

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

Complaint no.	:	739/2019
Date of filing complaint:		21.02.2019
First date of hearing:		15.05.2019
Date of decision	:	29.07.2022

1. Shuchi Agarwal 2. Rohit Agarwal Both r/o: 2201, Tower IV, Planet Godrej, K.K Marg, Saat Rasta, Mahalaxmi East, Mumbai, Maharashtra -400011	Complainants
Versus	
M/S Haamid Real Estates Pvt. Ltd. Regd. office: 232-B, Okhla Industrial Estate, Phase -III, New Delhi-110020	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Abhishek Yadav (Advocate)	Complainants
Sh. M.K Dang (Advocate)	Respondent

ORDER

- The present complaint has been filed by the complainant/allottees 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 provisions of

the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.No.	Heads	Information	
1.	Project name and location	"The Peaceful Homes" Sector 70A , Gurgaon	
2.	Nature of the project	Group Housing	
3.	DTCP License	16 of 2009 dated 29.05.2009	
4.	Validity Status	28.05.2024	
5.	Name of the licensee	Haamid Real Estate Pvt. Ltd.	
6.	RERA Registered/ not registered	63 of 2019 dated 22.10.2019	
7.	Valid Till	Valid Upto 31.12.2019	
8.	Area	8.38 Acres	
9.	Unit no.	A 174 (Annexure C-5- page no. 73 of the complaint)	B232 (Annexure C-11 age 141)
10.	Unit admeasuring	2925 sq. ft (Annexure C-5- page no. 81 of the complaint).	2150 sq. ft. (Annexure C- 11-page no. 141 of the complaint)
11.	Date of allotment letter	10.06.2013 of old unit but was not signed by the parties (Annexure C-5-page no. 81 of the complaint).	



12.	Date of re-allotment letter of new unit	19.08.2015	
13.	Date of execution of Flat Buyer's Agreement	19.08.2015	
14.	Possession clause	11(a) "The company proposes to handover the possession of the unit to the applicant within a period of of 36 months from the date of commencement of construction of the project, which shall mean the date of commencement of the excavation work at the project site and this date shall be duly communicated to the allottee ("commitment period"). The allottee further agrees and understands that the company shall additionally be entitled to the period of 180 days ("Grace period"), after the expiry of the aid commitment period to allow for any contingencies or delays in obtaining the Occupation/Completion Certificate etc., of the project from the concerned Authorities/ Departments.	
15.	Due date of possession	25.04.2017 (Taken from the date of excavation i.e 25.04.2014 provided by the project details)	
16.	Total sale consideration	Rs.1,83,51,450/- (As alleged by the complainants in the facts)	
17.	Total amount paid by the complainants	Rs. 67,29,600 /- (As alleged by the complainants in the facts)	
18.	Occupation Certificate	29.10.2019 (Annexure R-29 page 111 of	Not Received

		reply) For Tower A	
19.	Offer of possession	Not Offered	13.03.2020 (Annexure 31 page 114 of reply)

B. Facts of the complaint:

3. A project by the name of "The Peaceful Homes" situated in Sector 70 A Gurugram was being developed by the respondent. The complainants showed their interest in the project and one of the official of the respondent company flew from Gurgaon to Mumbai just to get the allotment application signed. The respondent persuaded the complainants to book a flat in their project. The complainant believing the respondent paid an initial amount of Rs. 10,00,000/- for a total sale consideration of Rs. 1,83,51,450/- vide Cheque No. 593947 of HDFC Bank Ltd. but never sought allotment of 4BHK as they were interested in 2BHK.
4. That the complainants paid, an amount of Rs. 37,29,600/- to the respondent company towards the above-mentioned project on 25.04.2013. The allotment of the unit was issued by the respondent 10.06.2013 to the complainants but for 4 BHK Flat i.e. A174 with 2925 Sq. Ft. Super Area located in Tower A on 17th Floor in the project "The Peaceful Homes" which they did not accept as they were interested in 2BHK. The complainants requested many times to allot 2BHK, but on 01.05.2014, the respondent sent buyer agreement to them for 4 BHK flat with a total basic sale price of Rs. 1,83,51,450/- which they did not sign.
5. That the complainants made several requests to the respondent company to allot 2BHK flat but met with no response. The



respondent vide communication dated 13.06.2014 intimated the complainants about construction of 80 ft. wide road in Sector 70 to confer connectivity to the project and the progress of the construction activities.

6. That the complainants contacted officials of HDFC Bank as suggested by the officials of the respondent but the bank was restrained to give home loan of only 1 Crore to the complainants and the same was communicated to them vide e-mail dated 11.05.2015. After the loan was not sanctioned as promised by the Respondent company, the respondent told them to arrange finances else they would forfeit the amount already paid and compelled the complainant to make numerous trips from Mumbai to Gurgaon in which there was quite of lot of expenditure incurred towards travelling and lodging expenses.
7. That the complainant met the officials of the respondent on 26.05.2015 and it was agreed that either the respondent company would go ahead and refund the entire amount received against the unit/flat in the project in question or if willing, they would opt for 2 BHK flat/unit in the same project. Accordingly, the complainants vide e-mail dated 28.05.2015 requested for refund however, showed interest in 2BHK. Thereafter, the complainants kept on requesting respondent to refund their money but met with no response. The complainants on 13.08.2015 requested to seek refund and in alternative for allotment of 2 BHK flat/unit in the project "The Peaceful Homes" of the respondent company but despite insisting on allotting 2 BHK, the complainants were allotted 3 BHK flat on the pretext that 2 BHK units were unavailable. While reallocating, the respondent company with a malafide intention mentioned the date

of realloftment as 13.08.2015 whereas, the complainants paid the first installment in year 2012.

8. That the complainants again visited office of the respondent on 17.08.2015 and paid another amount of Rs. 20,00,000/-. On 19.08.2015 a buyer's agreement was executed between the parties in respect of 3 BHK flat i.e., B232 as well the payment plan was wrongly attached and only after consistent efforts and follow ups by the complainants, the payment plan was corrected. The respondent till date has not got the aforesaid agreement registered. While entering into the agreement, it was further mutually agreed that the respondent would not raise any demand unless, paperwork was completed, agreement registered, documents such as license, occupation certificate etc. are provided.
9. That the respondent began raising demand as per inflated payment plan and accordingly, the complainants vide emails dated 04.10.2015, 02.02.2016, 21.03.2016, 21.07.2016 & 14.02.2017 requested the respondent to provide paperwork, completion certificates and other documents pertaining to project. But again, the respondent company started raising demand letters dated 27.08.2015, 24.09.2015, 22.06.2016, 24.08.2016, 13.09.2016, 26.06.2017, 12.11.2017, 10.12.2018 & 26.12.2018 to pay further amount towards re-allotted flat/unit.
10. That the complainants tried to arrange the finances, being helpless and dejected and were able to get the loan sanctioned from HDFC bank. But the bank recommended to obtain RERA and occupation certificate before seeking disbursement of loan in pursuance of which the complainants vide e-mails dated 23.02.2018 & 03.04.2018 sought clarification from the officials of respondent regarding the



status of application of getting "occupation certificate" from the state authority and RERA registration. In reply to said e-mails, the officials of the respondent told the complainant vide e-mails dated 23.02.2018 & 06.03.2018 that application for getting "occupation certificate" was pending with state authority.

11. That the complainants made several requests and visited personally to office of the respondent in order to seek refund of the amount on the ground that on one hand, re-allotment of flat/unit has been made to them without approval and on the other hand, no paperwork/agreement/terms & conditions regarding the re-allotted flat/unit have been executed/settled between the parties. That vide e-mail dated 05.12.2018, the respondent forwarded photographs to the complainants of latest construction update. But the complainants were astonished to see that the photographs even till December 2018 do not show any construction of Tower B in the project where re-allotted unit/flat of the complainants was situated. On recent visit on the site of Tower B it transpired that said property is not in a liveable condition and is far from being offered to be delivered.
12. That the respondent forwarded a letter dated 08.01.2019 to complainants whereby another demand of 69,05,918/- was raised. The conduct of non-delivery of residential flat by respondent to the complainants even after lapse of more than 8 years suggests that there is absolutely no intent of it to fulfill contractual obligations entered into with them. As per the buyer's agreement, the respondent was supposed to hand over the possession of the unit/flat to the complainants within a period of 36 months from the

date of commencement of construction of the project. But the complainants have not got the possession yet.

13. That the complainants have at all times made payment against the demands of the respondent and preferred to stop further payment due to the fact that numerous requests of completing the paperwork/agreement/terms & conditions regarding the re-allotted flat/unit made by them were ignored. The complainants were seeking to buy the flat with the objective to shift to Gurgaon as then they were offered a good job opportunity. But due to undue delay in offering of possession and blocking up of huge amount deposited by the complainants, they not only lost the job opportunity but are also under severe financial constraints making it unreasonable and unviable for them to take the possession of flat now.
14. That the complainants till date paid a total amount of Rs. 67,29,600/- to the respondent against allotted a flat i.e more than 50% of the total sale price but the project was not even close to getting completed.
15. Hence, the complainants intend to withdraw from the project and are left with no other alternative but to file the present complaint seeking refund of the paid-up amount besides interest and compensation.

C. Relief sought by the complainants:

16. The complainants sought the following relief(s):
 - i. Direct the respondent to refund the amount of Rs. 67,29,600/- along with interest.

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

D. Reply by respondent:

The respondent-builder by way of written reply made the following submissions:

17. That the complainants, after checking the veracity of the project had applied for allotment of an apartment and accordingly unit no. A174 was allotted to them by the respondent. The buyer's agreement was not executed by the complainants.
18. That the respondent raised payment demands from the complainants in accordance with the mutually agreed terms and conditions of the booking application form and buyer's agreement as well as of the payment plan. That the complainants committed several defaults in making timely payments of the demanded amount.
19. That the respondent had raised the payment demand dated on 21.04.2014, 06.10.2014, 02.06.2015 for the amount of Rs. 19,25,579, /-, Rs. 30,13,607/- and Rs. 48,83,118/-. However, the complainants failed to remit the due amount despite reminders dated 27.05.2014 and 19.06.2014 28.10.2014, 24.11.2014, 24.06.2015. So, a final notice dated 12.01.2015 was sent by it to the complainants.
20. That on account of non-fulfilment of the contractual obligations by the complainants and despite several opportunities extended by the respondent, the allotment of the complainants was cancelled, and the earnest money deposited by them along with other charges was forfeited vide cancellation letter dated 29.07.2015 and the

- complainants were left with no right, claim, lien or interest whatsoever in respect of the unit no. A174.
21. That the complainants after the termination of the allotment approached the respondent and vide their email dated 28.05.2017 requested the respondent to continue their association with it. An allotment letter dated 13.08.2015 was issued by the respondent for 3BHK and allotted B232 in the said project. It is submitted that the complainants after receipt of the allotment offer letter for the new unit had never made payment towards the total sale consideration of Rs.1,83,51,450/-. The buyer's agreement was executed between the parties to the complaint on 19.10.2015.
22. The respondent had sent the payment demand dated 12.02.2016. However, the complainants failed to remit the due amount despite reminder dated 16.03.2016. The complainants again failed to remit payment amount despite reminders dated 22.06.2016, 18.07.2016 and 24.08.2016. Again, the respondent had raised the instalment demand for net payable amount of Rs. 51,25,863/-and Rs. 58,81,459/-on 13.09.2016 and 17.11.2016 However, the complainants again failed to pay the due instalment amount despite reminder dated 15.10.2016, 01.02.2017, 26.04.2017 and 26.06.2017.
23. That the possession of the unit was to be offered to the complainants according to the buyer's agreement within a period of 36 months from the date of commencement of construction of the project which comes to be 25.04.2017.
24. That the complaint is not maintainable as the matter is preferable to arbitration as per The Arbitration and Conciliation Act, 1996 in view

of the fact that agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 57 of the buyer's agreement.

25. However, there have been several unforeseeable events which were beyond the reasonable control of the respondent which have affected the timely completion of the project. Due to defaults on part of the allottees, the respondent was constrained to approach financial institutions to raise funds to complete the construction of the project. Moreover, during the course of construction, various disputes in relation to quality and delay in work on the project arose with the civil contractors of the respondent viz. Shri Balaji Buildmate Private Limited. The disputes got further aggravated and the resolution of the disputes took a considerable amount of time. Finally, after the dispute was settled amicably, a new contractor viz. RSV Builders Private Limited was awarded the work.
26. That there was a major accident at the project site which resulted in the untimely death of two labourers and three were hospitalized. Due to this unforeseen accident, the work at the project site had to be stopped for about a month. Due to the said demonetization of currency notes and policy changes by the Central Government, the pace of construction of the project was severely affected
27. That beside the aforesaid reasons, on account of various orders passed by the Hon'ble National Green Tribunal, the construction activities had to come to a complete standstill during a considerable time period which further affected the timely completion of the said project. The respondent cannot be held liable on account of non-performance by the concerned governmental authorities.

28. Due to heavy rainfall in Gurugram in the year 2016 and unfavourable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions. That the aforesaid circumstances fall within the ambit of the definition of the 'force majeure' conditions as stated in Clause 46 of the buyer's agreement.
29. It was denied that the construction of the tower is still going on. Rather the respondent has completed the construction of the tower in which the unit allotted to the complainants is located. It is submitted that respondent had applied for the grant of occupation certificate vide application dated 18.03.2019 and the same was granted by the concerned authorities on 29.10.2019.
30. It is pertinent to mention herein that respondent offered the possession of the unit to the complainants on 13.03.2020. Several payment demands were raised by the respondent vide payment demand dated 13.03.2020. However, despite reminders dated 14.05.2020 and 09.07.2020, the complainants have failed to remit the due amount. A bare perusal of the statement of account would reveal that huge amount of Rs. 1,05,98,240.31 is payable by the complainants to the respondent. The complainants are bound to take the physical possession of the unit after making payment towards the due amount as well after completing the documentation formalities.
31. Copies of all the relevant do 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 submissions made by the parties.

E. Jurisdiction of the authority:

32. 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

33. 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

34. 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.

35. 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.
36. 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. 2020-2022(1) RCR (c) 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of



Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

37. 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 objection raised by the respondent:

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

38. The respondent has raised an objection that the complainants have not invoked arbitration proceedings as per the buyer's agreement which contains a provision bearing no. 57 regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

57. All or any disputes arising out of or touching upon or in relation to the terms of this Agreement or its termination Including the Interpretation and validity of the terms hereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussions, falling which the same shall be settled through reference to a sole Arbitrator to be appointed by the Company, whose decision shall be final and binding upon the Parties. The Allottee hereby confirms that it shall have no objection to the appointment of such Sole Arbitrator and the Allottee hereby accepts and agrees that this shall not constitute a ground for challenge to the Independence of Impartiality of the said Sole Arbitrator to conduct the arbitration. The subilization shall be governed by the



Arbitration and Conciliation Act, 1996 of any statutory amendments/modifications thereto and shall be held at the Company's offices or at a location designated by the said Sole Arbitrator In Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The Award of the Sole Arbitrator shall be final and binding on the Parties. Both the Parties will share the fees of the Arbitrator in equal proportion.

39. The respondent contended that as per the terms & conditions of the application form duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainants, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate 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 not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, Consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Similarly, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on***

13.07.2017, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builders could not circumscribe the jurisdiction of a consumer forum.

40. While considering the issue of maintainability of a complaint before a consumer forum/commission in the face of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as ***M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018*** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

41. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants

are well within the right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

G. Findings on the relief sought by the complainants:

G.1 Direct the respondent to refund the amount of Rs. 67,29,600/- along with interest.

42. The subject unit was allotted to the complainants on 10.06.2013 which was later on cancelled by the respondent and new unit was allotted to them on 19.08.2015. The complainant approached the authority seeking relief of refund of the paid up amount on the grounds that on one hand re-allotment of flat/unit has been made to them without their approval and on the other hand, no paperwork/agreement/terms & conditions regarding the re-allotted flat/unit have been executed/settled between the parties.

43. At this stage, the authority would express its views regarding the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession, the liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:



- i. Possession must be offered after obtaining occupation certificate.**
- ii. The subject unit should be in habitable condition.**
- iii. Possession should not be accompanied by unreasonable additional demands.**

44. In the case at hand, the offer of possession was made without the OC being obtained. Thus, the offer of possession is invalid per se.
45. Keeping in view the fact that the allottees /complainants wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the 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.
46. The occupation certificate/completion certificate of the tower where the unit is situated has still not been obtained by the respondent-promoter and neither a valid offer was made. Though it is pleaded on behalf of respondent that after receipt of OC on 29.10.2019 it offered possession of the allotted unit to the complainant but the plea advanced in this regard is untenable. A perusal OC dated 29.10.2019 shows that the same does not relate to the tower where the allotted unit is situated and the same is with some other tower in the project. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they 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.....”

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

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

48. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of

agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

49. This is without prejudice to any other remedy available to the allottee including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
50. The authority hereby directs the promoter to return the amount received by him i.e., Rs 67,29,600/- with interest at the rate of 9.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 (ibid).

G.2 Direct the respondent to pay an amount of Rs. 1,00,000/- as litigation cost.

51. 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 complaints 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 issued the Authority:


52. 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 promoter 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 of Rs.67,29,600/- received by it from the complainants along with interest at the rate of 9.80% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017 from the date of each payment till the actual date of refund of the deposited amount within the timelines provided in rule 16 of the Haryana Rules 2017.

53. Complaint stands disposed of.

54. File be consigned to the Registry.

v.i- 
(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.07.2022