, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of

subject unit along with interest at the prescribed rate as provided under section 18(1) 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)*

22. Clause 29 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

***"29.***

*The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 30. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit."*

23. The authority has gone through the possession clause and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying

period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.

24. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. 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 fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement 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 mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

25. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 36 months plus 6 months from date of

agreement or the date of commencement of construction which whichever is later. The authority calculated due date of possession from the date of agreement i.e., 28.06.2012 being later. The period of 36 months expired on 28.06.2015. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.

26. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him 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.*

27. 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.
28. 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%**.

29. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

31. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 29 of the agreement executed between the parties on 28.06.2012, the possession of the subject apartment was to be delivered within stipulated time i.e., by June 2015. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 28.12.2015.

32. Keeping in view the fact that the allottee/complainant wish to withdraw from the project and is 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.

33. The due date of possession as per agreement for sale as mentioned in the table above is 28.12.2015 and there is delay of 4 years 2 months and 12 days on the date of filing of the complaint.
34. 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 allottees 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....."*

35. Further, 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. 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 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."*

36. 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 allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he 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.
37. 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 complainant is entitled to refund of the entire amount paid by them 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*.

**F.II Compensation of ₹ 10,00,000/-**

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

**G. Directions of the authority**

46. 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 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 the actual date of refund of the deposited amount.
  - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

47. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
48. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter. There shall be separate decrees in individual cases.
49. Files be consigned to registry.

  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.07.2022

  
(Dr. K.K. Khandelwal)

Chairman