

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

Complaint no.	3238 of 2021
Date of filing complaint	07.09.2021
First date of hearing	10.09.2021
Date of decision	15.09.2022

1. Kanta Devi Saini 2. Kishore Kumar Saini Both R/O: House no. 318, Behind Law College, Sector 40, Gurugram, Haryana-	Complainants
Versus	
M/s. International Land Developers Pvt. Ltd. Regd. office: ILD Trade Centre, 9 th Floor, Sector- 47, Sohna Road, Gurugram, Haryana-122018	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Rishabh Jain (Advocate)	Complainants
Sh. Pankaj Chandola (Advocate)	Respondent

ORDER

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

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

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Arete", Sector 33, Gurugram
2.	Nature of the project	Group Housing Colony
3.	Project area	11.61 acres
4.	DTCP license no.	44 of 2013 dated 04.06.2013 valid upto 03.06.2019
5.	Name of licensee	Brijesh-Sanjeev Ss/o Satbir and 2 others
6.	RERA Registered/ not registered	06 of 2019 dated 08.02.2019 valid upto 02.07.2022
7.	Allotment Letter	18.04.2014 (Annexure 04 at page 48 of complaint)
8.	Unit no.	F-402, 4 th Floor, Tower F (Page 78 of complaint)
9.	Unit area admeasuring (super area)	1275 sq. ft. (Page 78 of complaint)



9.	Date of execution of apartment buyer agreement	11.05.2015 (Page 61 of complaint)
10.	Possession clause	10. Possession of Apartment 10.1 Subject to timely grant of all approvals (including revisions thereof), permissions, certificates, NOCs, permission to operate, full/part occupation certificate etc. and further subject to the Buyer having complied with all its obligations under the terms and conditions of this Agreement, and subject to all the buyers of the apartments in the Project making timely payments including but not limited to the timely payment of the Total Sale Consideration, stamp duty and other charges, fees, IAC, Levies & Taxes or increase in Levies & Taxes, IFMSD, Escalation Charges, deposits, Additional Charges to the Developer and also subject to the Buyer having complied with all formalities or documentation as prescribed by the Developer, the Developer shall endeavour to complete the construction of the Said Apartment within 48(Forty-Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months.
11.	Due date of possession	11.11.2019 (Calculated as 48 months from date of execution of BBA i.e., 11.05.2015 plus 6 months grace period as the same is unqualified)
12.	Total sale consideration	Rs. 71,69,525/- (Page 82 of complaint)
13.	Amount paid by the complainants	Rs. 18,60,000/- (Page 28 of CRA)

14.	Surrender letter	18.02.2020 (Page 127 of complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not obtained

B. Facts of the complaint:

3. That the respondent published very attractive colourful brochure, highlighting the project known as 'Arete Project', located at village Dhunela, Sector - 33, Tehsil Sohna, Gurugram, Haryana. The respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country, in order to lure prospective customers to buy the apartment in the project. There are fraudulent representations, incorrect and false statements in the brochure.
4. The complainants were approached by the sale representatives of the company, who made tall claims about the project 'Arete' describing it as the world class project. The complainants were invited to the sale office and were lavishly entertained, and promises were made to them that the project would be finished in time, complete with parking, horticulture, parks, club, and other common area facilities. The complainants were impressed by their statements and oral representations and ultimately lured to pay Rs. 3,00,000/- (rupees three lakh) via two cheques, no. 183139 dated 1st December 2013 and no. 539652 dated 3rd December, 2013 as booking amount along with the application of registration of residential apartment. The respondent issued acknowledgement receipts no. 157 and 158 on 28th December 2013 and allotted apartment no. F-402 to the complainants.

5. The respondent further raised a demand - cum - invoice on 1st February, 2014 of Rs.9,11,349/- (Rupees Nine Lakh Eleven Thousand Three Hundred Forty-Nine) for booking of the apartment. The complainants made the payment via three cheques, no. 682201 dated 6th March 2014 of Rs.1,11,349/-, no. 039539 of Rs.5,00,000/- and no. 539654 of Rs.3,00,000/- both dated 7th March 2014 to the respondent and the respondent issued acknowledgement receipts 421, 422 and 423 to the complainants on 7th March, 2014.
6. The complainants signed the letter of acceptance for apartment no. 402, 4th Floor, Tower F at ILD Arete, Sector 33, Gurugram, admeasuring 1275 square feet with preferential location charges (PLC) at the rate of Rs.100/- per square feet on 24th March 2014. Thereafter, the complainants were issued the provisional allotment letter on 18th April 2014 against their booking in the project, mentioning the provisional allotment of the aforementioned unit at the rate of Rs.4,608/- per square feet. Thus, the total net cost of the apartment is Rs.71,69,525/- (Rupees Seventy-One Lakh Sixty-Nine Thousand Five Hundred and Twenty-Five).
7. The respondent then issued another demand - cum - invoice dated 21st March 2015 for Rs.6,42,394/- with regard to allotment and excavation instalment at the construction site. The complainants made the payment via four cheques, no. 104486 dated 9th May 2015 amounting Rs.3,05,394/-, no. 140307 amounting Rs.1,00,000/- and no. 682203 amounting Rs.25,250/- both dated 11th May 2015 and no. 539664 amounting Rs.2,00,000/- dated 12th May 2015 to the respondent. The respondent acknowledged the payments and issued receipts no. 1126, 1127 and 1128 on 11th May 2015 and receipt no. 1230 on 12th May 2015 to the complainants.



8. It is pertinent to mention that the respondent has violated section 13 of the Act, 2016 by taking more than ten per cent (10%) cost of the apartment before the execution of the apartment buyers' agreement. The total cost of the apartment is Rs.71,69,525/- (Rupees Seventy One Lakh Sixty Nine Thousand Five Hundred Twenty Five) including EDC, IDC, PLC, car parking space / utility charges, club membership charges and interest free maintenance security etc. while the respondent had collected a total sum of Rs.18,41,993/- (Rupees Eighteen Lakh Forty One Thousand Nine Hundred Ninety Three), around 26% (twenty six per cent) of the total cost of the Apartment till 11th May, 2015. The apartment buyer's agreement was only signed between the parties on 11th May 2015 for the given unit.
9. The complainants further made a payment of Rs.11,751/- via cheque no. 01391 on 22nd May 2015 to the respondent on account of milestone "On Commencement of Excavation". Thereafter, the complainants again made payment of Rs.6,257/- via cheque no. 06936 dated 24th March 2016 to the respondent on account of milestone "On Commencement of Excavation and On Completion of Upper Basement Roof Slab".
10. That, the tower on which the apartment of the complainants is located has been abandoned by the respondent developer and hence no construction works are visible at the location where the tower F is planned to be constructed. The date of possession of the apartment comes out to be on 11th May 2019 as per the clause 10.1 of the agreement, which states the completion of the said apartment within 48 (Forty-Eight) months from the execution of this agreement.

11. The complainants gave a letter to refund for the deposited amount i.e., Rs.18,41,993/- (Rupees Eighteen Lakh Forty-One Thousand Nine Hundred Ninety Three) to the respondent on 18th February, 2020 stating the reason that the respondent has not yet started the work of tower f and has falsely claimed previously on 25th march, 2016 “the commencement of excavation and completion of upper basement” and hence has completely abandoned it now.
12. That, despite of a delay of more than three (3) years from the due date of possession, the respondent has failed to offer for possession of the apartment till date and that is why, the complainants now seek refund of their deposited amount with interest from various dates of receipts from the respondent for his failure to deliver the possession of the apartment till 11th May 2019, as per the terms and conditions of the agreement.
13. Because of reasons stated above, the complainants wish to withdraw from the project. The complainants seek the complete refund of their deposited amount along with interest at the prescribed rate for inordinate delay caused due to the complete failure of the respondent. The complainants being aggrieved persons have filed a complaint under section 31 of the Act, 2016 read with Rule 28 of the Rules, 2017 before the HARERA, Gurugram for violation or contravention of provisions of the Act, 2016 and Rules as mentioned therein.

C. Relief sought by the complainants:

14. The complainants have sought following relief(s):
 - i) Direct the respondent company to refund an amount of Rs. 18,60,000/- along with interest at the prescribed rate from the date of receipt of each instalment of payment till the date of refund.

- ii) Direct the respondent to pay legal expenses of Rs. 1,00,000/- to the complainant.

D. Reply by respondent:

The respondent by way of written reply made following submissions

15. That at the outset each averment, statement, allegation, contention of the complainant which was contradictory and inconsistent with the reply submitted by the respondent was denied and no averment, statement, allegation, contention of the complainant shall deem to be admitted save as those specifically admitted being true and correct. It was respectfully submitted that the same be treated as a specific denial of the complaint. The respondent is a leading real estate company aiming to provide state of art housing solutions to its customers and have achieved a reputation of excellence for itself in the real estate market.
16. That the complainants herein, have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. They are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
17. That the complainants have not approached the Ld. Authority with clean hands and has suppressed relevant material facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with cost.
18. It was submitted that no affidavit was filed along with the present complaint. An affidavit is utmost necessary for filing any complaint before any court or the authority. It was submitted that no pleadings or documents in the complaint can be relied upon without verifying the

same by filing a proper affidavit with the sign and seal of the notary public. The present complaint has been filed without an affidavit to verify the truthfulness of the averments made under the complaint. Therefore, for the said reason, the present complaint is liable to be dismissed with heavy cost.

19. That in 2013, the complainants herein, learned about the project launched by the respondent titled as 'Arete' (herein referred to as 'Project') and approached the respondent repeatedly to know the details of the said project. The complainants further inquired about the specification and veracity of the project and were satisfied with every proposal deemed necessary for the development of the project. After having keen interest in the project constructed by the respondent the complainant herein booked a flat unit bearing no. F-402 and customer ID as IA0151.
20. That the respondent issued the provisional allotment letter to the complainants on 18th April 2014 against their booking in the Arete project and allotted apartment bearing no. 402, 4th floor, tower F admeasuring super area of 1275 Sq. Ft. at Village Dhunela, Sector-33, Tehsil Sohna, Gurugram.
21. That on 11.05.2015, a builder buyer agreement (herein referred to "Agreement") was executed between the parties wherein the unit bearing no. 402, 4th floor, tower F admeasuring super area of 1275 Sq. Ft. was allotted to the complainants in the said project.
22. It is a matter of fact, that time was essence in respect to the allottees' obligation for making the respective payment. As per the agreement so signed and acknowledged the allottee was bound to make the payment of instalment as and when demanded by the respondent but the same

was not paid. The relevant clause 8 of the said agreement is mentioned herein below for ready reference:

Clause 8: Time is the essence

8.1. It is hereby agreed by the parties that time is the essence under this agreement and the buyer shall timely payment of each instalment of the total sale consideration as per the payment plan opted and other charges, taxes, escalation charges, securities, additional charges, deposits including any interest or penalty payable under this agreement in accordance with the timelines indicated herein and timely performances by the buyer of all his obligations under this agreement, and for the developer to complete the construction of the said apartment.

8.2. The Developer shall be under no liability to send reminders of payments to the Buyer after sending a demand letter. In the event of any delay in payment of the instalments for the total sale consideration, or the failure to pay the stamp duty, registration, fee, or any other charges or amount including deposits, payable by the Buyer or as may be notified by the Developer prescribed in Clause 9.1 of this Agreement.

23. It was further submitted that the project of the respondent got delayed due to reasons beyond control of the respondent. That the major reason for delay for the construction and possession of project is lack of infrastructure in the said area. The twenty-four-meter sector road was not completed on time. Due to non-construction of the sector road, the respondent faces many hurdles to complete the project. For completion of road, the totally upon the Govt. department/machinery and the problem is beyond the control of the respondent. The aforementioned road has been recently constructed. It was submitted that the building plan has been revised on 16.06.2014 vide memo no. ZP370/AD(RA)/2014/16 dated 16/06/2014 and further revised on 21.09.2015 vide memo no. ZP370/AD(RA) 2015/18145 dated 21/09/2015. It is further submitted that the building plan has been

changed for the benefit of the purchaser/allottee and due to this reason, the project got delayed.

24. It was submitted that in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to time by the company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.
25. That due to ban levied by the competent authorities, the migrant labourers were forced to return to their native towns/states villages creating an acute shortage of labourers in the NCR region. Despite, after lifting of ban by the Hon'ble Court the construction activity could not resume at full throttle due to such acute shortage.
26. It was submitted that the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affected the progress of the project. In past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In

the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L 49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L 53 dated 01.11.2019.

27. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These forced the migrant labourers to return to their native towns states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
28. The demonetization and new tax law i.e., GST, affected the development work of the project. In the view of the facts stated above it is submitted that the respondent has intention to complete the project soon for which the respondent is making every possible effort in the interest of allottees of the project. Even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and such period shall not be added while computing the delay.

29. That the Covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. That on 24.03.2020, the Ministry of Home Affairs, GOI vide notification bearing no. 40-3/2020-DM 1(A) recognized that entire nation was threatened with Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. Subsequently, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. It is to note, various state Governments, including the Government of Haryana have also imposed strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities.
30. It is an evident fact the respondent herein had been running behind the complainant for the timely payment of instalment due towards the respective unit in question. That in spite being aware of the payment schedule the complainant herein has failed to pay the instalment on time. It is pertinent to bring into the knowledge of the Hon'ble Authority that the complainant in the present mater has failed to pay the entire instalment as per the agreed payment schedule. It is evident that the complainant was well aware of the payment schedule and despite after being aware of the same the complainants have failed to make any such payments on time.
31. That the respondent is committed to complete the development of the project at the earliest for which every necessary action is being taken by the respondent. It is further submitted that as the development of the project was delayed due to the reasons beyond the control of the

respondent, the complainants are not entitled for compensation in any which way and the same was agreed into between the complainant and the respondent under clauses 10.1, 10.2, 10.3, 10.4, and clause 18. Therefore, the complainants are not entitled for compensation for delay.

32. Despite, such obstacles in the construction activity and before the normalcy could resume the entire nation was hit by the worldwide covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances.
33. That, it is evident that the entire case of the complainants is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story, hence, the present complaint filed by the complainants deserves to be dismissed with heavy costs. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Ld. Authority, That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
34. All other averments were denied in toto.
35. Copies of all 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 submissions made by the parties.

E. Jurisdiction of the authority:

36. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

37. 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

38. 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.

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

F. Findings on the objections raised by the respondents:**F.I Objection regarding no affidavit submitted by complainant.**

40. The respondent has raised the plea that the complainants have not submitted an affidavit along with the present complaint. It was submitted that no pleadings or documents in the complaint can be relied upon without verifying the same by filing a proper affidavit with the sign and seal of the notary public. That the present complaint has been filed without an affidavit to verify the truthfulness of the averments made under the complaint. Therefore, for the said reason, the present complaint is liable to be dismissed with heavy cost. However, a perusal to page 34 of original complaint filed before the Hon'ble Adjudicating Officer shows that a duly signed affidavit has been submitted wherein it has been affirmed that all facts and submissions made in the complainant are true and correct. Hence, the plea of the respondent is devoid of merit and liable to be rejected.

F.II Objections regarding delay due to force majeure:

41. The respondent-promoter raised the contention that the construction of the project was delayed due to conditions beyond the control of the respondent such as non-construction of sector road by Government, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016 along with demonetization and new tax law i.e., GST, affected the development work

of the project. First of all, the orders of High Court in the year 2012 does not have any impact on the project as the same was passed even before the apartment buyer's agreement was executed between the parties. Further, the orders banning construction and extraction of ground water were imposed for a very short duration and thus, a delay of such a long duration cannot be justified by the same. With respect to delay due to Covid-19, it is pertinent to note that the due date of possession comes out to be 11.11.2019 and the Covid-19 pandemic and subsequent lockdown only happened in 2020 and hence, the same cannot be said to adversely affect the construction of the project. Due to this reason, the plea stands rejected. The plea regarding delay due to GST and demonetisation is also devoid of merit and thus, all the pleas stand rejected. Thus, the promoter-respondent 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 default in making payments due by the complainant

42. The respondent has alleged that the complainants have breached the terms and conditions of the agreement and contract by defaulting in making timely payments. It was submitted by the respondent that the complainants even after knowing the payment schedule did not pay the instalments on time.
43. But the plea raised in this regard is devoid of merit. The complainants had made payments regularly and timely till 2016. However, to utter

shock of the complainants, the construction of the project site was not moving forward. The complainants had opted for construction-linked payment plan and hence, if the construction is not going as per the milestone specified, the complainant can withhold payments. Hence, the plea of the respondent is devoid of merit and thus, rejected.

G. Entitlement of complainant for refund:

G.I Direct the respondent company to refund an amount of Rs. 18,60,000/- paid along with interest at the prescribed rate from the date of receipt of each instalment of payment till the date of refund

44. That the complainants booked a unit in the project of the respondent named as "Arete" situated at sector 33, Gurgaon, Haryana for a total sale consideration of Rs. 71,69,525/-. The complainants paid an amount of Rs. 18,60,000/-. The BBA was executed between the parties on 11.05.2015 and the due date of possession in accordance with clause 10.1 of BBA comes out to be 11.11.2019. the complainant wrote a letter dated 18.02.2020 for refund of its amount, however, since the same is after due date of possession hence a case of refund is made out. However, till date neither OC has been obtained nor possession has been offered to the complainant.
45. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter 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.

46. The due date of possession as per agreement for sale as mentioned in the table above is 11.11.2019 and there is delay of 1 year 9 months 27 days on the date of filing of the complaint.
47. The complainant has paid only a sum of Rs. 18,60,000/- out of sale consideration of Rs. 71,69,525/- i.e., merely 25% of sale price. The respondent had the right to send reminders to the complainant to clear its dues and, in case the same was still not paid, to cancel the unit on account of non-payment. However, the respondent chose not to cancel the unit. In the meantime, the due date of possession had expired. Hence, the respondent is liable, on demand of the complainant-allottee, to refund the amount deposited by him under section 18(1) along with interest at the prescribed rate.
48. 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. (supra)* 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 and observed that:

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

49. 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.
50. 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.
51. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 18,60,000/- (inadvertently mentioned as Rs. 30,00,072/- in proceedings dated 15.09.2022 and the same stands corrected by this order) with interest at the rate of 10.00% (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. Direct the respondent to pay legal expenses of Rs. 1,00,000/- to the complainant

52. The complainants in the aforesaid head are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, 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.

G. Directions of the Authority:

53. 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. 18,60,000/- received by him from the respondent/allottee along with interest at the rate of 10.00% 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.
- iii) The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

54. Complaint stands disposed of.

55. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.09.2022