



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

<b>Complaint no.</b>	:	<b>5132 of 2019</b>
<b>Date of filing complaint:</b>		<b>20.11.2019</b>
<b>First date of hearing:</b>		<b>04.12.2019</b>
<b>Date of decision</b>	:	<b>31.05.2022</b>

	Sh. Siva Rama Krishna Prasad Anne S/o Sh. A.S Koteswara Rao <b>R/O:</b> Flat no. 603, Tower-2, Beverly Park, Plot no.2, Sector-22, Dwarka, New Delhi- 110075	<b>Complainant</b>
Versus		
1. 2.	M/s Woodview Residences M/s Lotus Greens Developers Private Limited <b>Regd. office:</b> Lotus Greens Developers Pvt Ltd, Lotus Business Park, Level 7, Tower B, Plot no. 8, Sector 127, Noida Expressway, Noida-201304	<b>Respondents</b>

<b>CORAM:</b>		
Dr. KK Khandelwal		<b>Chairman</b>
Shri Vijay Kumar Goyal		<b>Member</b>
<b>APPEARANCE:</b>		
None		Complainant
Sh. Deeptanshu Jain (Advocate)		Respondents

**ORDER**

1. The present complaint 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 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 complainant, 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	"Woodview residencies", Sec 89 & 90, Gurgaon
2.	Project area	101.081 acres
3.	Nature of the project	Plotted colony
4.	DTCP License	59 of 2013 dated 16.07.2013 Valid up to- 15.07.2021
5.	Name of the licensee	Orris Land & Housing Private Limited & others
6.	RERA Registered/ not registered	<b>Registered</b> Vide registration no. 34 of 2020 Valid up to- 15.07.2023
7.	Unit no.	B-12, UGF [Annexure C2 at page 55 of the complaint]
8.	Unit measuring	1090 sq. ft. [Annexure C2 at page 55 of the complaint]
9.	Date of allotment	11.02.2015 [Annexure C2 at page 55 of the complaint]
10.	Date of execution of builder buyer agreement	20.11.2015 [Annexure C3 at page 58 of the complaint]
11.	Possession clause	<b>Clause 5.1 of buyer's agreement</b> Subject to clause 5.2 and subject to buyer making timely payments, the



		company shall endeavor to complete the construction of the building block in which the dwelling unit is situated within <b>36 months with a grace period of 6 months from the date of issuance of allotment letter</b> provided that all amounts due and payable by the buyer has been paid to the company in timely manner. (As per page 64 of the complaint)
12.	Due date of possession	<b>11.02.2018</b> (Grace period of 6 months is not given)
13.	Total sale consideration	Rs. 88,66,017/- [Annexure R12 at page 121 of reply]
14.	Total amount paid by the complainant	Rs.22,45,593/- [Annexure R12 at page 121 of reply]
15.	Payment plan	Construction linked plan [As per page no. 56 of complaint]
16.	Occupation Certificate	Not obtained
17.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. That the respondents launched the project in the name of 'Woodview Residence' in 2013-14 and offered to the public at large to apply for residential units. Influenced by the advertisement and assurance regarding the delivery period and the quality of the project, the complainant applied for booking of an independent floor measuring 1,000 sq. ft. bearing unit no B-12-UGE. An allotment letter dated 11.02.2015 was issued in respect of unit to the complainant.
4. That a builder-buyer agreement dated 20.11.2015 was executed between the parties with respect to the unit. In terms of clause 5.1 of the builder



buyer agreement, the respondents were to deliver possession of the aforesaid unit within a period of 36 months from the date of issuance of the allotment letter dated 11.02.2015 i.e., by 11.02.2018.

5. That the complainant made timely payments in accordance with the payment plan. In total, a sum of Rs. 22,45,593/- which includes a payment of Rs. 8,00,000/- made at the time of booking i.e. on 15.02.2014, out of the total sale price of Rs 88,66,017/- has already been paid.
6. That aggrieved by the lack of progress at the project even after the due date of the completion of the project, the complainant sent legal notice dated 25.09.2019 to the respondents.
7. That the respondents have failed to deliver possession to the allotted unit. The dwelling units in the project are languishing at the stage of skeletal structures, and that the non-completion of the project is not attributable to any circumstance provided for force majeure clause (clause 5.2) of the builder- buyer agreement.
8. That the respondents have breached the terms of the agreement entered into and failed to deliver the unit by the agreed possession date. The conduct, deficiency of service and unfair trade practices employed by the respondents has caused harassment and immense mental agony to the complainant. Thus, he is entitled to refund of the total amount deposited along with an interest of 12% p.a. from the date of deposit/payments.



9. That the respondents are enjoying the substantial amount of consideration paid by the complainant and other allottees. On the other hand, the complainant after having paid substantial amount of consideration towards his unit is still empty handed. In addition, the complainant has wasted several years in attempting to purchase a home and has also lost out interest in other yielding investments.

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

10. The complainant has sought following relief(s):
- Direct the respondents to refund/ return the amount i.e. Rs. 22,45,593/- received by him along with the prescribed interest.
  - Direct the respondents to pay compensation.

**D. Reply by respondents:**

The respondents by way of written reply made following submissions

11. That the respondent no.1, i.e., Lotus Greens Developers Pvt. Ltd. (presently, known as "Broad Homes Private Limited") is only the group company of the respondent no. 2 and has initially marketed the project which is being developed by the respondent No. 2. It is pertinent to mention that there is no privity of contract between the respondent no. 1 and the complainant and it does not owe any responsibility whether contractual or otherwise, so far as the completion and delivery of the units in the project is concerned. Hence, the name of the respondent no.1 be deleted from the array of parties.



12. That the respondent No.2 (Bright Buildtech Pvt. Ltd.) which is a group company of the respondent no.1 is developing the project namely "Woodview Residences" on its share in the project land admeasuring 101.081 acres situated at revenue estate of village Hayatpur, Sector 89 and 90, Gurugram. It is pertinent to mention that the respondent no.2 has appointed M/s. Ace Mega Structures Private Limited (hereinafter referred as "Ace") as development manager for development, construction, sales and marketing of the project vide 'development management agreement' dated 23.05.2019 with the objective of ensuring expeditious development of the project and to provide professionally proficient customer-care interaction. The role and responsibility of 'Ace' was restricted to manage and supervise the construction and development of the said project and to ensure timely completion and the same was intimated to the complainant vide letter dated 03.10.2019. The status of 'Ace' is purely that of a service provider who shall receive a fee as consideration for providing project management and development services to the respondent.
13. That the complainant has concealed true and material facts from this forum. The complainant at his own free will approached the respondents for allotment of dwelling unit in the aforesaid project and submitted an application form dated 15.02.2014 along with advance booking amount of Rs. 8,00,000/-.
14. That at the time of submitting the application, he was provisionally allotted B-12 Dwelling Unit, UGF, at the basic sale price of Rs. 78,48,000/- plus EDC,



IDC charges, club members fee, IFMS amounting to Rs. 88,66,017/-, as mentioned in application form duly signed by him.

15. That the complainant at the time of submission of the application form opted for construction linked payment plan and the detailed payment plan in respect of the said dwelling unit was sent to him along with allotment letter. The complainant was required to pay the due installments as per the payment schedule, in respect of the said unit. However, the payment schedule was never adhered to by him. The respondent no. 2 reminded the complainant on several occasions to make the timely payment of the due installments. As such, it issued demand notice on 21.03.2015 for payment of the next instalment which became due for payment after ninety days.
16. That despite reminder, the complainant failed to make the payment of above said instalment. Even then, the respondent not showing his bonafide sent the buyers agreement to the complainant vide letter dated 28.07.2015, calling upon him to complete the formalities and submit the buyers agreement duly signed to it.
17. That the respondent again sent a demand note dated 18.01.2016. However, the complainant always remained negligent and never fulfilled his part of contract nor paid the instalment as per the agreed payment plan. It is the complainant who is at fault who has not paid the instalments in time because of which the construction of the project got delayed. Furthermore, it issued a letter dated 07.03.2016, to intimate the complainant that the respondent no. 2 has availed finance from Yes Bank Limited for the



purpose of the completion of the said project against the security of the land and building and advised him to make all future payments for the said unit as per the schedule of payment to the escrow account with 'Yes Bank Limited' as per the details mentioned in the said letter.

18. That non-payment of the instalments by the allottees is a force majeure circumstance. The other reasons for delay in project are stoppage of construction activities in NCR region by the orders of Court, non-availability of construction material and labour, implementation of nationwide lockdown' to contain the spread of 'Covid-19', etc. Moreover, all these situations and adverse conditions are force majeure situations, which were beyond the control of the respondents.
19. That the said project of the respondent no. 2 is at the final stage of the construction and is reasonably delayed because of 'force majeure' situation which were beyond its control. The respondent no.2 submitted an application for change of developer (COD) with the concerned authority i.e., Director General Town and Country Planning' (DTCP) for the inclusion of the name of the 'co-developer' i.e. 'Bright Buildtech Pvt. Ltd.', which is pending adjudication before it. However, despite all odds, still, the respondent no. 2 along with development manager 'Ace' is making all efforts to complete the construction work at project site at full pace and is expecting to handover the possession very soon, once the present situation of pandemic 'Covid-19' gets over and situation normalizes.





20. That due to the exponential increase in the cases of 'Covid-19', the Central Government imposed nationwide lockdown' w.e.f. 25.03.2020 which was extended till 30.06.2020, resultantly the same is causing serious impact on the economy posing difficult challenges for everyone. It is pertinent to mention that prior, to this unprecedented situation of pandemic Covid-19', the respondent no.2 along with the development manager had been carrying out the construction of the project at full pace and was expecting to deliver the units to the buyers by the end of year 2020. However, due to the sudden outbreak of the pandemic and closure of economic activities, the respondents too are experiencing the liquidity crunch, as such, amid, this difficult situation of 'force majeure' the respondents were not in a position to adhere to the arbitrary demands of the complainant for cancellation of the allotment and refund of the monies along with interest due the reasons mentioned hereinabove. Although, considering the seriousness of the situation and prevailing circumstances caused due to implementation nationwide lockdown, the Government of India has already extended the project completion deadlines by 6 months from the commencement of lockdown period. Therefore, we expect to complete the entire project within the extended time period and expect to deliver the flat/ unit to the complainants very soon.
21. That the natural life cycle was about to come back on track which was derailed in March 2020 the sudden outbreak of second wave of pandemic of COVID in April 2021 in the nation made the situation worst from worse



and the country once again was under the grip of COVID and subsequently, lockdown was imposed in the country all over once again. It is further submitted that the second wave caused severe damage to the economy and real estate sector being no exception was hit the worst.

22. That other than the above reasons, there was delay in handing over of the possession of the allotted unit due to the various reasons which were beyond the control of the respondent no. 2. Following important aspects are relevant which are submitted for the kind consideration of this authority:-

- a. Non-booking of all apartments seriously affected the construction:- It is submitted that the global recession badly hit the economy and particularly the real estate sector. The construction of project is dependent on the amount of monies received from the bookings made and monies received henceforth, in form of instalments paid by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent no.2 at the time of launch of the project. That, the reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent no.2, henceforth, causing delay in the construction work of the project.



- b. Lack of adequate sources of finance
- c. Shortage of labour.
- d. Rising manpower and material costs
- e. Approvals and procedural difficulties.
- f. There was extreme shortage of water in the region which affected the construction works.
- g. There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln,
- h. Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labours.
- i. Recession in economy also resulted in availability of labour and raw materials becoming scarce.
- j. There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM).
- k. Direction by the Hon'ble National Green Tribunal & Environmental authorities to stop the construction activities for some time on regular intervals to reduce air pollution in NCR region.



1. Due to the increase in pollution in National Capital Region, the Hon'ble Supreme Court of India vide Order dated 04.11.2019 passed in *Writ Petition (Civil) No. 13029 of 1985 titled as "M.C. Mehta-Versus-Union of India & Ors"* had put complainant is raising unfair demands without any basis. It is reiterated herein that the company is attempting to make its best efforts to complete the construction works and to give possession of the flat to the allottees as soon as possible. It is submitted that the whenever the construction activity has stopped at the project site, it is due to the above said reasons of force majeure' which are beyond the control of the respondent no.2, therefore, the unfair and unreasonable demands of the complainant shall not be entertained. It is submitted herein that the respondent no.2 is attempting to make its best efforts to complete the construction works and to give possession of the 'unit' to the allottees as soon as possible.
23. That the project is at advance stage of construction and is completed to the extent of 70%. Therefore, in view of the same, the complainant shall not raise unreasonable demands which can materially affect the entire project. It is submitted that the respondent no.2/ Bright Buildtech Pvt. Ltd. has launched 420 numbers of independent floors to be constructed on 140 plots. Out of the 258 floors / units were sold by the company till date and the company in expecting to handover the possession of sold units on or before June 2022.



24. That the complainant has applied for the allotment of the unit as investment and not for personal use, which fact is abundantly clear and evident from the conduct of the complainant. The complainant has invested in the unit with intent to have monetary gains by way of reselling the unit to a higher bidder at an appreciated value.
25. That on 03.02.2021, the Ld. Secretary RERA, Haryana has filed an affidavit before **Hon'ble Supreme Court of India in SLP (Civil) No. 13005/2020 titled as "M/s. Sana Realtors Pvt. Ltd. vs. Union of India & Ors."**, wherein, at Para Nos. 43 to 46 of the Counter Affidavit, the Ld. RERA, Haryana has submitted that:

*In the cases where the projects are delayed inordinately i.e. delay ranging from 2 to 10 years, the RERA Act and RERA Rules provide that in the event of delay, compensation shall be paid @SBI-MCLR +2% per year, which usually works out to simple interest@ of about 10%. It is further submitted by RERA, that keeping in view the overall interest of parties and in exercise of the regulatory functions the Authority can come to the finding that the compensation for the entire period of delay for entire period prior to enactment of RERA Act, 2016 be paid at the rate provided in Rule 15 of the RERA Rules and this provision can be made applicable on all the previous agreement also delay irrespective of period*

In view of the above stand of Ld. HRERA, before the Hon'ble Supreme Court is that in the cases of delay in completion of projects, the Ld. HRERA provides for compensation, keeping in view the overall interest of the parties. As such, this authority should take into account the adverse circumstances which were beyond the control of the respondents, and which has led to the delay in completion of project. However, the



respondents are endeavouring. to finish the project on or before June 2022.

Therefore, this authority shall not consider the prayers of refund of monies.

26. 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:**

27. 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 complainant at a later stage.

**F. Findings on the objections raised by the respondents:**

**F.I Objections regarding the complainant being an investor:**

28. It is pleaded on behalf of answering respondents that complainant is an investor and not consumer. So, he is not entitled to any protection under the Act and the complaint filed by him 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 the 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 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 buyer's agreement, it is revealed that the complainant are buyer and has 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."*

29. 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 complainant is an allottee as the subject unit was allotted to him 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.000600000010557 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 is not entitled to protection of this Act also stands rejected.

**F.II Objection regarding force majeure conditions:**

30. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been





delayed due to force majeure circumstances such as delay on part of the developer M/s. Ace Mega Structures Private Limited, shortage of labour due to implementation of various social schemes by Government of India, demonetisation, lockdown due to covid-19 various orders passed by NGT, weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The plea advanced that the developer has failed to handover the possession of project on time as per 'development management agreement' entered between them on dated 23.05.2019. It is observed the plea advanced cannot be taken as the complainant was never a party to said contract and thus, there was no privity of contract. Further, the respondent has taken a plea that there was a delay in construction of the project on account of NGT orders, orders by EPCA, orders by Hon'ble Supreme Court of India, etc but did not particularly specified that for which period such orders has been made operative for. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter respondents cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

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

31. 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."*

32. 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 11.02.2018. It 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 cannot be excluded while calculating the delay in handing over possession

**G. Entitlement of the complainant for refund:**

**G.I Direct the respondents to refund/ return the amount i.e. Rs. 22,45,593/- received by him along with the prescribed interest.**

33. The complainant was allotted a unit in the project of respondent detailed above on 11.02.2015 for a total sale consideration of Rs.88,66,017/-. The builder buyer agreement was executed on 20.11.2015. The possession of subject unit was to be offered with 36 months from the date of issuance of allotment letter. The complainant paid a sum of Rs.22,45,593/- up to 11.02.2016. The due date for completion of project and offering possession of the unit comes to 11.02.2018. But the respondent failed to carry out the

construction of the project and which led to his withdrawal from the project and is seeking refund by filing of complaint.

34. Thus, keeping in view the fact that the allottee-complainant wished to withdraw from the project and is 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 **11.02.2018** and there is delay of 1 years 9 months on the date of filing of the initial complaint i.e. 20.11.2019.
35. 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 allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has 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....."*

36. 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*

37. 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 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 he 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.

38. 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. 22,45,593/- 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.**

39. The complainant is claiming compensation in the above-mentioned relief. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant 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:**

40. 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. 22,45,593/-** received by them from the complainant 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.

41. Complaint stands disposed of.

42. File be consigned to the registry.

v.i-3  
(Vijay Kumar Goyal)  
Member  
Haryana Real Estate Regulatory Authority, Gurugram

(Dr. KK Khandelwal)  
Chairman  
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.05.2022