

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

Complaint no. : 1036 of 2019
Date of decision: 15.09.2022

Neh Lata Singh wife of Sh. Aditya Kumar Singh
Address:- House no. 123/30, Sector-30,
Gurugram, Haryana

Complainant

Versus

Emaar MGF Land Limited
Address: - ECE House, 28 Kasturaba Gandhi Marg,
New Delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Shri Tushar Behmani
Shri J.K. Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 14.03.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the

Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Imperial Gardens", Sector 102, Gurugram, Haryana
2.	Total area of the project	12 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	107 of 2012 dated 10.10.2012
	Validity of license	09.10.2020
	Licensee	Kamdhenu Projects Pvt. Ltd.
	Area for which license was granted	12 acres
5.	Registered/not registered	<p>Registered in two phases</p> <p>i. 208 of 2017 dated 15.09.2017 [Valid up to 31.12.2018 for 49637 sq. mtrs. and extension granted vide no.3/2019 dated 02.08.2019 which is extended up to 31.12.2019]</p> <p>ii. 14 of 2019 dated 28.03.2019(Phase II) [Valid up to 17.10.2018 for 4.57 acres]</p>
6.	Applied for occupation certificate on	11.02.2019 [annexure R16, page 39 of reply]

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7.	Occupation certificate granted on	17.10.2019 [annexure R16, page 39 of reply]
8.	Provisional allotment letter in favour of the original allottee Mr. Aditya Kumar Singh (husband of complainant)	28.02.2013 [annexure R2, page 32 of reply]
9.	Unit no.	IG-04-GF02, ground floor, building no.4 [annexure C4, page 49 of complaint]
10.	Area of the unit (super area)	2025 sq. ft.
11.	Date of execution of buyer's agreement between the respondent and the original allottee	30.04.2013 [annexure C4, page 46 of complaint]
12.	Possession clause	14. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 42 (Forty Two) months from the date of start of construction; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 3 (three) months after the expiry of said period of 42 months, for applying and obtaining the completion certificate/occupation</i>

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		<i>certificate in respect of the Unit and/or the Project.</i> (Emphasis supplied) [page 64 of complaint]
13.	Date of start of construction as per the statement of account dated 10.12.2021 at page 27 of reply	11.11.2013
14.	Due date of possession	11.05.2017 [Note: Grace period is not included]
15.	Total consideration as per the statement of account dated 10.12.2021 at page 27 of reply	Rs.1,65,66,768/-
16.	Total amount paid by the complainant as per statement of account dated 10.12.2021 at page 27 of reply	Rs.1,47,31,228/-
17.	Complainant's name was substituted in place of her husbands' name vide letter dated	06.07.2018 [annexure C23 page 138 of complaint]
18.	Offer of possession	20.11.2019 [annexure R15, page 31 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- (i) That the complainant is a senior citizen and law-abiding person in the society. That after learning about the upcoming residential project of the respondent, the complainant met the officials of the respondent at their office and the respondent convinced the complainant with their lucrative promises to provide the



complainant with world class residential property in the millennium town Gurugram. The complainant booked the unit in question with the respondent by paying booking amount of rs.10,00,000/- on 30.10.2012 (as mentioned in the SOA annexure - C24) and unit No. IG-04-GF02 admeasuring 2025 sq.ft., in the project named 'Imperial Gardens' of the respondent was allotted to the complainant who is the wife of the original allottee sh. Aditya Kumar Singh. That the change in ownership of the said unit in question was completed between the parties vide letter dt.06.07.2018.

- (ii) That the complainant had paid the sum of Rs.10,00,000/- vide two separate cheques as mentioned above in index in favor of respondent as registration/booking amount for the said unit in the complex. At the time of payment of booking amount, the officials of the respondent had told the complainant that the possession of the booked unit shall be given within 42 months from booking date. But the respondent deliberately failed to insert possession date in the buyer's agreement and only mentioned that the possession will be delivered from start of the construction work whereas there is no mention of the date of commencement of the construction which did not start till November 2013. The complainant had paid

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Rs.58,61,861/- before construction started. It was on 11.11.2013 when the construction work commenced at the site of the project in question as mentioned in SOA.

(iii) That the buyer's agreement was signed between the original allottee [husband of the complainant, before the change of ownership took place on 06.07.2018 and the respondent on 30.04.2013. The sale consideration was Rs.1,54,88,625/- (Basic Sale Price of Rs.1,28,30,400/-) + charges of the one car park + charges of PLC applicable. That the Clause 14(a) of the buyer's agreement dated 30.04.2013 (annexure-C4) mentions that the respondent shall handover the possession of the unit within a period of 42 months from the date of start of construction, subject to certain limitations as may be provided in the buyers' agreement and timely compliance of the provisions of the buyer's agreement by the complainant. The complainant and the respondent also agreed to a grace period of 3 months for applying occupation certificate in respect of the unit after the said period of 42 months.

(iv) That the clause 16(a) of the buyer's agreement dated 30.04.2013 specifies that in the event the respondent fails to deliver the possession of the unit to the complainant within the stipulated time period and as per the terms and conditions of the buyer's

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agreement, then the respondent shall pay to the complainant, compensation at the rate of Rs.7.50/- per sq.ft. of the super area of the unit per month for the period of delay. That the complainant had paid the 95% of the total amount of sale consideration as per the payment schedule i.e. Rs.1,42,91,909/- as demanded by the respondent. This is admitted fact as per the statement of accounts as on 12.02. 2019. The details are mentioned in the payment schedule annexed along with this complaint. that, there is no default on part of the complainant as regard to the payments and that the payments have been duly paid to the respondent within time.

- (v) That as per the buyer's agreement dt. 30.04.2013 the respondents were required to hand over the actual physical possession of the mentioned unit no. IG-04-GF02 on or before 10.07.2017 which includes 3 months' time of grace period after the expiry of 42 months from the start of construction. But due to the factual circumstances at the site of the said project, the construction work has not completed even 50% of the total construction work. That there is a delay in completion of the mentioned project by the respondent which amounts to breach of the terms and conditions of the buyer's agreement dt. 30.04.2013. That the actual ground

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reality regarding the status of construction of the said project in dispute is absolutely shocking and strong reason to believe that the respondent has misrepresented the facts related to the construction status to the complainant and demanded the entire sale consideration illegally and fraudulently. The ground reality at the construction site is way different from what the respondent had claimed to the complainant regarding the completion of the project.

- (vi) That the respondent has violated every promise to provide a livable property till date despite taking the 95% of the total sale consideration from the complainant due to their own known reasons of delay in completion of the project at the site for which the complainant has suffered.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. Direct to the respondent to refund the amount paid by the complainant to the respondent along with interest at prescribed rate from the date of receiving actual money by the respondent till the date of actual realization of the payment by the respondent to the complainant.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been

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

D. Reply by the respondent

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

- i. That the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this authority. The complainant has filed the present complaint seeking refund and interest on the account of the alleged delay in delivering possession of the unit booked by the husband of the complainant. It is respectfully submitted that complaints pertaining to refund, compensation and interest are not to be decided by this authority. The present complaint is liable to be dismissed on this ground alone. That the complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
- ii. That the present complaint raises several such issues which cannot be decided by way of the present complaint in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of RERA and can only be adjudicated by a civil court. The present complaint deserves to be dismissed on this ground alone.
- iii. That the husband of the complainant (original allottee) had approached the respondent sometime in the year 2012 for purchase of an independent unit in its upcoming residential project "imperial gardens" (hereinafter "the project") situated in sector

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102, village Kherki Majra Dhankot, Tehsil & District Gurgaon, Haryana. It is submitted that the original allottee and the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after they were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that they took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.

- iv. That thereafter the original allottee (Aditya Kumar Singh) vide application form dated 30.10.2012 applied for provisional allotment of a unit in the project. The aforesaid allottee, in pursuance of the application form dated 30.10.2012, was allotted an independent unit bearing no. IG-04-GF02, located on the Ground Floor, in the project vide provisional allotment letter dated 28.02.2013. The original allottee consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that he would remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the original allottee. The original allottee further undertook to be bound by the terms and conditions of the application form.
- v. That however the original allottee was extremely irregular as far as payment of instalments was concerned. The respondent was constrained to issue multiple payment request reminder letters to the husband of the complainant requesting him to remit the outstanding amounts to the respondent before the respective due date enumerated therein. However, the original allottee

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maliciously and consciously refrained from making any payment towards the instalments in violation of the undertaking given by him at the time of making an application for booking of a unit in the project in question. The complainant has concealed this fact from this authority and therefore there is no equity in favour of the complainant.

- vi. That it is submitted that the complainant and her husband consciously and maliciously chose to ignore the payment request letter and reminder issued by the respondent and defaulted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent. The complainant and the original allottee chose to ignore all these aspects and willfully defaulted in making timely payments. It is submitted that the respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case.
- vii. That upon the request of the husband of the complainant (original allottee), the respondent transferred the said unit/substituted the allotment of the original allottee in favour of the complainant. It is pertinent to mention that the complainant is bound by the terms and conditions as laid down in the buyer's agreement dated 30.04.2013 which had been executed between the original allottee



and the respondent. All the rights and liabilities of the original allottee have been transferred to the complainant. The original allottee and the complainant had executed, and Indemnity cum Undertaking dated 17.06.2018 and a transfer affidavit dated 17.06.2018 for the purpose of substituting the name of the original allottee with that of the complainant. The respondent had confirmed the transfer vide allotment letter dated 06.07.2018.

- viii. That the project of the respondent has been registered under RERA Act, 2016 and HRERA Rules, 2017. Registration certificate granted by the Haryana real estate regulatory authority vide memo no. HRERA-140/2017/1083 dated 15.09.2017 has been appended as annexure R11. It is pertinent to mention that the respondent had applied for extension of the registration and the authority has already extended the validity of registration vide memo bearing no. RC/REP/HARERA/GGM/2017/208 dated 02.08.2019. The registration had been extended till 31st of December 2019 and the respondent had already offered possession of the unit in question to the complainant vide letter dated 20.11.2019. It would not be out of place to mention that the complainant has not taken possession of the unit in question till date.
- ix. That it is submitted that the rights and obligations of complainant as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. It is submitted that as per clause 14 of the buyer's agreement dated 30.04.2013 the time period for delivery of possession was 42 months alongwith grace period of 3 months from the date of start



of construction subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement.

- x. That it has also been provided in the aforesaid clause that the date for delivery of possession of the unit would stand extended in the event of occurrence of the facts/reasons beyond the power and control of the respondent. The complainant has completely misconstrued, misinterpreted and miscalculated the time period as determined in the buyer's agreement. It is pertinent to mention that it was categorically provided in clause 14(b)(iv) that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent. Since, the original allottee/complainant has defaulted in timely remittance of payments as per schedule of payment the date of delivery of possession is not liable to be determined in the manner sought to be done in the present case by the complainant.
- xi. That clause 16 of the buyer's agreement further provides that no compensation for any delay in delivery of possession caused on account of delay or non-receipt of the occupation certificate, completion certificate or any other permission/sanction from the competent authority shall be provided to the allottees. The respondent had submitted an application for grant of occupation

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certificate to the concerned statutory authority. The occupation certificate thereafter was granted on 17.10.2019 and the same has been appended herewith as **annexure r16**. It is submitted that once an application for issuance of occupation certificate is submitted before the concerned competent authority the respondent ceases to have any control over the same.

- xii. That the complainant was offered possession of the unit in question through letter of offer of possession dated 20.11.2019. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to them. However, the complainant approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent explained to the complainant that the validity of registration has already been extended by the statutory authority and therefore they were/are not entitled to any compensation in terms of the buyer's agreement. However, the complainant threatened the respondent with institution of unwarranted litigation. the instant complaint has been preferred by the complainant in order to obtain wrongful gain and cause wrongful loss to the respondent.
- xiii. That it needs to be highlighted that possession has been offered by respondent after obtaining occupation certificate in respect of the tower in which the unit in question is located. It is submitted that the possession has been delivered to the complainant after completing the construction thereof in order to facilitate them to complete the interior work, fittings etc. As per their liking and

12



subjectivities. The complainant has accepted the possession of the unit in question without raising any objection. It is evident that the complainant has acknowledged the completion of construction of the unit in question and that the same was ready for possession. However, the complainant has failed to undertake the necessary work and consequently cannot be allowed to take undue advantage of this fact by alleging delay in delivery of possession of the unit in question. It is submitted that work pertaining to fit outs, interior works etc. is the responsibility of the concerned allottee and the same cannot be imputed to a developer in any manner. the instant complaint is nothing but an abuse of process of law.

- xiv. That in addition thereto it is submitted that conveyance deed and other formalities would be completed once all the instalments and other dues/charges are remitted by the complainant. The complainant is conscious and aware of this fact and have preferred the instant complaint in order to obtain wrongful gain and to cause wrongful loss to the respondent.
- xv. That without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the alleged interest frivolously and falsely sought by the complainant was to be construed for the alleged delay in delivery of possession. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainant is not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. the complainant has consciously and maliciously refrained from obtaining possession of the unit in question. consequently, the

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complainant is liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

- xvi. That without admitting or acknowledging in any manner the truth or legality of the frivolous and false allegations levelled by the complainant and without prejudice to the contentions of the respondent that there has been no delay in offering possession of the apartment to the complainant, it is respectfully submitted that the respondent has been prevented from timely implementation of the project by reasons beyond its power and control. It is submitted that the respondent had appointed a contractor operating under the name and style of Capacite Infraprojects Ltd. for construction and implementation of the project in question. The said contractor had represented and claimed that it has the necessary resources, competence, capacity, capability and expertise for undertaking, performing, effectuating and completing the work undertaken by it.
- xvii. That the respondent had no reason to suspect the bona fide of the said contractor at the relevant time and awarded the work to the said contractor. However, the said contractor was not able to meet the agreed timeline for construction of the project. The said contractor failed to deploy adequate manpower, shortage of material, etc. the respondent was constrained to issue several notices, requests etc. to the said contractor to expedite progress of the work at the project site but to no avail. the said contractor consciously and deliberately chose to ignore the legitimate and just requests of the respondent on one pretext or the other and defaulted in carrying out the work in a time bound manner.



Therefore, no fault or lapse can be attributed to the respondent of the facts and circumstances of the case.

- xviii. That without admitting or acknowledging in any manner the legality or truth of the allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the interest demanded by the complainant in the instant complaint is compensatory in nature for indemnifying the complainant for the alleged delay and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. That it is pertinent to mention that the respondent has paid an amount of Rs. 39,627/- credit on account of benefit of Anti-Profiting and Rs. 561/- has been credited as benefit on account of early payment rebate (EPR). Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainant towards the basic principal amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainant towards delayed payment charges (dpc) or any taxes/statutory payments etc.
- xix. That it is submitted that all the demands raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement duly executed between the parties. There is no default or lapse on the part of the respondent. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.

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7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

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allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and 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 case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant.

F.I. Direct to the respondent to refund the amount paid by the complainant to the respondent along with interest at prescribed rate from the date of receiving actual money by the respondent till the date of actual realization of the payment by the respondent to the complainant.

14. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by it 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

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*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."*

15. As per clause 14 of the flat buyer agreement dated 30.04.2013 provides for handing over of possession and is reproduced below:

14. POSSESSION

(a) Time of handing over the Possession

*Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit **within 42 (Forty Two) months from the date of start of construction**; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of **3 (three) months after the expiry of said period of 42 months, for applying and obtaining the completion certificate/occupation certificate** in respect of the Unit and/or the Project.*

16. At the outset, it is relevant to comment on the present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement 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 favour 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

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for the purpose of allottee and the commitment time period 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 grace period:** The promoter has proposed to hand over the possession of the said unit within 42 (Forty- Two) months from the date of start of construction and further provided in agreement that promoter shall be entitled to a grace period of 3 for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project. The date of execution of buyer's agreement is 30.04.2013. The period of 42 months expired on 11.05.2017, (as per the date of start of construction i.e. 11.11.2013) as a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the grace period prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 3 months cannot be allowed to the promoter at this stage.

18. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by her at the prescribed



rate interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by it 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.

19. 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.
20. 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%.
21. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule 28(1), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14 of the agreement to sell dated form executed between the parties on 30.04.2013 the possession of the subject unit was to be delivered within



a period of 42 (Forty Two) months from the date of start of construction i.e. 11.11.2013 which comes out to be 11.05.2017. As far as grace period is concerned, the same is disallowed for the reasons quoted above.

22. 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.
23. The due date of possession as per agreement for sale as mentioned in the table above is **11.05.2017 and there is delay almost 2 years on the due date of possession i.e. 11.05.2017.**
24. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is received after filing of complaint by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for

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sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate.

25. 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. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

26. 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 it in respect of the unit with interest at such rate as may be prescribed.

27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

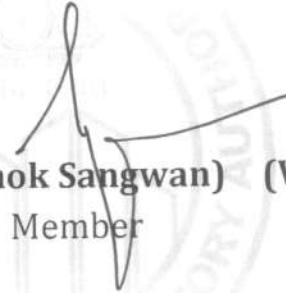
28. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount i.e., Rs. 1,47,31,228/- received by it from the complainant along with interest at the rate of 10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.



- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- 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 complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
29. Complaint stands disposed of.
30. 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

HARERA
GURUGRAM