

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

Complaint no.:	1231 of 2019
First date of hearing:	03.12.2019
Date of decision:	15.09.2022

Naveen Kumar Suman
R/o Flat no. 101, House no. RZF-777/20, Gali no. 16,
Raj Nagar part-II, Palam Colony, New Delhi-110077.

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:

Shri. Naveen Kumar Suman (complainant in person)
Shri. Tarun Biswas (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 11.04.2019 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.	Symphony/J/B/2701 [As alleged by the complainant on page no. 3 of complaint]
6.	Unit area admeasuring	1702 sq. ft. [As alleged by the complainant on page no. 3 of complaint]



7.	Allotment letter	19.09.2015 [As alleged by the complainant on page no. 3 of complaint]
8.	Date of builder buyer agreement	Not executed
9.	Total sale consideration	TSC- Rs. 1,07,01,370/- (without service tax) Rs. 1,11,36,243/- (with service tax) [As alleged by the complainant on page no. 2-3 of complaint]
10.	Amount paid by the complainant	Rs. 2,50,000/- [As per reminder letter on page no. 27 of complaint]
11.	Possession clause	Clause 19(a) of application form Subject to other terms of this Application/Agreement, including but not limited to timely payment of the Total Price, stamp duty charges by the Applicant(s), the Company shall endeavour to complete the construction of the Said Apartment within <u>42 (Forty-two) this from the start of construction, which is not the same as date of this application.</u> The Company will offer possession of the Said apartment to the Applicant(s) as and when the Company receives the occupation certificate from the competent authority (ies). Any delay by the Applicant(s) in taking possession of the Said Apartment from the date of offer of possession, would attract holding charges @ Rs. 05 (Five) per month for any delay of full one month or any part thereof. Clause 18(a) of buyer's agreement Subject to other terms of this Agreement/Agreement, including but not limited to timely payment of the Total Price,

		stamp duty and other charges by the Vendee(s), the Company shall endeavour <u>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.</u> The Company will offer possession of the Said Apartment to the Vendee(s) as and when the Company receives the occupation certificate from the competent authority(ies). Any delay by the Vendee(s) in taking possession of the Said Apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof.
12.	Building plan approved on	17.01.2013
13.	Due date of possession	19.03.2019 [No BBA has been executed inter-se parties, moreover there is nothing on record to show the date of start of construction. Therefore, due date of possession has been calculated as per clause 18(a) of similar situated BBA wherein due date of possession shall be calculated from the date of allotment i.e., 19.09.2015]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
 - a. That the respondent had been proclaiming in general public through newspaper advertisements, marketing emails, SMS and telemarketing that they had launched an integrated residential township in Gurugram (Haryana). The said integrated township a claimed was being set up after necessary approvals of all the competent authorities. It was



- further claimed that all the necessary approvals, clearances and procedures had been duly obtained and sanctioned as regards the proposed integrated township and further proclaiming that the location of such site, which is under development, was prime land and centrally located. The other terms of the scheme, eligibility, registration and mode of allotment was also prescribed in the brochures.
- b. That lured by these open proclamations through publication in the local newspapers and various advertisements the complainant booked a flat in the project, namely '**Beethoven'S 8**', Sector-107, Gurgaon, Haryana, for an amount of Rs. 1,07,01,370/- (Rupees one crore seven lakhs one thousand three hundred seventy only) on which service tax amounting to Rs. 4,34,873/- (Rupees four lacs thirty-four thousand eight hundred seventy-three only) was payable. Thus, the total cost of the flat was Rs. 1,11,36,243/- (Rupees one crore eleven lacs thirty-six thousand two hundred forty-three only) in this regard the respondent issued a letter dated 19.09.2015 whereby flat bearing unit no. Symphony J/B-2701, admeasuring 1702.21 sq. ft. floor no. 27 was allotted to the complainant.
- c. That thereafter, an application for allotment by sale was executed on 21.09.2013 at Gurugram. According to the application for allotment by sale dated 21.09.2013 and as per clause 19(a), the possession of the flat was to be handed over within 42 months from the date of start of construction.
- d. That in clause no. 19(b) of the application for allotment by sale dated 21.09.2013 it was mentioned that in case of delay in handing over the possession to the allottee, the allottee(s) shall be entitled to

compensation for delay @ Rs. 5/- per Sq.Ft. per month of the super area of the unit. Further, as per clause no. 15(b) of the aforesaid application it was mentioned that the respondent in its sole discretion may waive of the breach in not making the timely payments @ 14% for first 45 days from the due date and beyond that @ 18% p.a. for all period exceeding 45 days. It is mentioned that in the allottee failed to take the possession the developer shall charge the holding over charges @ Rs. 05/- per sq. ft. on the super area of the unit per month.

- e. That the complainant after submitting the application for allotment by sale made payment of Rs. 2,50,000/- (Rupees two lakh and fifty thousand only) on 23.09.2013, which payment was made towards the booking of the flat. At the time of booking the complainant was assured by the officials of the respondent that the construction on the project has already commenced as all the necessary approvals have already been taken concerned authorities.
- f. That in order to know the actual status of the project, the complainant went to the site and found that all the claims of the officials of the respondent were false and there was no construction activity at the site. On coming to know about the actual status of the project, the complainant again went to office of the respondent informing them about the falsity of their claims, the officials of the respondent told the complainant that there was miscommunication and in fact that the construction of the project would commence very soon. They assured the complainant that they would demand the next instalment only when the construction actually starts at the site. Thereafter, the complainant made several visits at the site and the complainant became apprehensive of the intensions of the respondent. As a matter



of fact, it was never intention of the respondent to complete the project and the project was just ploy to extract hard earned money from the people. Even as on date there is no construction activity at the site and the respondent is enjoying hard earned money of the complainant. To the surprise of the complainant, the respondent served a reminder dated 22.08.2014 in which it was reflected that an amount of Rs. 2,91,994/- (Rupees two lakh ninety-one thousand nine hundred ninety-four only) was due towards the complainant. As the same time, it was also reflected that the complainant had paid Rs. 2,50,000/- (Rupees two lakh fifty thousand only) to the respondent. Needless to say, that since there was no construction in the project, therefore, the complainant was within his rights not to make any further payments.

- g. That it is pertinent to mention here that no flat buyer agreement was never executed between the complainant and the respondent for the obvious reason that the respondent was never interested in going ahead with the project. According to clause no. 15(b) of the application for allotment by sale, it was mentioned that the respondent in its sole discretion may waive of the breach in not making the timely payment @ 14% for first 45 days from the due date and beyond that @ 18% p.a. for all period exceeding 45 days. It was mentioned that if the allottee fails to take the possession, the developer shall charge the holding over charges @ Rs. 05/- per sq. ft. of the super area of the unit per month. The respondent is legally bound to compensate the complainant for the delay at the same rate, which the respondent would have otherwise charged the complainant that is to pay the holding over charges @ Rs. 05 per sq. ft. of the super area and also interest @ 14% for first 45 days from the date of deposit of the amount and beyond that @ 18% p.a. for

all period exceeding 45 days within the meaning of section 1(z) explanation 1(i) of the Real Estate (Regulation and Development Act, 2016.

- h. That had the possession been handed over to the complainant within the stipulated period, the complainant would have been using the flats in quashing for her personal requirements which is way the complainant continued to make, rather forced, to make the payments as per the demands made by the respondent despite the fact that the respondent was not adhering to the schedule of construction and was more interested in fleecing the complaint.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s)
- a. Refund entire amount paid by the complainant along with the 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. The respondent has contested the complaint on the following grounds.
- a. At the very outset it is most respectfully submitted to this Hon'ble Forum that the answering respondent i.e., M/s Agrante Realty Ltd is a company incorporated under Companies Act and represented by its Authorized representative Shri Satish Kumar duly authorized vide board resolution dated 12.09.2022 to file the present reply to the complaint. The complaint admittedly pertains to the project "Beethoven's 8" located at Sector 107, Village Dharampur, Gurugram. It is pertinent to mention here that the answering respondent is not the



“promoter” as defined under section 2 the real estate regulatory authority, 2016. The answering respondent company is not the entity who has or is developing the land for the said project. The answering respondent company is merely a sister company of the promoter company with its separate existence and is engaged in other projects. The answering respondent is not the “promoter” as per RERA and is not responsible for the construction of the project.

- b. That it is pertinent to mention here that only an “allottee” as defined under RERA is entitled to invoke the provisions of the RERA for seeking appropriate reliefs. It is submitted that the complainant herein is not a successful allottee in the project and thus is not entitled to enforce the provisions of the RERA. The complainant herein had only applied for allotment in the said project vide application for allotment dated 21.09.2013 and as per the price list of the unit and special payment plan opted by the complainant as filed by him on record, an amount equivalent of 10% of BSP of the unit was payable for successful booking of a unit in the project. Further, the said 10% comes to an amount of ₹ 9,17,875/- and the complainant admittedly had remitted a sum of ₹ 2,50,000/- only and failed to remit the balance amount towards booking. It is not out of place to mention that any allotment made to the complainant was provisional and subject to successful payment of the complete booking amount within time. The complainant had thus failed to book a unit in the project and was never an allottee in the

project. The reminder letter issued by the respondent as filed by the complainant himself as an annexure clearly reflects that booking amount was due and not paid. Therefore, the said amount being part of earnest money stands forfeited by the respondent. The complainant was a speculative investor who falsely sought more time to pay his dues and it is for such investors that the project gets delayed.

- c. That the complainant had specifically agreed and understood vide application for allotment vide clause 15 (a) that in the event the complainant fails to comply with the terms of the application which includes timely remission of due installments towards his proposed allotment the promoter would be entitled to forfeit the amount deposited as earnest money and free to resell it. It is reiterated that the earnest money was 10% of the cost of the unit and the complainant here did not even deposit the same.
- d. Tower J is almost ready, contrary to the false allegations of the complainant. The necessary electrical wiring and works pertaining to plumbing and sanitation have also begun. It is submitted that the promoter would be in a position in all probability to apply for occupation certificate shortly. The promoter has incurred and utilized his own funds and loans towards construction of the project and if the complaints pertaining to refunds are entertained at this stage it would jeopardize the fate of the project which would consequently hamper the valuable rights of the other allottees of project.



- e. That the statement of objects, reasons and preamble of the Act makes it manifestly clear that it is not only the interest of the consumers of the real estate sector which the Act seeks to protect and safeguard but also the promotion of the real estate with a view to ensure sale of plot, apartment etc. Therefore, this Hon'ble Authority should consider the said objective especially in light of preceding paragraphs. The Hon'ble Authority is empowered not only to monitor the projects but also to ensure their timely completion where projects are held up or stopped and to take steps so the same are completed in time and in the interest of the allottees who are awaiting possessions of the units in the project. It is not out of place to mention here that due to pending registration of the project with the Hon'ble Authority the promoter since the implementation of the Act was unable to raise funds from its existing customers nor could it raise finance by selling unsold inventory. The shortage of funds to enable rapid construction had been a determining factor for the delay as it slowed down the pace of construction considerably. It is reiterated that the promoter is undertaking costs of constructions from its own pockets and is not demanding anything from the allottees, an act which is unprecedented by any other real estate company, and it is now for this Authority to balance the interest of the consumers and the promoters harmoniously to achieve the maximum good and benefits.

- f. That M/s RMS Estate Pvt Ltd (Now known as "Agrante Developers Pvt Ltd") was granted development license from Director Town and Country Planning, Haryana ("DTCP") for development of land spread over a total area of 18.0625 acre of land on which the present project is being developed. The said license was granted on 27.03.2012 and was valid for 4 years.
- g. The development/collaboration agreement dated 23.05.2013 stipulated strict liability on M/s Sarvaram Infrastructure Pvt Ltd or his appointed nominee to be in compliance of all statutory compliances, bye-laws applicable as per HUDA, DTCP etc. as applicable for his parcel of land. M/s Sarvaram Infrastructure Pvt Ltd was further under the obligation to remit all the dues accrued towards governmental authorities arising under the agreement for the portion of land with the Collaborator under the agreement.
- h. That M/s Sarvaram Infrastructure Pvt Ltd, however, started defaulting in its compliance of statutory duties and contractual obligations. The promoter had on several occasions issued written requests and even served legal notices to M/s Sarvaram Infrastructure Pvt Ltd to rectify the said defaults *inter-alia* payment of EDC and IDC charges. The promoter had taken every step to ensure compliance of statutory obligations as non-compliance by M/s Sarvaram Infrastructure Pvt Ltd would directly prejudice the promoter's project completion having the common license. It is submitted that the license for the land lapsed due



to non-renewal, and it cannot be renewed until outstanding EDC & IDC charges along with penalty is not cleared for the total land jointly by the promoter and M/s Sarvaram Infrastructure Pvt Ltd in proportion to their respective projects. Needless to mention here that the promoter is ready and willing to pay its share of EDC and IDC charges for the purposes of renewal of license.

- i. It is submitted that the promoter has filed for HRERA registration vide application dated 09.08.2018 of its project on the said land which was to be with the applicant as per the agreement. The fate of the application is dubious and is still pending as the aforesaid license has lapsed and does not exist anymore as on date and further, EDC and IDC charges are unpaid which were to be paid by the M/s Sarvaram Infrastructure Pvt Ltd. It is pertinent to mention here that the directors of Sarvaram Infrastructure Pvt Ltd are lodged in jail presently. The promoter is crippled in the sense that he is unable to correspond with them, which could perhaps lead to some fruitful results. Moreover, insolvency proceedings are pending against them before the Hon'ble National Company Law Tribunal.
- j. Lastly it is submitted that the crisis of COVID-19 pandemic has also given a blow to smooth working of the promoter. It is pertinent to mention here that during the lockdown imposed by the central government, the workforce at the project site left for their homes and there was a complete halt in the work which added to further delay. It

was after sincere efforts of the promoter that the workforce could be again mobilized and presently the works are being carried out at the site.

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

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. As per clause 18(a) of similar situated BBA 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 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 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. No BBA has been executed inter-se parties, moreover there is nothing on record to show the date of start of construction. Therefore, 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., 19.09.2015 i.e., by 19.03.2019.
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 **19.03.2019** and there is delay of 1 month on the date of filing of the complaint.

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. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 2,50,000/- 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*.

G. Directions of the authority

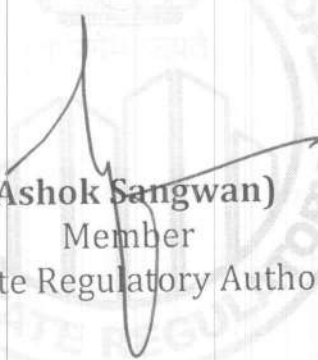
28. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations

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. 2,50,000/- paid by the complainants along with prescribed rate of interest @ 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.

29. 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