



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

Complaint no.	:	1208 of 2019
Date of filing complaint:		10.04.2019
First date of hearing:		18.09.2019
Date of decision	:	12.05.2022

1. Sh. Vikas Chaddha S/o Sh. Suresh Narain Chaddha 2. Smt. Preeti Chaddha W/o Sh. Vikas Chaddha Both R/O: III-A 85, Nehru Nagar, Ghaziabad, Uttar Pradesh- 201001	Complainants
Versus	
1. M/s Agrante Developers Private Limited 2. M/s Agrante Realty Limited 3. Sh. Arvinder Singh Regd. office: DTJ-704, DLF tower-B, Jasola, New Delhi	Respondents

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Kuldeep Kohli (Advocate)	Complainants
Sh. Tarun Biswas (Advocate); Sh. Sanjeev Thakur GM (Legal)	Respondents

ORDER

1. The present complaint has been filed by the complainants/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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the 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	"Beethoven's 8", Sector- 107, Gurgaon
2.	Project area	18.0625 acres
3.	Nature of the project	Group housing complex
4.	DTCP License	23 of 2012 dated 23.03.2012
5.	Name of the licensee	Narendra Kumar Gupta & others
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	Symphony/J/B/501 on 5th floor [As per page no. 55 of the CRA]
8.	Unit measuring	1702 sq. ft. [As per page no. 55 of the CRA]
9.	Date of allotment	Not provided on record
10.	Date of execution of builder buyer agreement	10.07.2014 [As per page no. 53 of the CRA]
11.	Possession clause	Clause 18(a) of buyer's agreement Subject to other terms of this Agreement/Agreement, including but not limited to timely payment of the Total Price, stamp duty and other charges by the Vendee(s), the Company shall endeavour to complete the construction of the Said Apartment <i>within 42 (Forty two) months from the</i>



		<i>date of Allotment, which is not the same as date of this Agreement.</i> The Company will offer possession of the Said Apartment to the Vendee(s) as and when the Company receives the occupation certificate from the competent authority(ies). Any delay by the Vendee(s) in taking possession of the Said Apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof.
12.	Due date of possession	10.01.2018 [Since no allotment date has been provided on record, thus, calculated from date of agreement i.e. 10.07.2014]
13.	Total sale consideration	BSP- Rs. 93,61,000/- TSC- Rs. 1,08,71,570/- (without service tax) [As per page no. 57 of the CRA]
14.	Total amount paid by the complainants	Rs. 28,83,363/- [As per page no. 57 & 67 of the CRA]
15.	Payment plan	Construction linked plan [As per demand letter dated 13.09.2016 on page 71 of CRA]
16.	Occupation Certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the complainants being interested in the purchase of a residential apartment for himself and his family for living purposes, were approached by the respondent no. 1/their agents for selling a residential apartment in the said project.



4. That the complainants paid a booking amount of Rs 9,61,121/- as per the payment plan opted by them and booked one residential apartment, admeasuring 1702 sq. ft. bearing unit no. J/B/501 on 5th floor of tower Symphony consisting of 3BHK (w/o SU) @ Rs.5,500/- sq. ft. for a total base price of Rs. 93,61,000/- and the total consideration including base price, PLC, EDC, electric installation, IFMS, covered car parking, Club membership and other charges amounting to Rs. 1,08,71,570/-.
5. That as per para 2 of "application for allotment by sale", the complainants having booked a residential apartment approached the respondent for executing an apartment buyer agreement. Despite repeated requests, the apartment buyer agreement was never provided to the complainants and subsequently, never signed.
6. That a demand letter dated 22.05.2014 was raised by the respondent of an amount of Rs 19,51,367/- as per the payment plan opted by the complainants. The complainants after discussing with the CRM team of the respondent no. 1, paid Rs.14,73,609/- vide payment receipts no. R/B/311 & R/B/312 dated 23/06/2014.
7. That the complainants were asked to enter into an "agreement to sale" instead of the "apartment buyers' agreement", which was executed between the complainants and the respondent no. 2 being the developer, M/s RMS Estate Private Limited(now M/s Agrante Developers Private Limited) on 10-07-2014.



8. That as per clause 3F(b) of the above referred agreement to sale, an amount of Rs. 88,48,583/- was shown as total balance amount payable by the complainants to the respondent no. 2 after taking into consideration the earlier payments made.
9. That subsequent to the signing of the above "agreement to sale" the complainants made a payment of Rs. 4,48,633/- vide receipt no. R/B/355 dated 30.7.2014. From the time of execution of the "application for allotment by sale" and "agreement to sale" thereafter, the respondent company no. 1 continued raising demands based on the construction linked payment plan and the complainants kept on paying the same together with external development charges, infrastructure development charges, etc.
10. That though the payments to be made by the complainants were based on the construction on the ground but unfortunately the demands being raised was not corresponding to the factual situation on ground. The complainants approached the respondents to ask about the status of construction and also raised objections towards slow progress of the project and demand raised by the respondent-company, but the respondent cunningly answered that they have set procedure and accordingly, they have raised demand note.
11. The complainants visited the site many times to ascertain the status of the project and took some photographs. The complainants were shocked and surprised beyond comprehension to find that the project was lying in a raw, desolate state and was in a state of utter neglect and abandonment. To



his wilderment, the complainants realized that they had been foxed and badly cheated of his hard-earned money by having asked for 30% of the amount of total sale consideration from complainants. It was therefore very clear from the visit on the site that the construction at the site had been abandoned.

12. That the complainants were sent intimation by the respondent no. 2 vide letter dated 03.06.2015 about the change in name of the developer company namely M/s RMS Estates Pvt Ltd to M/s Agrante Developers Pvt Ltd.
13. The basic sales price of the said residential apartment stands out to be Rs. 93,61,000/- which along-with PLC, car park and similar components came out to be Rs. 1,08,71,570/-. Out of which, a sum of Rs. 28,83,363/- was paid by the allottees.
14. That a demand for Rs.10,07,350/- was raised by the respondent no. 2 vide letter dated 13.09.2016 claiming that the construction milestone related to this instalment payable on casting of 3rd floor slab. But the most surprising part of this demand is that for the first time the demand was raised by respondent company no. 2 instead of respondent company no. 1 which was earlier raising the demands. The complainants did not made payment towards said demand as the respondent no. 1 could not clarify that why there has been a change in company demanding the payments.



15. That as per clause 5(18)(a) of the "agreement to sale", the said group housing complex which has 23 storied towers, the possession of which was scheduled within 42 months of having signed the application for allotment to sale which was done i.e. by 27.08.2017 and on 13.9.2016, the instalment was being asked for laying of 3rd floor slab. Under any stretch of imagination, it was beyond the complainants to think that the entire complex with all the towers would be delayed.
16. That failing to get any satisfactory response from the respondents to his various posers and facing a deluge of persistent unqualified demands from the respondents, complainants wrote e-mails to respondents and pointing out the deficiencies, delay and the false promises by the respondents, and sought a clear timeline for possession. In response to which respondents sent an attachment vide its mail dated 03.10.2016. Replying to the said email the complainants wrote detailed email to respondents dated 11.10.2016 asking the reasons for no visibility of project construction on the site, complainants requested for refund of monies, and sent repeat emails on 25-10-2016 highlighting the deficiency of services.
17. That a final intimation letter dated 05-11-2016 was sent by respondents reminding the complainants to settle the demand raised vide letter dated 13.09.2016. However, the complainants were not happy with the progress on the site and therefore were reluctant to pay the money and instead asked for the refund vide their email dated 11.10.2016, 26.10.2016 and 12.11.2016.



18. The respondent no. 2 sent an undated letter updating progress of the project but the actual position on the ground, as per the site visit, was much different from what was claimed in the letter.

C. Relief sought by the complainants:

19. The complainants have sought following relief(s):
- i. Direct the respondents to refund the total amount paid to them amounting to Rs. 28,83,363/- along with interest as prescribed under Act from the first date of payment, within 3 months of the complainants' intimation of non-acceptance of the unit allotted to the complainants by the respondents.
 - ii. Direct the respondents to not to cancel the booking of the petitioner till the pendency of the complaint.
 - iii. Direct the respondents to pay a sum of Rs. 1,00,000/- as cost of litigation.

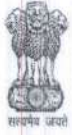
D. Reply by respondents:

The respondents by way of written reply made following submissions

20. That the respondent no. 3 arrayed in the complaint i.e. Sh. Arvinder Singh is director of respondent no. 1 who is the promoter of the project. Sh. Arvinder Singh in his individual capacity is not a promoter as envisaged under the Act and ought to be deleted from the list of respondents.
21. That the complainant has also been a defaulter. It is the allottee like the complainant that the project is delayed due to failure in the timely remittance of funds by the allottees as per the payment plan.



22. That M/s RMS Estate Pvt Ltd (now known as "Agrante Developers Pvt. Ltd.") ("respondent herein") was granted development licence from Director Town and Country Planning, Haryana ("DTCP") for development of land spread over a total area of 18.0625 acres of land on which the present project is being developed. The said license was granted on 27.03.2012 and was valid for 4 years.
23. That subsequent to grant of the above licence, the respondents have executed a development/collaboration agreement dated 23.05.2013 with M/s Sarvaram Infrastructure Pvt. Ltd. ("collaborator"). The area admeasuring 10.218 acres out of the aforesaid total land was handed to the collaborator with absolute and exclusive rights for the purposes of developing the same. It is pertinent to mention here that M/s Sarvaram Infrastructure Pvt Ltd himself or through his nominee has proposed to build a separate project namely "ELACASSA" on that parcel of land with which the respondents have no association whatsoever. Thus, resultantly, there were two projects being developed under the same license by two distinct colonizers with rights and liabilities strictly framed under the said collaboration agreement. It would not be out of place to mention here that such agreements were in common practice at that time.
24. That the development/collaboration agreement dated 23.05.2013 stipulated strict liability on M/s Sarvaram Infrastructure Pvt Ltd or his appointed nominee to be in compliance of all statutory compliances, bye-laws applicable as per HUDA, DTCP etc as applicable for his parcel of land.



M/s Sarvaram Infrastructure Pvt Ltd was further under the obligation to remit all the dues accrued towards governmental authorities arising under the agreement for the portion of land with the collaborator under the agreement.

25. That M/s Sarvaram Infrastructure Pvt Ltd however, started defaulting in his compliance of statutory duties and contractual obligations. The respondents have on several occasions issued written requests and even served legal notices to M/s Sarvaram Infrastructure Pvt Ltd to rectify the said default sinter-alia payment of EDC and IDC charges. The respondents have taken every step to ensure compliance of statutory obligations as non-compliance by M/s Sarvaram Infrastructure Pvt Ltd would directly prejudice the respondent's project completion having the common license. It is submitted that the license for the land lapsed due to non-renewal and it could not be renewed till outstanding EDC & IDC charges along with penalty are cleared for the total land jointly by the respondent and M/s Sarvaram Infrastructure Pvt Ltd in proportion to their respective projects. Needless to mention here that the respondent is ready and willing to pay its share of EDC and IDC charges for the purposes of renewal of license.
26. That the bona-fide of the respondents can be further gathered by the fact that it is running post to pillar and has filed a representation before Financial Commissioner (Haryana) seeking a bifurcation of the license in two parts for two projects respectively and pursuing the same sincerely. It is pertinent to mention here that only after renewal of license, the

respondents would be competent to get the project registered with the authority. The respondents have undertaken every measure in his armoury to salvage the project and complete the same.

27. That the respondents have filed for HRERA registration vide order letter dated 09.08.2018 of its project on the said land which is to be dealt with as per the agreement. It is pertinent to mention here that the directors of the Sarvarm Infrastructure Pvt Ltd are lodged in jail presently. The respondents are crippled in the sense that he is unable to correspond with them which could perhaps lead to any results. Moreover, insolvency proceedings are pending against them before Hon'ble National Company Law Tribunal.
28. That due to the non-registration with HRERA, the respondents were unable to sell proposed units in its project. More particularly, the respondents have crippled financially as no demand can be raised by it from its existing allottees. It is to be kindly considered by this authority that the respondents have accordingly not raised a single demand from its allottees and has not collected more than 40% of total sale consideration of unit from any of its allottees. On the contrary, the respondents have undertaken the tedious task of completing the construction the project from its own finances and loans so as to offer possession and is also remitting the interests on subvention scheme on behalf of customers so as to protect them from further loss. The overall conduct of the respondents plays a vital part in deciding the complaint such as the present one. The respondents

have faced with peculiar circumstances which would require mutual co-operation of its allottees.

29. That, it would be of high importance to mention one similar complaint filed with this authority wherein similar issues were being adjudicated. The authority under the Act of 2016, had the opportunity to deal with similar complex issues being faced by the developer in respect of the licensed land wherein the original licensee had further sub-divided the land for development purposes on the basis of collaboration agreements. This authority in complaint no.(s) 826/2018, 1402/2018, 1343/2018, 1344/2018 has passed common orders. The issues in those complaints were similar to the respondent's issues. In these cases also, the original licensee Triveni Ferrous Infrastructure Pvt Ltd, a joint venture comprising of two groups Seth and Mittal Group who had subsequently divided/assigned development/marketing rights into five separate land holding to be developed separately pursuant to which similar issues arose which are being faced by the respondents. This authority in those complaint(s) has passed its conclusions and recommendations more particularly the recommendation to Town and Country Planning Department, Haryana stressing the grave importance that DTCP must divide license in five parts (as there were five assignee developers) and determine liabilities of each party individually and separately (liability on account of overdue license fee, EDC, IDC penal interest and other charges). Once the license is bifurcated, separate RERA registration would be



permissible. Besides this the authority had also pertinently recommended that DTCP should defer recovery of the overdue EDC so as to leave some cash flow in the hands of the developers for investing in the project. Therefore, the respondents prays with folded hands to refer the present matter to that authority in the light of the aforementioned facts as cited so that similar recommendations can be issued on behalf of the respondents to Town and Country Planning Department, Haryana. It is submitted that such recommendations would be in consonance with the statutory duties of the authority in Section 32 of the Act of 2016 which provides the functions of the authority for promotion of the real estate sector.

30. That the complainants herein are speculative investors and do not fall under the purview of the consumers as they have nowhere in the complaint mentioned that the said unit was being purchased by them for their personal use.
31. That the delayed possession hurts and damages the respondents more than it does to the complainants. It is submitted that any additional one-year delay increases the cost of project by 20%. The respondents has not demanded or is in receipt of more than 40% of the total sale consideration of the proposed apartment from any allottee and is bearing the cost of construction from its own pocket. It is taking all measures to complete the project with procuring necessary approvals from the competent authorities.



32. That the tower-J is ready and the construction of building structure comprising of 14 floors is completed. The respondents would be in a position in all probability to offer the possession of the flats in tower-H in 4-5 months and in tower-J in 10- 12 months from the date of filing of the present reply. The respondents have incurred and utilised his own funds and loans towards construction of the project and if the complaints pertaining to refunds are entertained at this stage, it would jeopardize the fate of the project which would consequently hamper the valuable rights of the other allottees of project. The respondents are in the process of applying for occupation certificate for tower- J. The respondents are willing to adjust the interest component as computed for delay in offering possession towards the balance sale consideration of the complainants as the respondents would offer possession in tower-J whichever would be convenient to them.
33. That lastly, it is submitted that the crisis of COVID-19 pandemic has also given a blow to smooth working of the respondents. It is pertinent to mention here that during the lockdown imposed by the Central Government, the workforce at the project site left for their homes and there was a complete halt in the work which added to further delay. It was after sincere efforts of the respondents that the workforce could be again mobilised and presently, the work is being carried out at the site with full force.



34. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the



case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondents:

F.1 Objections regarding the complainants being investors:

36. It is pleaded on behalf of respondents that complainants are investors and not consumers. So, they are not entitled to any protection under the Act and the complaint filed by them under Section 31 of the Act, 2016 is not maintainable. It is pleaded that the preamble of the Act, states that the Act is enacted to protect the interest of consumers of the real estate sector. The Authority observes that the respondents is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's



agreement, it is revealed that the complainants are buyers and paid considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of term allottee under the Act, and the same is reproduced below for ready reference:

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

37. In view of above-mentioned definition of allottee as well as the terms and conditions of the flat buyer's agreement executed between the parties, it is crystal clear that the complainants are allottees as the subject unit allotted to them by the respondents/promoters. The concept of investor is not defined or referred in the Act of 2016. As per definition under section 2 of the Act, there will be 'promoter' and 'allottee' and there cannot be a party having a status of 'investor'. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal No.0006000000010557 titled as **M/s Srushti Sangam Developers Pvt Ltd. Vs Sarvapriya Leasing (P) Ltd. and anr.** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being an investor are not entitled to protection of this Act also stands rejected.

F.II Objection regarding force majeure conditions:

38. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as dispute with the collaborator i.e. M/s Sarvaram Infrastructure Private Limited, delay in



payment of statutory dues by the collaborator and delay in obtaining RERA registration, etc. It is further submitted that 40% of the amount already paid by the complainants cannot be considered to be sufficient amount towards discharge of their liability. Moreover, the respondents has not raised demand more that of 40% of the total sale consideration. The pleas raised by the respondents with regard to a dispute with its collaborator, delay in payment of statutory charges and obtaining RERA registration cannot be considered and taken into consideration for delay in completing the project as the complainants were not a party to such a contract. It was for the respondents to settle those issues with its collaborator and get registration of the project. The agreement for sale was executed inter-se parties on 10.07.2014 and the due date of handing over of possession was within 42 months from the execution of buyer's agreement i.e., 10.01.2018 has already expired. Though no demand more than 40% against the total sale consideration was raised but the facts detailed above by the respondents cannot be taken into consideration in completing the project and forcing the complainants to continue with the same.

F.III Objection regarding delay in completion of construction of project due to outbreak of Covid-19

39. The Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 has observed that-

"69. 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."



40. In the present complaint also, the respondents was liable to complete the construction of the project in question and handover the possession of the said unit by 10.01.2018 and the respondents is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that 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 and for the said reason the said time period is not excluded while calculating the delay in handing over possession

G. Entitlement of the complainants for refund:

G.I Direct the respondents to refund total amount paid to them amounting to Rs. 28,83,363/- along with interest as prescribed under Act from the first date of payment, within 3 months of the complainants' intimation of non-acceptance of the unit allotted to the complainants by the respondents.

G.II Direct the respondents to not to cancel the booking of the petitioner till the pendency of the complaint.

The project detailed above was launched by the respondents as group housing complex and the complainants were allotted the subject unit in tower Symphony against total sale consideration of Rs. 93,61,000/-. It led to execution of builder buyer agreement between the parties on 10.07.2014, detailing the terms and conditions of allotment, total sale consideration of the allotted unit, its dimensions, due date of possession, etc. A period of 42 months for completion of the project was allowed to the respondents and that period has admittedly expired on 10.01.2018. It has come on record that against the total sale consideration of Rs. 93,61,000 the complainants have paid a sum of Rs. 28,83,363/- to the respondents. It



is the case of the complainants that since the pace of the construction of the project was not going on at required speed, so, they did not pay any amount after paying 30% of the total sale consideration. Though no demand after receipt of above-mentioned amount was raised by the respondents but that does not automatically extend the due date for completion of the project and handing over the possession of the allotted unit. While filing reply on 19.08.2021, it was admitted by the respondents that due to certain force majeure circumstances detailed in it, the construction of the tower where the allotted unit of the complainants is situated could not be completed. It is observed that due to non-payment of demand payable against construction of 3rd slab, a final intimation letter was issued on 05.11.2016. Although there is nothing on record to show that the respondents has proceeded with the cancellation of the allotted unit. The complainants stated that since there was no progress at the construction site, thus the complainants refused to pay the subsequent demands and it is observed by the authority that an email dated 11.10.2016 i.e. before such final intimation letter dated 05.11.2016, was sent by the complainants to the respondents stating that they do not wants to continue with the project as the same has been delayed and abandoned. Email dated 11.10.2016, 26.10.2016 and 12.11.2016 in this regard was also sent and the same is evident from page no. 72-73 of CRA filed by the complainants. Though he offered alternative accommodation in another tower and adjustment of delay possession charges in that unit but that does not absolve the respondents from its contractual obligations contained in the buyer agreement dated 10.07.2014. The respondents has detailed certain circumstances discussed earlier responsible for delay in completing the project but the same has been dealt with by the authority. The



complainants filed the present complainant seeking refund of the amount deposited with the respondents besides interest at the prescribed rate. Thus, 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 his failure to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per agreement for sale as mentioned in the table above is **10.01.2018** and there is delay of 1 years 3 months on the date of filing of the initial complaint i.e. 10.04.2019.

41. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents-promoter. 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 have 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....."

42. 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. (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. 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

43. 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 allottees, as the allottees wish 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.
44. This is without prejudice to any other remedy available to the allottee including compensation for which allottee 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.

The authority hereby directs the promoter to return the amount received by him i.e., Rs. 28,83,363/- with interest at the rate of 9.40% (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.II Direct the respondents to pay a sum of Rs. 1,00,000/- as cost of litigation.

45. The complainants are claiming compensation in the above-mentioned relief. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority:

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

- i) The respondents /promoters are directed to refund the amount i.e. **Rs. 28,83,363/-** received by them from the complainants along with interest at the rate of 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 amount.

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

47. Complaint stands disposed of.

48. File be consigned to the registry.

V.K. - 3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Dr. KK Khandelwal)

Chairman

Dated: 12.05.2022