BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**6098 of 2019**
New complaint no.	**383 of 2021**
Date of filing complaint:	**29.11.2019**
First date of hearing:	**31.01.2020**
Date of decision :	**10.05.2022**

1. 2.	Sh. Kunal Saha S/o Sh. Arup Kumar Saha Smt. Kakali Saha W/o Sh. Arup Kumar Saha **both R/O**: C-305, Saransh Apartments, 34, IP Extension, Patparganj, New Delhi	**Complainants**
	Versus	
	M/s Agrante Developers Private Limited **Regd. office:** DTJ-704, DLF tower-B, Jasola, New Delhi	**Respondent**

CORAM:	
Dr. KK Khandelwal	**Chairman**
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
None	Complainants
Sh. Sanjeev Thakur , G.M.Legal and Sh. Satish Kumar, A.R.	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter

shall be responsible for all obligations, responsibilities and functions under the 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.

2. The complaint bearing no. 6098 of 2019 has been received on 29.11.2019 and reply has been filed on 19.08.2021 by the respondent. For the aforesaid complaint only, new proforma B has been generated by the complainants bearing complaint no. 383 of 2021. Therefore, the aforesaid complaints shall be clubbed together.

A. Unit and project related details

3. 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.	Harmony-I K/B/1404 on 14th floor [As per page no. 13 of the complaint]
8.	Unit measuring	1702 sq. ft. (super area) [As per page no. 13 of the complaint]
9.	Date of allotment	08.08.2014 [As per page no. 13 of the complaint]
10.	Date of execution of builder buyer agreement	08.08.2014 [As per page no. 14 of the complaint]

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 ***within 42 (Forty two) months from the date of Allotment, which is not the same as date of this Agreement.*** 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	08.02.2018 [Calculated from date of allotment i.e. 08.08.2014]
13.	Total sale consideration	BSP- Rs. 85,95,100/- [As per page no. 16 of the complaint] TSC- Rs. 1,01,05,670/- (without service tax) Rs. 1,04,97,648/- (with service tax) [As per page no. 38 of the complaint]
14.	Total amount paid by the complainants	Rs. 48,00,461/- [As per page no. 39-41 of the complaint]
15.	Payment plan	Cannot be ascertained
16.	Occupation Certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

4. That the respondent advertised and promoted a residential complex known as "Beethoven's 8" situated in Sector no- 107, Gurugram, Haryana. It was declared that the plot was freehold to be used/developed for a residential complex as per the approved building plans.

5. That it was assured by the respondent that the said project detailed above would be completed within 42 months and in case of any delay, it would pay 7% per annum toward penalty. Believing the assurances to be correct, the complainants applied on 22.07.2014 for a residential unit and paid a booking amount of Rs. 9,15,000/-. Further, as per the allotment letter dated 08.08.2014, the complainants were allotted a residential unit bearing no: Harmony I K/B/1404 on the 14th floor having a super area of 1702 sq. ft for a total consideration of Rs. 1,01,05,670/-.

6. That an agreement to sell dated 08.08.2014 was executed between the parties. The complainants deposited Rs. 48,00,461/- vide receipts R/B/352, R/B/396, R/B/419 as per the various demands raised by the respondent. Further, they regularly visited the office of the developer and the site of the construction but were surprised to know that even after depositing the said amount, the construction of the tower- "Harmony-I" has not yet started. Despite receiving almost 50% payment of the total sale consideration and paying all the demands raised by the developer for the said flat, it failed to deliver the possession of the allotted flat within 42 months i.e. by 08.02.2018.

7. That the construction of the tower in which the allotted unit is situated has not yet commenced causing a deep concern qua developer's intentions. Despite multiple queries through e-mails and meetings, no communication was received from the respondent about the completion status of the project and hence, this complaint seeking refund of the amount deposited with it besides interest at the prescribed rate.

C. Relief sought by the complainants:

8. The complainants have sought following relief(s):

   i. Direct the respondent to refund the amount of Rs. 48,00,461/- paid by the complainants along with the prescribed rate of interest.

   ii. Direct the respondent to pay interest @18% p.a. on compound rate from the committed date of possession i.e., 08.02.2018 on the entire sum paid by them to the developer till the date of refund.

C. Reply by respondent:

The respondent by way of written reply made following submissions

9. 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.

10. That subsequent to grant of the above licence, the respondent has 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 respondent has 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.

11. 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.

12. That M/s Sarvaram Infrastructure Pvt Ltd however, started defaulting in his compliance of statutory duties and contractual obligations. The

respondent has 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 respondent has 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.

13. That the bona-fide of the respondent 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 respondent would be competent to get the project registered with the authority. The respondent has undertaken every measure in his armoury to salvage the project and complete the same.

14. That the respondent has 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 respondent has crippled in the sense that he is unable to correspond with them which could perhaps lead to any results. Moreover, insolvency proceedings are also pending against them before Hon'ble National Company Law Tribunal.

15. That due to the non-registration with HRERA, the respondent was unable to sell proposed units in its project. More particularly, the respondent 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 respondent has 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 respondent has 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 respondent plays a vital part in deciding the complaint such as the present one. The respondent has faced with peculiar circumstances which would require mutual co-operation of its allottees.

16. 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 respondent. 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 if 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 respondent 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 respondent 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.

17. 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.

18. That the delayed possession hurts and damages the respondent more than it does to the complainants. It is submitted that any additional one-year delay increases the cost of project by 20%. The respondent 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. The unit of the complainants is in tower Harmony and the construction of which, due to certain force majeure circumstances as detailed in the present reply could not be initiated. Therefore, the respondent referring to the complainants' email dated 02.06.2019, wherein they have requested the respondent to allocate a 4 bedroom flat in Tower- J of the said project, as per the availability of the floor, accepted their offer and undertakes to reallocate their unit to tower-J which is soon to be offered for possession.

19. That the respondent also undertakes and is willing to adjust the delayed possession charges as applicable in the agreement which shall be adjusted towards the balance consideration of the unit, for which the complainants opted for. In addition to the same, the construction of the super structure of tower H along with electrical fittings and plumbing works is also complete and is available to the complainants' reallocation. Thus, the authority may be pleased to refer the matter to mediation for the aforesaid objective pending disposal of the complaint.

20. That the tower-H comprises of fourteen floors and tower-J comprising of twenty-three floors. The tower-H is completely constructed and necessary electrical wiring and works pertaining to plumbing and sanitation are also ready. In tower J, eighteen no. of floors are fully constructed and the slab of 19th floor has been laid down. The respondent 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 respondent has incurred and utilised his own funds and loans towards construction of the project. 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 respondent is in the process of applying for occupation certificate for tower- H. The respondent is willing to adjust the interest component as computed for delay in offering possession towards the

balance sale consideration of the complainants as it would offer possession in tower-H or tower-J whichever would be convenient to them.

21. That lastly, it is submitted that the crisis of COVID-19 pandemic has also given a blow to smooth working of the respondent. 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 respondent that the workforce could be again mobilised and presently, the work is being carried out at the site with full force.

22. 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:

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

E. I Territorial jurisdiction

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 respondent:

F.I Objections regarding the complainants being investors:

24. It is pleaded on behalf of respondent 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 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 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."*

25. 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 respondent/promoter. 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:

26. The respondent-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 respondent has not raised demand more that of 40% of the total sale consideration. But the plea of the complainants is that though they have deposited more than 50% of the sale consideration with the respondent but neither the construction of project is complete, nor possession of the allotted unit has been offered to them. The pleas raised by the respondent 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 respondent to settle those issues with its collaborator and get registration of the project. The allotment of the unit in the project was made by the respondent on 08.08.2014 and the due date of handing over of possession was within 42 months from date of allotment i.e., 08.02.2018 has already expired. Though no demand more than 40%/50% against the total sale consideration was raised but the facts detailed above by the respondent 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

27. 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."*

28. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 08.02.2018. The respondent 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 respondent to refund the amount of Rs. 48,00,461/- paid by the complainants along with the prescribed rate of interest.

G.II Direct the respondent to pay interest @18% p.a. on compound rate from the committed date of possession i.e., 08.02.2018 on the entire sum paid by them to the developer till the date of refund.

29. The project detailed above was launched by the respondent as group housing complex and the complainants were allotted the subject unit in tower Harmony-I on 08.08.2014 against total sale consideration of Rs. 85,95,100/-. It led to execution of builder buyer agreement between the parties on 08.08.2014, 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 respondent and that period has admittedly expired on 08.02.2018. It has come on record that against the total sale consideration of Rs. 85,95,100/-, the complainants have paid a sum of Rs. 48,00,461/- to the respondent up to the year 2014. 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 50% of the total sale consideration. Though no demand after receipt of above-mentioned amount was raised by the respondent 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 respondent 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 commenced. Though he offered alternative accommodation in another tower and adjustment of delay possession charges in that unit but that does not absolve the respondent from its contractual obligations contained in the buyer agreement dated 08.08.2014. The respondent 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 respondent 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 **08.02.2018** and there is delay of 1 years 9 months 21 days on the date of filing of the complaint i.e. 29.11.2019.

30. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which 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....."*

31. Further in the judgements 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 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*

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

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

33. 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 to the complainants, the amount received by it i.e., **Rs. 48,00,461/-** 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.

H. Directions of the Authority:

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

i) The respondent /promoter is directed to refund the amount i.e. **Rs. 48,00,461/-** received by it 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 respondent to comply with the directions given in this order and failing which legal consequences would follow.

35. Complaint stands disposed of.

36. File be consigned to the registry.

(Vijay Kumar Goyal)
Member

(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.05.2022