

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

Complaint no. : 3236 of 221
First date of hearing: 24.11.2021
Date of decision : 31.05.2022

Mr. Charanjit Singh Chadha
R/o: - T-12, 2nd Floor, Khasra No. 10/3, Near Deler
Mehendi Farmhouse Nihal Vihar, Nangoli, Delhi- 110041 **Complainant**

Versus

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

CORAM:

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

APPEARANCE:

Sh. Charanjit Singh Chadha **Complainant in person**
Sh. Bhrigu Dhami (Advocate) **Respondent**

ORDER

1. The present complaint dated 16.08.2021 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	"Supertech Basera" sector- 79&79B, Gurugram	
2.	Project area	12.11 area	
3.	Nature of project	Affordable Group Housing Project	
4.	RERA registered/not registered	Registered vide no. 108 of 2017 dated 24.08.2017	
5.	RERA registration valid upto	31.01.2020	
6.	RERA extension no.	14 of 2020 dated 22.06.2020	
7.	RERA extension valid upto	31.01.2021	
8.	DTPC License no.	163 of 2014 dated 12.09.2014	164 of 2014 dated 12.09.2014
	Validity status	11.09.2019	11.09.2019
	Name of licensee	Revital Reality Private Limited and others	
9.	Unit no.	0903, 9 th floor, tower/block- 2, (Page 17 of the complaint)	
10.	Unit measuring	473 sq. ft	



		[carpet area] 73 sq. ft. [balcony area]
11.	Date of execution of flat buyer's agreement	15.04.2016 (Page 16 of the complaint)
12.	Offer of allotment letter	18.03.2016
13.	Possession clause	3.1 Possession <i>Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later. The Developer also agrees to compensate the Allottee/Buyer @ Rs.5.00/- (Five rupees only) per sq. ft. of the area of the flat per month for any delay in handing over possession</i>



		<i>of the Flat beyond the given promised period plus the grace period of 6 months and upto offer letter of possession or actual physical possession whichever is earlier.</i> <i>(Page 29 of agreement).</i>
14.	Due date of possession	22.01.2020 [Note: - the due date of possession can be calculated by the 4 years from approval of building plans (19.12.2014) or from the date of environment clearance (22.01.2016) whichever is later.]
15.	Date of approval of building plans	19.12.2014 [as per information obtained by the planning branch]
16.	Date of grant of environment clearance	22.01.2016 [as per information obtained by the planning branch]
17.	Total sale consideration	Rs.19,28,500/- (As per payment plan page 19 of the complaint)
18.	Total amount paid by the complainant	Rs.9,64,250/- (As per receipt information page 13 of the complaint)
19.	Occupation certificate	Not obtained
20	Cancellation letter	26.03.2019 [Page 39 of the complaint]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant booked an apartment under the affordable housing policy and was allotted an apartment bearing no. 0903 admeasuring 473 sq. ft. situated at 9th floor of tower 2. The affordable group housing society is named as "Supertech Basera" situated at Sectors 79&79B registered with the authority vide no. 108 of 2017.
- II. That the allotment of apartment detailed above after draw of lots was made on 04.09.2015 by making initial payment by the complainant.
- III. That the complainant as per the payment plan under affordable housing policy paid different amounts as demanded by the respondent from time to time. Both the parties signed the builder buyer agreement on 15.04.2016 for the above-mentioned unit. The possession of the said unit is to be delivered on 22.01.2020.
- IV. That the complainant as per clause 2.2 of flat buyer agreement, he has to pay Rs.19,28,500/- as total consideration but paid an amount of Rs.9,64,250/-. Since the complainant failed to pay the remaining amount as per schedule of payment so, the respondent/builder issue the cancellation letter dated 26.03.2019.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- i. Direct the respondent to refund the entire amount of Rs.9,64,250/- without deduction of any amount on any short of grounds.
 - ii. Direct the respondent to pay interest on entire amount of Rs.9,64,250/- at the rate of 18% per annum from the date of cancellation till date of actual refund.
 - iii. Direct the respondent to pay litigation cost of Rs.40,000/- to the complainant.
 - iv. Kind request to lodge Criminal case including FIR against the respondent for wilful cheating and misappropriate breach of trust as per law prevailing.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent contested the complaint on the following grounds: -
- i. The complainant approached the respondent making enquiries about the project and after complete information being provided to him, sought to book an apartment in the said project and the complainant submitted an application for allotment of a unit.
 - ii. That vide letter of allotment, that complainant was allotted a unit bearing no. 903, tower- 2, in the said project. The payment plan for remaining sale consideration was also detailed in the said letter.



- The total sale consideration was mutually decided as Rs.19,28,500/-
- iii. That consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the flat buyer agreement dated 15.04.2016. It is pertinent to mention that the parties are bound by the agreement executed by them and its terms and conditions. The agreement is in consonance with the Affordable Group Housing Policy, 2013.
 - iv. In terms of the said policy and the terms of the agreement, the possession was to be handed over within 4 years from the date of approval of building plans or grant of environmental clearance (EC). However, the same were subject to force majeure conditions which would hamper the development of the project. Further, in terms of clause 3.5 of the agreement, the timely possession was subject to timely payments of sale consideration and the other charges and completion of all required formalities clause 15 of the agreement details out the conditions which were agreed between the parties would constitute as "Force Majeure".
 - v. That the EC for the said project was received on 22.01.2016. Thus, the possession strictly as per the agreement was to be handed over by 21.01.2020 plus 6 months grace period, i.e., July 2021. That the said time period fell within the Government Imposed Covid- 19,



lockdown and thus the respondent is entitled to appropriate extension of time.

- vi. That in interregnum, the pandemic of covid-19 has gripped the entire nation since March 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant. Thereafter, it would be apposite to note that the construction of the project is in full swing, and the delay if at all, has been due to the government-imposed lockdowns which stalled any sort of construction activity. Till date, there are several embargos qua construction at full operational level.
- vii. That the period of lockdown owing to the covid-19 first and second wave may be waived for the calculation of the DPC, if applicable to be paid by the respondent as no construction despite numerous efforts could be continued during the lockdown period.
- viii. That the delay if at all, has been beyond the control of the respondent and as such extraneous circumstances would be categorized as 'Force Majeure', and would extend the timeline of handing over the possession of the unit, and completion the project.
- ix. The delay in construction was on account of reasons that cannot be attributed to the respondent. That the flat buyer agreement provides that in case of delays in delivery of unit for reasons not

attributed to the developer/respondent, then it shall be entitled to proportionate extension of time for completion of said project. The relevant clauses which relate to the time for completion offering possession extension to the said project are "Clause 3" under the heading "possession" of the "agreement".

- x. The force majeure clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by it for completion of the project and not a delay on account of the respondent for completion of the project.
- xi. That apart from the defaults on the part of the allottee, like the complainant herein, the delay in completion of project was on account of the following reasons/ circumstances that were above and beyond the control of the respondents: -
- Shortage of labour/ workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/ State Government under NREGA and JNNURM Schemes;
 - that such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex.

The respondent cannot be held solely responsible for things that are not in control of the respondent.

- xii. The respondent has further submitted that the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. It is no more *res integra* that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the *negligence or malfeasance* of a party, which have a materially adverse affect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, in light of the aforementioned, it is submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the allotment letter.
- xiii. It is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the demonetisation of the Indian economy, on the real estate sector. The real estate sector is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetisation led to systemic operational hindrances



in the real estate sector and whereby the respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the aftereffects of demonetisation, which caused a delay in the completion of the project. The said delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.

- xiv. That the complainant has not come with clean hands before this authority and has suppressed the true and material facts from this authority. It would be apposite to note that the complainant is a mere speculative investor who has no interest in taking possession of the apartment.
- xv. That the enactment of Real Estate (Regulation and Development) Act, 2016 is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate market sector. The main intention of the respondent is just to complete the project within stipulated time submitted before this authority. According to the terms of the builder buyer agreement also, it is mentioned that all the amount of delay possession will be completely paid/adjusted to the complainant at the time final settlement on slab of offer of possession. The project is ongoing project and construction is going on.



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

slow process and a steady pace of construction as realized after long period of time.

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



Ors, as well Credai MCHI & Anr. V. UOI & Ors has taken cognizance of the devastating conditions of the real estate sector and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. According to notification no. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020, passed by this authority, registration certificate upto 6 months has been extended by invoking clause of force majeure due to spread of corona virus pandemic in Nation, which beyond the control of respondent.

- xx. This authority vide, its order dated 26.05.2020 had acknowledged the Covid-19 as a force majeure event and had granted extension of six months period to ongoing projects. Furthermore, it is of utmost importance to point out that vide notification dated 28.05.2020, the Ministry of Housing and Urban Affairs has allowed an extension of 9 months vis-a-vis all licenses, approvals, end completion dates of housing projects under construction which were expiring post 25.03.2020 in light of the force majeure nature of the Covid pandemic that has severely disrupted the workings of the real estate industry. That the pandemic is clearly a 'force majeure' event, which automatically extends the timeline for handing over possession of the apartment.



7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.
8. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement quoted above, 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 it is observed that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.
9. Keeping in view the judgement of Hon'ble Supreme Court in case titled as M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (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 proceeded 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 facts mentioned in the complaint and the reply received from the respondent and submissions made by both the parties during the proceedings.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

12. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....



(4) *The promoter shall-*

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

13. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
14. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (Civil), 357* 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."

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

F. Findings on the objections raised by the respondent

F.1 Objection regarding the project being delayed because of force majeure circumstances and contending to invoke the force majeure clause.

16. From the bare reading of the possession clause of the flat buyer agreement, it becomes very clear that the possession of the apartment was to be delivered by 22.01.2020. The respondent in its reply pleaded the force majeure clause on the ground of Covid- 19. The High Court of Delhi in case no. *O.M.P (I) (COMM.) No. 88/2020 & I.As. 3696-3697/2020 title as M/S HALLIBURTON OFFSHORE SERVICES INC VS VEDANTA LIMITED & ANR. 29.05.2020* held that *the past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the*



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

F. II Objections regarding the complainant being investor.

17. The respondent has taken a stand that the complainant is investor and not consumer, therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the



Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is buyer and has paid total price of **Rs.9,64,250/-** to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

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



by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to refund the entire amount of Rs.9,64,250/- without deduction of any amount on any short of grounds.

G.II Direct the respondent to pay interest on entire amount of Rs.9,64,250/- at the rate of 18% per annum from the date of cancellation till date of actual refund.

19. Upon perusal of the documents available on record and submissions made by both the parties, the authority observes that complainant was allotted the unit in the said project on 18.03.2016 and thereafter a buyers' agreement was executed between the parties on 15.04.2016. The respondent started raising demands as per the schedule of payment, and the complainant as per the payment plan has paid an amount of Rs.9,64,250/- out of the total sale consideration of Rs.19,28,500/-. The complainant failed to pay the remaining amount as per schedule of payment and which led to issuance of notice of



cancellation by the respondent/builder dated 26.03.2019. According to clause 5(iii)(i) of the Affordable Group Housing Policy, 2013.

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

20. It is to be noted that as per the schedule of collection of payment under section 5(iii)(b) of Affordable Group Housing Policy, 2013, provides for time linked payment plan instead of construction linked payment plan. On 13.07.2018, the respondent published a list of defaulters of payments in the daily Hindi newspaper Rashtriya Sahara. Finally, the cancellation letter has been issued by the respondent on 26.03.2019. The respondent has cancelled the unit as per the provisions of the policy but there is nothing on record to show that the respondent has refunded the balance amount after deduction of Rs.25,000/- as per provisions of clause 5(iii)(i) of the policy.

21. As per cancellation clause of the affordable housing policy the respondent can deduct the amount of Rs. 25000/- only and the balance amount shall be refunded back to the complainant

G.III. Direct the respondent to pay litigation cost of Rs.40,000/- to the complainant.



22. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case 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 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 shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainant is advised to approach the adjudicating officer for seeking compensation.

G.IV. Kind request to lodge Criminal case including FIR against the respondent for wilful cheating and misappropriate breach of trust as per law prevailing. सत्यमेव जयते

23. The above-mentioned relief sought by the complainant was not pressed during the arguments. The authority is of the view that the complainant does not intend to pursue the above-mentioned relief sought. Hence, the authority has not returned any finding w.r.t. to the above-mentioned relief.

H. Directions of the authority

24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to refund the balance amount of complainant after deduction of Rs. 25000/- as per clause 5(iii)(i)



of the Policy 2013. That the respondent has been using the amount paid by the complainant even after cancellation of subject unit. Therefore, the respondent is further directed to return the amount paid by the complainant with an interest @9.50% per annum from the date ^{of} surrender/withdrawn of allotment till the actual realization of the amount.

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

25. Complaint stands disposed of.

26. File be consigned to registry.

v.i-3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Dr. K.K. Khandelwal)

Chairman

Dated: 31.05.2022

HARERA
GURUGRAM