

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

Complaint no.:	3722 of 2021
First date of hearing:	18.11.2021
Date of decision:	15.09.2022

Shiv Shankar Mukherjee
R/o C-443, Ground Floor, Defence Colony, New Delhi-
110024.

Complainant

Versus

M/s Agrante Realty Ltd.

Office address: 522-524, DLF Tower-A, Jasola, New
Delhi-110044

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Smt. Kritika Bhardwaj (Advocate)
Shri. Tarun Biswas (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 13.09.2021 has been filed by the complainants/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 as provided 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. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), 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	"Beethoven's 8", Sector- 107, Gurgaon	
2.	Nature of project	Group housing complex	
3.	RERA registered/not registered	Not Registered	
4.	DTPC License no.	23 of 2012 dated 23.03.2012	
	Validity status	Not available on record	
	Name of licensee	Narendra Kumar Gupta & others	
	Licensed area	18.0625 acres	
5.	Unit no.	Minor-H/A/604 [As per page no. 69 of the complaint] [Unit no. 1, hereinafter]	Minor- H/A/605 [As per page no. 95 of the complaint] [Unit no. 2, hereinafter]
		1300 sq. ft.	1300 sq. ft.
6.	Unit area admeasuring	1300 sq. ft.	1300 sq. ft.



		[As per page no. 69 of the complaint]	[As per page no. 95 of the complaint]
7.	Application dated	26.09.2013 [As per page no. 55 of the complaint]	26.09.2013 [As per page no. 63 of the complaint]
8.	Allotment letter	12.05.2014 [As per page no. 69 of the complaint]	21.07.2014 [As per page no. 95 of the complaint]
9.	Date of builder buyer agreement	12.05.2014 [As per page no. 71 of the complaint]	21.07.2014 [As per page no. 96 of the complaint]
10.	Payment plan	Construction linked payment plan [As per page no. 94 of the complaint]	Construction linked payment plan [As per page no. 120 of the complaint]
11.	Total sale consideration	BSP- Rs. 68,90,000/- [As per page no. 72 of the complaint] Rs. 82,18,546 (with service tax) [As per page no. 68C of the complaint]	BSP- Rs. 68,90,000/- TSC- Rs. 79,75,500 (without service tax) [As per page no. 105 of the complaint]
12.	Amount paid by the complainant	Rs. 28,50,877/- [As alleged by the complainant on 21 of the complaint]	Rs. 28,50,877/- [As alleged by the complainant on 21 of the complaint]
13.	Possession clause	Clause 18(a) of buyer's agreement Subject to other terms of this agreement/agreement, including but not limited to timely payment of the total price, stamp duty	

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		and other charges by the vendee(s), the company shall endeavour to complete the construction of the said apartment within 42 (forty-two) months from the date of allotment, which is not the same as date of this agreement. The company will offer possession of the said apartment to the vendee(s) as and when the company receives the occupation certificate from the competent authority(ies). Any delay by the vendee(s) in taking possession of the said apartment from the date of offer of possession, would attract holding charges @ Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof.	
14.	Building plan approved on	17.01.2013 [As per clause 3A of agreement]	
15.	Due date of possession	Minor-H/A/604 12.11.2017 [Calculated from date of allotment i.e., 12.05.2014]	Minor-H/A/605 21.01.2018 [Calculated from date of allotment i.e., 21.07.2014]
16.	Settlement agreement	12.09.2018	
17.	Occupation certificate	Not obtained	
18.	Offer of possession	Not offered	

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
 - a. The present complaint has been preferred under Sections 31, 71 and 72 read with Section 18 of the Real Estate (Regulation and Development) Act. 2016. By way of the present complaint, the complainant seeks the relief of refund contemplated under Section 18,

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- i.e., a refund of the entire amount deposited towards the total consideration of the units purchased by him, with interest as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 in the project "Beethoven's 8", located at Sector 107, Gurugram, Haryana (the "Project").
- b. The respondent is a company registered under the Companies Act, 2013 having its registered office at 522-524, DLF Tower A, Jasola, New Delhi, and is engaged in the construction and development of real estate projects across northern India. In its promotional literature, the respondent had represented to the complainant that its parent group, Agranté Realty, boasts of having over 20 years of experience in the real estate sector, having completed over 8 townships and 12 projects.
- c. Believing the respondent's representations regarding its experience and expertise, the complainant invested his precious savings in the then upcoming project being developed by the respondent. Accordingly, on 26.9.2013, the complainant applied for allotment of two apartments in the project, viz. unit no. Minor-H/A/604 and unit no. Minor-H/A/605. With the form, the complainant also deposited a sum of Rs. 1,00,000 each for the two apartments with the respondent.
- d. On 12.8.2014, the respondent issued an allotment letter to the complainant for the apartment bearing unit no. Minor H/A/604. On the same day, the complainant also entered into a builder buyer agreement dated 12.5.2014 ("agreement 17 with the respondent for unit no. Minor H/A/604, admeasuring 1300 sq. feet. At the time of entering into agreement 1 and as recorded in clause 3[F] of the agreement itself, the complainant had already deposited a sum of Rs. 21,08,753 with the respondent.

- e. The total sale consideration for unit no. Minor-H/A/604 was Rs. 79,75,500. In accordance with the terms of agreement 1, and as per the respondent's subsequent requests, the complainant paid an aggregate sum of Rs. 28,50,877 towards the purchase of unit no. - Minor H/A/604. As set out in clause 3[f] of agreement 1, a sum of rs. 21,08,753 was paid by the complainant prior to / at the time of entering into the said agreement. Subsequently, vide cheque dated 26.10.2016, the complainant paid a further sum of Rs. 7.42,124 towards purchase of unit no. H/A/604. Minor.
- f. On 21.7.2014, the respondent issued the second allotment letter to the complainant for unit no. Minor-H/A/605, admeasuring 1300 sq. feet, in the same project. On the same day, the complainant entered into a second builder buyer agreement with the respondent ("agreement 2") for said unit. The terms of the two agreements were identical. Accordingly, as recorded under clause 3[f] of agreement 2, the complainant paid a sum of Rs. 21,30,872 prior to / at the time of execution of agreement 2, and a further sum of Rs. 7,20,005 pursuant to a demand letter issued by the respondent on 13.9.2016. Therefore, the complainant advanced an aggregate sum of Rs. 28,50,877 pursuant to agreement 2 and towards the purchase of unit no. Minor H/A/605.
- g. It is pertinent to state that the complainant made all timely payments, as and when demanded by the respondent, and pursuant to the agreement. In fact, no grievance was raised by the respondent alleging delay in and/or failure to make timely payments. On the contrary, as set out more fully below, the respondent has already admitted its delay / failure in making the apartments available but has nevertheless failed to refund the complainant's dues.

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- h. Admittedly, the respondent failed to adhere to the stipulated deadline as provided for in the agreements. The following clauses of the agreements demonstrate that the respondent was under an obligation to complete the project expeditiously, and definitely no later than 42 months from the date of the allotment, subject to any force majeure conditions.
- i. Although the period of 42 months for completion of the project expired on 12.10.2017 and 21.12.2017 respectively, the complainant initially refrained from exercising his rights under the agreements, acting on the respondent's representations and assurances that although delayed, the project will be completed soon.
- j. However, by September 2018, the complainant realized that the respondents' representations were patently false and misleading inasmuch the project showed no visible signs of progress. In fact, till as recently as April 2020, the photographs displayed by the respondent on its official website under the heading "current status" (of the project) showed that the project is far from being completed.
- k. Aggrieved on account of having been deprived of his savings and not having received possession of the flats either, vide email dated 04.09.2018, the complainant exercised his right to refund of the amounts advanced by him towards purchase of the two units under the agreements. The email also expressly stated that no force majeure conditions were applicable, as indeed none had been communicated by the respondents to the complainant at any stage prior thereto.
- l. Admitting to their default under the agreements in failing to complete the project within the stipulated timeline, the respondents initially agreed to refund the amounts due to the complainant pursuant to

clause 4(k) of the agreement along with lumpsum interest / compensation of Rs. 4,00,000 by way of four post-dated cheques, each amounting to Rs. 8,12,719, payable in four equal instalments over a period of eight months. Even though this was far lower than the interest contemplated under the agreements, the complainant, having been deprived of his hard-earned savings for over five years with no result to show for it, agreed to this compensation / interest amount with a view as to recover the sums advanced by him expeditiously. This arrangement for refund was recorded by the parties in a settlement agreement dated 12.09.2018 entered into between the respondent and the claimant, pursuant to which the parties set out the modalities and timelines for the refund that the complainant was entitled to under agreement 1.

- m. With respect to agreement 2, at the respondent's further request, the complainant agreed to retain the booking of unit no. Minor-H/A/605 till 31.3.2019, after which the respondent agreed that the complainant would be entitled to either continue with the booking or alternatively, seek refund of the booking amount as well as necessary compensation / interest. The terms of repayment for unit no. Minor 605 were identical to that agreed by the parties for unit no. Minor 604. This settlement agreement further expressly recorded that the settlement and / or the agreement between the parties was entirely contingent upon the revaluation of the dues from the respondent.
- n. However, despite admitting to default under the agreements and agreeing to pay the sums due to the complainant, the respondent continued to commit defaults in paying the amounts due under agreement. As on 20.3.2019- the date by which the respondent had

- agreed to pay the entire dues along with the agreed compensation / interest, the respondent had only paid 50% of the sums payable to the complainant under agreement 1.
- o. Subsequently, in April 2019, upon verifying the status of the project and coming to the conclusion that the project was still far from completion, the complainant communicated to the respondent that he did not wish to continue with the booking for unit no. Minor H/A/605 either, or accordingly, sought refund of the amount advanced by him under agreement 2, along with payment of the necessary interest / compensation.
- p. As on the date of filing the present complaint, the complainant has only received a sum of Rs 24,38,157 from the respondent on account of it having failed to deliver timely possession pursuant to the terms of agreement admittedly, a plain reading of the terms of settlement agreement dated 12.09.2018 as well as the subsequent part payments made by the respondent clearly demonstrate that the respondent has failed to comply with the terms of the agreements and is in breach of the necessary stipulation as to completion of the project within a period of 42 months from the date of the allotment, and to offer possession within the same time. However, despite admitting its default under the agreements, the respondent has failed to refund the entire amounts paid by the complainant pursuant to both agreements.
- q. On 18.12.2019, the complainant was constrained to issue a legal notice to the respondent through his legal representative, to bring to its notice its continuing breach of the agreements, including as read with the settlement agreement dated 12.9.2018. In the legal notice, the complainant sought refund of the entire amounts paid by him along

with the necessary interest / compensation, failing which the complainant stated that it would be constrained to initiate proceedings in accordance with his rights under law.

- r. Accordingly, having exhausted all amicable means to seek refund of the monies advanced by it, the complainant is constrained to approach this Hon'ble Authority in order to enforce its statutory rights against the respondent, and to seek refund of the amounts admittedly due and payable to it under its agreements, as well as pursuant to Section 18 of the Real Estate (Regulation and Development) Act, 2016.
- s. The complainant submits that it has paid substantial amounts to the respondent by investing his life savings into the said units/flats. It is submitted that the failure of the respondent to deliver possession of the units (which as the photographs show, are yet to even be constructed completely) has caused immense pressure and financial burden on the complainant.
- t. The above facts make it clear that the respondent is in breach of the agreements and is liable to pay the complainant's legitimate dues. The respondent's conduct has caused immense agony and hardship to the complainant, who has not only been left without the promised apartments but has also been deprived of his savings and lost out on other interest yielding investments during this time. The complainant accordingly seeks refund of the total amount deposited (after setting off the amount already received from the respondent) along with interest at the SBI Marginal Cost of Lending Rate (currently 7.30 %) plus two percent per annum from the date of deposits / payments.
- u. Subsequently, the cause of action arose again when the respondent, admitting to its default, agreed to refund the complainant's dues along

with some compensation / interest and recorded the terms thereof in the settlement agreement dated 12.9.2018. The cause of action arose further arose when the respondent, despite having agreed to refund the dues, failed to pay the entire sum advanced by the complainant and defaulted yet again on its obligation from 2019 onwards.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s)
 - a. Direct the respondent to refund the entire remaining amount deposited by the complainant towards the total consideration of the two units pursuant to section 18(1) of the Act.
 - b. Direct the respondent to pay interest at the SBI MCLR plus two percent from the date of respective payment till the date of realization of amount in accordance with Act.
 - c. Direct the respondent to pay all the legal costs incurred by the complainant and such reasonable and appropriate compensation in the facts and circumstances of the present case in addition to the refund and interest.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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. Notice to the promoter/respondent through speed post and through e-mail address (contact@agrante.com) was sent; the delivery report of which shows that delivery was completed. Despite service of notice, the promoter/respondent has failed to file a reply within stipulated time

period. On the last date of the hearing dated 10.05.2022 the respondent was directed to file the reply in two weeks i.e., by 24.05.2022 with a cost of ₹ 10,000/- failing which its defence may be struck off. Since, till today no reply has been submitted therefore, the authority assumes/observes that the respondent has nothing to say in the present matter and accordingly, the authority proceeds with the case without reply and the defence of the respondent stands struck off.

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 submission made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

9. 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

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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. (Supra)*** and 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*** 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 cases 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.I Refund entire amount paid by the complainant along with the interest

14. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -

- (a) *in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
(b) *due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

he shall be liable on demand to the allottees, in case 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

that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

15. Clause 18 of the agreement provides for handing over of possession and is reproduced below:

"18(a).

Subject to other terms of this agreement/agreement, including but not limited to timely payment of the total price, stamp duty and other charges by the vendee(s), the company shall endeavour to complete the construction of the said apartment within 42 (forty-two) months from the date of allotment, which is not the same as date of this agreement. The company will offer possession of the said apartment to the vendee(s) as and when the company receives the occupation certificate from the competent authority(ies). Any delay by the vendee(s) in taking possession of the said apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof."

16. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such

clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

17. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund of the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

18. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
19. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on

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date i.e., 15.09.2022 is **8%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10%**.

20. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

21. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, 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. The due date of possession has been calculated as per clause 18(a) of similar situated BBA, the possession of the subject apartment was to be delivered within a period of 42 months from the date allotment which is not the same as date of this agreement. Accordingly, the due date calculated from date of allotment letter i.e., 12.05.2014 & 21.07.2014 w.r.t. each different unit.
22. Keeping in view the fact that the allottee/complainant wish to withdraw from the project and is 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. The due date of possession as per agreement for sale as mentioned in the table above is 12.11.2017 for Minor-H/A/604 & 21.01.2018 for Minor-H/A/605.

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

24. Further, 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. observed as under: -

"25. The unqualified right of the allottee to seek refund referred under section 18(1)(a) and section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the



terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

25. 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.
26. 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.
27. A legal notice dated 18.12.2019 annexed on page no.137 of complaint, w.r.t. breach of agreement including settlement agreement was sent to the respondent, which was neither replied by the respondent nor the balance amount is refunded to the complainant. Both the parties entered into a settlement agreement dated 12.09.2018 not signed wherein it was agreed that the amount paid against unit no. H/A/604 shall be refunded to the complainant by the respondent along with a compensation of Rs. 4,00,000/- by way of four equal post-dated cheques each amounting to Rs,

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8,12,719/- payable in two instalments. As per para no. 4 of the legal notice dated 18.12.2019 it is mentioned that only 3 instalments have been paid (Calculated to be- 24,38,157/-) and the 4th instalment is still due on part of the respondent.

28. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 28,50,877/- with respect to each unit after deducting the amount already paid by the respondent along with interest at the rate of 10% (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 Cost of litigation & compensation

29. The complainant in the aforesaid relief is 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 complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

- A** 30. 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 of Rs. 28,50,877/- with respect to each unit after deducting the amount already paid by the respondent along with interest at the rate of 10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the 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.
 - iii. The respondent builder is directed not to create third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.
31. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.09.2022