

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

Complaint no. : 5539 of 2019
First date of hearing: 13.11.2019
Date of decision : 10.05.2022

Mr. Jai Shree Jain

R/o: - F- 1303, Celebrity Homes, Palam Vihar-
Gurugram- 122017 (Haryana)

Complainant

Versus

M/s Emaar MGF Land Limited.

Registered office at: - 306- 308, 3rd Floor, Square One,
C2, District Centre Saket, New Delhi- 110017

Corporate office at: - Emaar MGF Business Park,
Mehrauli Gurgaon Road, Sector- 28, Sikander Pur
Chowk, Gurugram- 122002

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Apoorv Jain (Advocate)
Sh. J.K. Dang (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 13.11.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it

is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name of the project	"Imperial Garden" Sector- 102, Gurugram, Haryana
2.	Project area	12 acres
3.	Nature of project	Group housing colony
4.	RERA registered/not registered	Registered in two phases i. 208 of 2017 dated 15.09.2017 [valid upto 31.12.2018 for 49637 sq. mtrs. And extension granted vide no. 3/2019 dated 02.08.2019 which is extended up to 31.12.2019] ii. 14 of 2019 dated 28.03.2019 valid upto 17.10.2018 [phase-II]
5.	DTPC License no.	107 of 2012 dated 10.10.2012
	Validity status	09.10.2020
	Name of licensee	Kamdhenu Projects Private Limited



6.	Unit no.	IG-06-0102, 1 st floor, Building no. 6 (Page 40 of the reply)
7.	Unit measuring	2025 sq. ft [super area]
8.	Date of execution of flat buyer's agreement	05.06.2013 (Page 37 of the reply)
9.	Provisional allotment letter	27.02.2013 (Page 26 of the reply)
10.	Possession clause	<p>14. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p><i>Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 42 (Forty Two) months from the date of start of construction; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 3 (three) months after the expiry of said period of 42 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project. (emphasis supplied)</i></p> <p>[page 55 of reply]</p>



11.	Date of start of construction as per statement of account dated 18.11.2019 at page 119 of reply	11.11.2013
12.	Due date of possession	11.05.2017 [Note: - Grace period is not included]
13.	Total sale consideration as per statement of account dated 18.11.2019 at page 119 of reply	Rs.1,64,15,701/-
14.	Total amount paid by the complainant as per statement of account dated 18.11.2019 at page 119 of reply	Rs.1,54,05,587/-
15.	Occupation certificate granted on	17.10.2019 [page 122 of the reply]
16.	Offer of possession	18.11.2019 [Page 128 of the reply]
17.	Delay in handing over possession w.e.f. due date of handing over of possession i.e., 11.05.2017 till the date of offer of possession plus 2 months i.e., 18.01.2020	2 years 8 months and 7 days
18.	Grace period	Not allowed

	<p>Since the grace period utilization is subject to condition of applying and obtaining of the occupation certificate in respect of the group housing complex. But upon perusal of documents on record, the respondent has applied for occupation certificate vide application dated 11.02.2019. Therefore, no such grace period of 3 months can be entitled to the promoter.</p>
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B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That on application being made by the complainant along with an amount of Rs.10 Lakhs on 10.01.2013, the complainant was allotted a dwelling unit No. IG-06-0102 in tower no. 6 of the group housing project in sector-102, Gurgaon in the name of 'Imperial Gardens' being developed by the respondent company.
- II. That while making the above application, the complainant was told by the respondent's representative that the complainant shall be handed over the possession of the dwelling unit in 42 months' time and may need a further grace period of 3 months making the maximum period of possession as 45 months.
- III. That then followed the receipt at the complainant's end the copies of the schedule of payment and buyer's agreement from the

respondent company in Feb. 2013. That initially the complainant refused to sign the buyer's agreement because of its containing one-sided terms, all favoring them and without conforming to the guidelines laid down by the Competition Commission of India as contained in their order dated 03.01.2013 the case of ***Belaire Owner's Association Vs. DLF***. That the complainant thereafter made a representation on 01.06.2013 to the CREDAI with regard pressure being exerted by the respondent on the complainant to sign the buyer's agreement, with a copy marked to the promoter.

IV. That the complainant was threatened by the respondent that if she does not sign on the dotted lines of the buyer's agreement. The allotment of dwelling unit to the complainant shall be cancelled and all her deposits made till then shall be forfeited. Being severally afraid, the complainant was left with no choice but to sign on the dotted lines of this agreement much against her will.

V. That so far, the complainant has deposited with the respondent an amount of Rs.1,53,55,759/-. Further, that recently on the complainant's visit to the site on 12.05.2018, after more than 5 years of the complainant's first payment dated 10.01.2013 to the respondent, the complainant found that the possession of the dwelling unit to the complainant would take even a longer time.

VI. That on a complaint (no. 405 of 2018) having been filed by the complainant before this authority on 07.06.2018, this authority passed its order on 05.09.2018. Exercising the powers conferred on it under section 37 of the Act, 2016 and the following direction to the respondent as under:

- (i) *The respondent is directed to give the physical possession of the said flat to the complainant on the date committed by the respondent Le 31.12.2018 for handing over the possession.*
- (ii) *The respondent is directed to give interest to the complainant at the prescribed rate of 10.45% on the amount deposited by the complainant for every month of delay from the date of possession Le 11.08.2017 till 05.09.2018 within 90 days of this order and thereafter, on 10th of every month of delay till the handing over of possession.*
- (iii) *If the possession is not given on the date committed by the respondent in the registration application, then the complainant shall be at liberty to further approach the authority for the remedy as provided under the provisions, Le. section 19(4) of the Act ibid."*

VII. That after the receipt of the order dated 05.09.2018 passed by this authority, the complainant sent repeated mails to the respondent on 04.10.2018, 17.10.2018, 22.10.2018, 26.10.2018, 29.10.2018, 31.10.2018, 20.11.2018, 21.11.2018, 26.11.2018, 10.12.2018, 15.12.2018, 24.12.2018, 10.01.2019, 17.01.2019, 21.01.2019 & 28.01.2019 for the compliance of the direction no. (ii) as above stated but without any response/compliance on the part of the respondent

VIII. That despite the specific direction no. (1) as above stated of this authority, the respondent neither gave the physical possession of the flat to the complainant on 31.12.2018) despite their specific commitment given to this authority as also noted by this

authority in para 27 (1) of its order dated 05.09.2018 nor did they give interest to the complainant at the prescribed rate of 10.45% on the amount deposited by the complainant for every month of delay from the date of possession i.e., 11.08.2017 till 05.09.2018 within 90 days of this order (which expired on 04.12.2018) and thereafter, on 10 of every month of delay till the handing over of possession as also directed specifically in para 27 (ii) of its order dated 05.09.2018 by this court.

IX. That the respondent filed an appeal before the Appellate Tribunal at Chandigarh on 03.01.2019 against the order passed by the authority, inter alia, on the ground of lack of jurisdiction which is still pending.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

i. Direct the respondent to refund the entire deposit of Rs.1,53,55,759/- made with the respondent from 10.01.2013 onwards along with the amount of interest as per the provisions of section 18(1) and 19(4) of the Act 2016 and read rule 15 of the rule 2017.

ii. The respondent is directed to pay a sum of Rs.1,00,000/- to the complainant towards the cost of litigation.

5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been

committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent contested the complaint on the following grounds: -

- i. That the complainant is a wilful and persistent defaulter who has failed to make payment of the sale consideration as per the payment plan opted by the complainant. The complainant has not come before this authority with clean hands and have concealed vital and material facts. The real and true facts are as under.
- ii. That the complainant had approached the respondent and expressed an interest in booking a unit in the residential group housing project being developed by them known as "Imperial Gardens" situated in Sector 102, Village Kherki Majra Dhankot, Tehsil & District Gurgaon. Prior to making the booking, the complainant had conducted extensive and independent enquiries with regard to the project and it was only after she was fully satisfied about all aspects of the project, including the approvals, licenses, permissions as well as the capacity of the respondent to undertake the said project, that the complainant took an independent and informed decision, uninfluenced in any manner by them, to book the unit.

- iii. That the complainant was provisionally allotted unit number IG-06-0102, located on the first floor in tower/building number 06, having approximate super area of 188.13 sq. mtrs. or 2025 sq ft. The complainant had opted for a payment plan which was partially construction linked. Thereafter, from the very beginning, the complainant had been extremely irregular with regard to payment. Consequently, the respondent had to issue notices and reminders calling upon the complainant to pay the demanded amounts as per the payment plan.
- iv. That as per the terms and conditions of the buyer's agreement dated 05.06.2013, the complainant was under a contractual obligation to make timely payment of all amounts payable under the buyer's agreement, on or before the due dates of payment failing which the respondent is entitled to levy delayed payment charges in accordance with Clause 1.2(c) read with Clauses 12 and 13 of the buyer's agreement.
- v. That the respondent registered the project under the provisions of the Act. The project had been registered initially till 31.12.2018. However, the respondent applied for extension of the validity of the project till 31.12.2019 in respect of a few towers that were yet to be completed on 31.12.2018, which extension was duly granted by this authority.

- vi. That on one hand this authority extended the timelines for registration of the project from December 2018 to December 2019 but took a contradictory view by passing an order to hand over the possession of the unit in question by December 2018. It is humbly submitted that this authority Gurugram cannot approbate and reprobate from its own stand, thereby the basis of directions issued by this authority Gurugram vide its order dated 05.09.2018 is devoid of any merit. This very aspect is also under consideration by the Hon'ble Appellate Tribunal in the appeal filed by them against the order dated 05.09.2018, which appeal is pending before the Hon'ble Appellate Tribunal.
- vii. That in so far as tower in which the unit in question is situated is concerned, the respondent completed construction of the same and applied for the occupation certificate in respect thereon on 11.02.2019. Thereafter, that upon receipt of the occupation certificate, the respondent offered possession of the said unit to the complainant vide letter dated 18.11.2019. That the complainant was called upon to remit balance amount as per the attached statement and also to complete the necessary formalities and documentation so as to enable them to hand over possession of the unit to the complainants.
- viii. That the complainants failed to come forward and make payment of balance sale consideration and take possession of

the unit in question, despite repeated requests from the respondent.

- ix. That the complainant had filed a complaint before this authority being complaint no 405 of 2018, seeking refund of the amount paid by the complainant. The said complaint was disposed by this authority with the observation that keeping in mind the status of the project and the intervening circumstances, it would hamper the completion of the project in case refund was allowed in the complaint. Accordingly, the complaint was disposed of with a direction to them to pay interest @10.45% on the amount deposited by the complainant from 11.08.2017 to 05.09.2018. The respondent was directed to give physical possession of the unit to the complainant on 31.12.2018, which at that time when the arguments in the complaint were addressed, was the date on which the validity period of the registration of the project expired. This authority further held that if possession was not given on the date committed by them in the registration application, then the complainant shall be at liberty to further approach the authority for the remedy provided under section 19(4) of the Act.
- x. That against the order dated 05.09.2018 passed by this authority, the respondent has preferred an appeal before the Haryana Real Estate Appellate Tribunal, Chandigarh (hereinafter

referred to as the "Hon'ble Appellate Tribunal"). The said appeal bearing no HREAT-33-2019 is pending before the Hon'ble Appellate Tribunal and is listed for final arguments. It is pertinent to mention that the allottee in compliance of proviso to section 43(5) of the Act of 2016 has deposited Rs.17,14,586/-. In addition to that, it is respectfully submitted that the respondent has duly offered possession of the unit to the complainant within the extended registration period, but she has refrained from taking possession of the unit on false and frivolous pretexts. Instead of remitting the balance payment as per the buyer's agreement and taking possession of the unit in question, the complainant filed an execution petition seeking execution of the order dated 05.09.2018 and has thereafter proceeded to file the present false and frivolous complaint seeking the very same relief of refund which was specifically declined by this authority.

- xi. That as has been submitted hereinabove, possession of the unit has been offered to the complainant before the date committed in the extension application for registration. Thus, the respondent has duly complied with the order passed by this authority. In so far as the direction for payment of interest is concerned, it is submitted that this authority did not have the jurisdiction to hear and decide a complaint seeking refund and

compensation, as held by the Hon'ble Appellate Tribunal in the matter of *Sameer Mahawar Vs MG Housing Pvt Ltd (Appeal No 06 of 2018 decided on 2nd May 2019)* that complainants pertaining to refund, interest etc. are to be decided by the adjudicating officer under section 71 of the Act, 2016 read with Rule 29 of the Rules, 2017, and not by the authority.

- xii. That the contractual relationship between the complainant and the respondent is governed by the terms and conditions of the buyer's agreement dated 05.06.2013. Clause 12 of the buyer's agreement provides that time shall be the essence of the contract in respect of the allottee's obligation to perform /observe all obligations of the allottee including timely payment of the sale consideration as well as other amounts payable by the allottee under the agreement. Clause 13 of the buyer's agreement provides for levy of interest on delayed payments by the allottee.
- xiii. That without admitting or acknowledging in any manner the truth or legality of the frivolous and false allegations levelled by the complainants and without prejudice to the contentions of them, it is respectfully submitted that the respondent has been prevented from timely implementation of the project by reasons beyond its power and control. It is submitted that the respondent had appointed a contractor on 17.09.2013 operating

under the name and style of Capacite Infra projects Ltd. for construction and implementation of the project in question. The said contractor had represented and claimed that it has the necessary resources, competence, capacity, capability, and expertise for undertaking, performing, effectuating, and completing the work undertaken by it. The respondent had no reason to suspect the *bona fide* of the said contractor at the relevant time and awarded the work to the said contractor. However, the said contractor was not able to meet the agreed timeline for construction of the project. The said contractor failed to deploy adequate manpower, shortage of material, etc. The respondent was constrained to issue several notices, requests etc. to the said contractor to expedite progress of the work at the project site but to no avail. Copies of the said notices, requests, reminders by them. The said contractor consciously and deliberately chose to ignore the legitimate and just requests of the respondent on one pretext or the other and defaulted in carrying out the work in a time bound manner. Therefore, no fault or lapse can be attributed to the respondent of the facts and circumstances of the case.

- xiv. That several allottees, including the complainants have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for

conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon them. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to them. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the complaint deserves to be dismissed at the very threshold.

- xv. That the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. The provisions of the Act relied upon by the complainant for seeking refund, interest or compensation cannot be called in to aid in derogation and in negation of the provisions of the buyer's agreement. The complainant cannot claim any relief which is not

contemplated under the provisions of the buyer's agreement. The complainant cannot demand any relief beyond or contrary to the agreed terms and conditions between the parties.

- xvi. That the entire sequence of events, that no illegality or lapse can be attributed to the respondent. Thus, the allegations levelled by the complainants qua the respondent are totally baseless and do not merit any consideration by this authority. The present application is nothing but an abuse of the process of law. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

11. 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.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022*

(1) RCR (Civil), 357” and followed in case of *Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021* wherein it has been laid down as under:

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

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

F. Findings on the relief sought by the complainant.

- F.1 Direct the respondent to refund the entire deposit of Rs. 1,53,55,759/- made with the respondent from 10.1.2013 onwards along with the amount of interest as per the provisions of section 18(1) and 19(4) of the Act, 2016 read with rule 15 of Rules.**

14. The complainant in the present complaint had filed a complaint bearing no.405 of 2018 seeking refund of the amount paid by the complainants with prescribed rate of interest. The said complaint was disposed of by the authority on 05.09.2018 by the authority with the following directions to the respondent:

"27. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent:

- i. The respondent is directed to give the physical possession of the said flat to the complainant on the date committed by the respondent i.e. 31.12.2018 for handing over the possession.*
- ii. The respondent is directed to give interest to the complainants at the prescribed rate of 10.45% on the amount deposited by the complainants for every month of delay from the due date of possession i.e. 11.08.2017 till 05.09.2018 within 90 days of this order and thereafter, on 10th of every month of delay till the handing over of possession.*
- iii. If the possession is not given on the date committed by the respondent in the registration application then the complainants shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. section 19(4) of the Act ibid." (Emphasis supplied)*

15. In the present complaint the complainant submitted that the complainant is no longer interested in taking possession of the property even when offered as firstly, the respondent has failed to handover possession by 31.12.2018 in compliance of order dated 05.09.2018 and secondly, she has already purchased another property from her family use.

16. That the complainant instituted the complaint bearing no. 405 of 2018 on 07.06.2018 thereby claiming refund of the amount paid by the

complainant along with interest at the prescribed rate, on the ground that the respondent promoter has failed to deliver the possession of the subject unit to the complainant within the period stipulated in the buyer's agreement.

17. Instead of allowing refund at the primal instance, delay possession charges were allowed to the complainant vide order dated 05.09.2018 for the following reasons:

- I. That the project is nearing completion.
- II. That the project is not held up. The work on the project is continuing and likely to be completed by 31.12.2018 as per commitment given by the promoter.
- III. That the promoter has declared a firm date of completion of project i.e., 31.12.2018.
- IV. That there are so-many number of allottees whose stake is there in the project and if refund is allowed indiscriminately in projects which are near completion, the interest of allottees of the project will suffer.

18. Therefore, keeping in view the overall interest of the allottees and progress of the project, the authority was of the considered view that the refund at that stage would be detrimental to the progress/completion of the project and large number of allottees who have preferred to wait for the project for its completion and take physical possession of their respective units with a view to make their permanent abodes. The complainant in pursuance of direction given in

para 27(iii) of the order dated 05.09.2018, has again approached the authority by way of present complaint bearing no. **5539/2019** dated **13.11.2019** as the respondent has again failed to handover possession by 31.12.2018.

19. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14(a) of the agreement executed between the parties on 05.06.2013, the possession of the subject unit was to be delivered within 42 months from the date of start of construction i.e., 11.11.2013 and disallows the grace period of 3 months as the promoter has not applied to the concerned authority for obtaining the occupation certificate within the time limit prescribed by the promoter in the buyer's agreement. Therefore, the due date of handing over of possession is 11.05.2017. As per the settled law one cannot be allowed to take advantage of his own wrong. In the present complaint, the occupation certificate was granted by the competent authority on 17.10.2019. The respondent offered the possession of the allotted unit to the complainant only on 18.11.2019. *(Sic: Inadvertently mentioned that the occupation certificate has not received in the proceeding of the day dated 10.05.2021).* It is the failure on part of the promoter to fulfil

its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period.

20. Since the allottee intends to withdraw from the project under section 18(1) of the Act, 2016 and the authority is well within its jurisdiction to proceed further in the matter to grant refund to the complainant in view of the recent judgement of the Hon'ble Apex court in the case of *Newtech Promoters and Developers Private Limited Vs. State of U.P. and Ors. (11.11.2021) MANU/SC/1056/2021*. Furthermore, the Hon'ble Supreme Court in *M/s Newtech Promoters and Developers Private Limited (supra)*, has held that the legislature has consciously provided the 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 and 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.
21. Furthermore, the hon'ble Apex Court in civil appeal no. 12238 OF 2018 titled as *Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan*, wherein it was held that the flat purchaser cannot be compelled to take possession of the flat even though it was offered almost 2 years after the grace period under the agreement expired. The relevant para is reproduced as under:

"We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant - Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent - Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent - Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent - Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent - Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the Respondent - Flat Purchaser was entitled to be granted the relief prayed for i.e., refund of the entire amount deposited by him with Interest."

22. While constituting the view on the basis of the aforesaid reasoning, the authority elucidated the above facts and establishes the entitlement of the allottee for refund as the respondent-promoter has defaulted in fulfilling its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established.
23. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund the entire amount paid by him at the prescribed rate of interest i.e., @ 9.40% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development)

Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II The respondent is directed to pay a sum of Rs. 1,00,000/- to the complainant towards the cost of litigation.

24. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

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

- i. The respondent/promoter is directed to refund the entire amount received by it from the complainant-allottee 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 deposited amount.

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

26. Complaint stands disposed of.

27. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.05.2022


(Dr. K.K. Khandelwal)
Chairman