



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

Complaint no. : 4139 of 2021  
First date of hearing: 25.11.2021  
Date of decision : 10.05.2022

Mr. Shyama Prasad Shukla  
S/o Sh. Rama Avtar Shukla  
R/o: - 44 Sunset Road, Searing town, New York- 11507 **Complainant**

Versus

M/s Raheja Developers Limited.  
**Regd. Office at:** W4D, 204/5, Keshav Kunj, Western  
Avenue, Sainik Farms, New Delhi- 110062 **Respondent**

**CORAM:**

Shri K.K. Khandelwal  
Shri Vijay Kumar Goyal **Chairman  
Member**

**APPEARANCE:**

Sh. Amrit Kaur Oberoi (Advocate)  
Sh. Rahul Bhardwaj (Advocate) **Complainant  
Respondent**

**ORDER**

1. The present complaint dated 11.10.2021 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 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name of the project	"Raheja Revanta", Sector 78, Gurugram, Haryana
2.	Project area	18.7213 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no. and validity status	49 of 2011 dated 01.06.2011 valid up to 31.05.2021
5.	Name of licensee	Sh. Ram Chander, Ram Sawroop and 4 Others
6.	Date of revised environment clearances	31.07.2017 [As per information obtained by the planning branch]
7.	Date of revised building plans	24.04.2017 [As per information obtained by the planning branch]
8.	RERA Registered/ not registered	Registered vide no. 32 of 2017 dated 04.08.2017
10.	RERA registration valid up to	5 Years from the date of revised Environment Clearance
11.	Unit no.	A-211, 21 <sup>st</sup> floor, Tower/block- A (Page no. 43 of the complaint)
12.	Unit area admeasuring	1296.63 sq. ft. (Page no. 43 of the complaint)
13.	Date of execution of agreement to sell - Raheja Revanta	13.06.2012 (Page no. 41 of the complaint)
14.	Allotment letter	13.06.2012 (Page no. 37 of the complaint)
15.	Possession clause	<b>4.2 Possession Time and Compensation</b>



That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser **within** thirty-six (36) months in respect of 'TAPAS' Independent Floors and **forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above.** The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as

		<i>holding charges for the entire period of such delay....."</i> (Page 55 of the complaint).
16.	Due date of possession	13.06.2016
17.	Total sale consideration	Rs.1,13,90,899 /- (As per customer ledger dated 16.08.2021 page no. 85 of complaint)
18.	Amount paid by the complainants	Rs.1,02,87,121/- (As per customer ledger dated 16.08.2021 page no. 85 of complaint)
19.	Occupation certificate /Completion certificate	Not received
20.	Offer of possession	Not offered
21.	Delay in handing over the possession till date of this order i.e., 05.05.2022	5 years 10 months and 27 days
22.	Grace period	<b>Not allowed</b> As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by June 2016. As per agreement to sell, the construction of the project is to be completed by June which is not completed till date. It may be further stated that asking for the extension of time in completing



the construction is not a statutory right nor has it been provided in the rules. Accordingly, in the present case this grace period of 6 months cannot be allowed to the promoter at this stage.

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint: -
- I. That the respondent company through its glossy, colourful brochure represented to the public in general and the complainant in particular about the "Revanta" project. The complainant's wife, Mrs. Geeta Shukla was visiting New Delhi, India in 2011 and at the airport, the representative of the respondent company misled her by representing that the respondent was developing world class towers in Gurugram which he represented as one of the tallest Skyscrapers in India, exquisitely designed landscape area with water bodies, earthquake resistant structure, largest and highest Sky Bridge Mini Theatre, Jacuzzi/ steam and sauna, automated car wash for the residents. Further, the respondent represented that the unit sold to the complainant in said project having towers, Tapas and Surya would be Class 'A' construction, with modular kitchen, modern electrical sanitary fittings, Italian marble flooring etc. and the respondent would be providing world class facilities and they are the leading construction company in Delhi, India and had worked relentlessly in its pursuit of adding value to the life of

people by developing world class township including the present and assured the complainant that the same would be ready within 48 months.

- II. That the respondent lured the complainant through these advertisements and misrepresentation that he booked a residential unit and paid Rs.9,71,650.90/- at the time of booking vide cheque bearing No. 31111180082 dated 08.11.2011 and further made two payments of Rs.12,50,000/- and Rs.2,44,954/- vide cheque Nos. 12019500242 and 312011900180 both dated 19.01.2012 vide application dated 09.02.2012. Thereafter, the complainant was allotted a unit no. A-211 in Surya Tower- A on 21<sup>st</sup> floor, admeasuring 1714.670 square feet super area, which included 1296.63 square feet built up area and was at **Raheja Revanta**, Sector-78, Gurugram, Haryana vide allotment letter dated 13.06.2012 and the parties executed an agreement to sell on 13.06.2012 for the purchase of aforesaid unit.
- III. That as per the terms and conditions of the agreement to sell, the respondent company had assured the complainant that possession of the aforesaid unit would be delivered to him within 4 years from the date of signing of the agreement to sell and if for any reason beyond its control, the construction is not completed within the stipulated period of 4 years, the complainant was entitled for compensation free grace period of 6 months.



- IV. That the total consideration (BSP) agreed for the aforesaid Unit was Rs.95,59,285/- calculated @ Rs.5,575/- per square feet. Besides the price towards the unit, as aforesaid, the complainant was made to agree to pay external and infrastructural development charges amounting to Rs.4,88,681/-, charges for covered car parking, Rs.3,50,000/-, thus, the total sale consideration agreed was Rs.1,03,97,966/-. Besides the aforesaid, he was required to pay interest free maintenance security and club membership charges. The payment plan which was Annexure-A to the agreement to sell dated 13.06.2012 is placed on record. At the time of executing the agreement to sell, the respondent has also obtained signatures of the complainant on various blank documents which were part of the agreement to sell.
- V. The payment plan was a construction-based plan, and the complainant was to pay timely installments. As per clause 3.7 of the agreement to sell, in case of any delay or default on the part of the complainant in paying the installments, he was liable to pay interest @18% per annum from the due date of payment of installment on monthly compounded basis. The complainant in all had paid a sum of Rs.1,02,87,121/- to the respondent against the demanded amount of Rs.1,03,97,966/-.
- VI. That as clause 3.14 of the agreement to sell, timely payment on the part of the purchaser was the essence of the contract and if there is any delay or default in making payment on time, the purchaser

is liable to pay interest @ 18% per annum to the builder from its due date of **payment on monthly compounded basis** as the respondent had represented to the complainant that with a view to ensure timely payment and smooth construction and timely delivery of the project as the construction is an on-going process and cannot be stalled due to non-payment of the defaulting purchaser.

- VII. That the complainant in 2016 through his representative found the project under construction was nowhere near completion and on enquiry, they were assured that the same would be completed on time and there was nothing to worry about it. While the Raheja's Revanta at Sector 78, Gurugram was under construction, the Act known as Real Estate (Regulation & Development) Act, 2016 came into effect, with effect from 1<sup>st</sup> May 2016.
- VIII. That the complainant again waited for 6 months. When he did not receive any letter for possession and occupation certificate, he again enquired about the site and was shocked to find that the status of the construction was still the same, which was witnessed 6 months back, but they again assured by the authorized representative of the respondent, that project would be completed, and it would take about 6 months' time to do the same. Since the complainant had parted with huge amount of Rs.1,02,87,121/-, he hoped that he would get his dream unit as assured by the respondent.





- IX. That the complainant had diligently made all the payments for the said allotment as and when demanded by them but till date did not receive any offer of possession from the respondent. The complainant has been regularly calling the respondent's office enquiring about completion of his unit and about the date of possession of the unit. The complainant recently sent his friend to visit the site and was shocked to learn that Surya 'A' tower is still not complete. The stipulated time of the aforesaid agreement stood expired on 13.06.2016 and the 6 months grace period also expired on 13.12.2016. Even after the expiry of more than 5 years, from the due date of delivery of possession, the project is nowhere near completion.
- X. That the complainant further learnt that the respondent without completing the project in hand, i.e., Revanta, is diverting the funds meant for existing projects by undertaking new projects and luring the public at large by misrepresenting facts and impressing upon them to buy unit in the new project without first completing the existing project in hand including said project. One such letter circulated by them whereby luring the public at large to invest in their 'Raheja Naveen Minar Project' without completing the '**Raheja Revanta**' Tower' and is indulging in unfair trade practice.
- XI. That the complainant is suffering wrongful loss because of non-utilization of his money for the last more than 9 years and has been deprived of use of his property, having invested huge amount of

money on the respondent misrepresentation in its project with the hope that he would get the possession even after giving grace period of 6 months. But on account of acts of omission and commission on part of the respondent, the said unit was not even completed and there is no hope in future that it would be completed, as the manner in which the construction is going on, the completion of the 'Surya Tower A', Revanta project is nowhere in sight. The respondent has violated the provisions of the Act of 2016, besides other violations and is not even posting quarterly upto date status of the project. Further, the respondent has demanded payment of installments at various occasions without following the construction plan and breached the material terms and conditions of the aforesaid agreement.

- XII. That the respondent has got its project registered under the Act being registration no. 32 of 2017 dated 04.08.2017 vide Memo No. HRERA(Reg.)23/2017/242 and non-completion of the project under the agreement to sell would invite serious consequences. The respondent has failed to fulfill various obligations which it was required to perform towards the complainant being the allottee of the unit and thus violated the rights of the allottee, i.e., the complainant under the Act of 2016.
- XIII. That the respondent has unduly delayed the completion of the project and by virtue of the complaint, the complainant seeks refund of the entire amount of Rs.1,02,87,121 /- along with interest



@18% per annum compounded on monthly basis from the date of respective payments till realization as this is the rate of interest charged by the respondent from the complainant in case he commits default in payment of installment as per clause 3.7 of the agreement to sell.

- XIV. That the respondent must sell the project only based on carpet area which buyer can use. However, in the present case, the respondent has charged for 1714.670 square feet super/carpet area and out of which, the complainant would be getting only 1296.63 square feet approximately built up area on the 21<sup>st</sup> floor, which clearly shows that the respondent has flouted each and every provision of the Act of 2016 and have duped the buyers of their lifetime savings by charging them over and above the actual carpet area under the garb of various frivolous heads in violation of the provisions of the Act of 2016.
- XV. That the respondent, despite a long delay of 5 years and 3 months have not completed the project in time, and has been guilty of deficiency of services as detailed above and due to the said deficiency of services, the Complainant has suffered and is still suffering extreme hardships, inconvenience, mental agony, financial loss and loss of property, as the respondent has badly failed to honour its commitments under the agreement to sell dated 13.06.2012 and have failed to complete the project as undertaken by it. The complainant seeks compensation and

damages on account of undue hardships, mental agony, loss of use of property and loss of future prospects suffered by him at the hands of the respondent, which he quantifies at Rs.50,00,000/-. The respondent is further guilty of indulging in unfair trade practice, which is clearly discernible from its aforesaid act.

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

4. The complainant has sought following relief(s).
  - I. Directing the respondent to pay to the complainant a sum of Rs.4,29,08,527/- which includes principal amount of Rs.1,02,87,121/- and Rs.3,26,21,406/- on account of compound interest @18% per annum compounded on monthly basis, and further to pay compound interest @ 18% per annum of the aforesaid amount of Rs.4,29,08,527/- from the date of filing of the present complaint till realization/date of payment;
  - II. To pass an order for a sum of Rs.50,00,000/- against the respondent as compensation and damages in favour of the complainant towards the mental agony, harassment and undue hardship suffered by them at their hands and on account of the loss of use of the property in question.
5. Despite due service and putting in appearance through AR, the respondent company failed to file any written reply and giving several opportunities. So, the same led to striking off its defence.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be



decided on the basis of these undisputed documents and submissions made by the complainant.

**D. Jurisdiction of the authority**

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

**D.I Territorial jurisdiction**

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

**D.II Subject-matter jurisdiction**

9. 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.*

10. 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.
11. 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.*** and followed in case of ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021*** 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."*



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

**E. Findings on the relief sought by the complainants.**

- E. I Directing the respondent to pay to the complainant a sum of Rs.4,29,08,527/- which includes principal amount of Rs.1,02,87,121/- and Rs.3,26,21,406/- on account of compound interest @18% per annum compounded on monthly basis, and further to pay compound interest @ 18% per annum of the aforesaid amount of Rs.4,29,08,527/- from the date of filing of the present complaint till realization/date of payment.
13. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject apartment 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)*

14. Article 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

#### **4.2 Possession Time and Compensation**

*That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser **within thirty-six (36) months in respect of 'TAPAS' Independent Floors** and **forty eight (48) months in respect of 'SURYA TOWER'** from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. **However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above.** The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay.....”*

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its





meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

16. **Due date of handing over possession and admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by June 2015. As per agreement to sell, the construction of the project was to be completed by June 2015 which is not complete till date. It may be further stated that asking for the extension of time in completing the construction is not a statutory right nor has it been provided in the rules. Accordingly, in the present case this grace period of 6 months cannot be allowed to the promoter at this stage.
17. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the rate of 18% p.a. However, allottee intends 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.*

18. 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.
19. 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., 10.05.2022 is **7.40%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **9.40%**.
20. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule **28(1)**, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement to sell executed between the parties on 13.06.2012, the possession of the subject apartment was to be delivered within a period of 48 months from the date of agreement to sell, which come out i.e., by 13.06.2016 and disallows the grace



period of 6 months as the promoter has not completed the construction within the time limit prescribed by the promoter in the buyer's agreement. Therefore, the due date of handing over of possession is 13.06.2016. As per the settled law, one cannot be allowed to take advantage of his own wrongs. It is pertinent to mention over here that even after a passage of more than 5.10 years neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observed that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottee intends to withdraw from the project and is well within his right to do the same in view of section 18(1) of the Act, 2016. Further, the authority has no hitch in proceeding further and to grant a relief in the present matter in view of the recent judgement of the Hon'ble Supreme Court of India in the case of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1), RCR (civil),357* 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, 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 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."*

21. 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 the entire amount paid by him at the prescribed rate of interest i.e., @ 9.40% 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*.

**E. II. Pass an order for a sum of Rs.50,00,000/- against the respondent as compensation and damages in favour of the complainant towards the mental agony, harassment and undue hardship suffered by them at their hands and on account of the loss of use of the property in question.**

22. The complainants are also seeking relief w.r.t. litigation expenses. 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.

**F. Directions of the authority**

23. 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 entire amount of Rs.1,02,87,121/- paid by the complainant along with prescribed rate of interest @ 9.40% 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.

24. Complaint stands disposed of.

25. File be consigned to registry.

(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Dr. K.K. Khandelwal)

Chairman

Dated: 10.05.2022