

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

Complaint no. : 635 of 2020
Date of decision: 14.09.2022

1. Vikram Dhar
2. Kirti Kriplani
Both R/o G-908, Surya Vihar, Dundahera,
Gurugram-122016

Complainants

Versus

Emaar MGF Land Limited
Address: - Emaar Business Park, 2nd Floor, Mehrauli
Gurugram Road, Sikenderpur Chowk-Sector-28

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Chairman
Member
Member

APPEARANCE:

Shri Pankaj Dua
Shri Dheeraj Kapoor

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 24.02.2020 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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	Emerald Floors Premier-III at Emerald Hills, Sector 65, Gurugram, Haryana
2.	Total area of the project	25.499 acres
3.	Nature of the project	Residential gated colony
4.	DTCP license no.	06 of 2008 dated 17.01.2008
	Validity of license	16.01.2021
	Licensee	Active Promoters Pvt. Ltd. and 2 others
	Area for which license was granted	25.499 acres
5.	Registered/not registered	Registered vide no. 104 of 2017 dated 24.08.2018 [For 82768 sq. mtrs.]
	Validity of registration	23.08.2022
6.	Applied for occupation certificate on	20.07.2020 [page 110 of reply]
7.	Provisional allotment letter	20.09.2011 [Page 29 of complaint]
8.	Unit no.	EFP-III-40-0502, 5 th floor, building no.40 [page 35 of complaint]

9.	Area of the unit (super area)	1975 sq. ft.
10.	Date of execution of buyer's agreement	19.03.2012 [page 34 A of complaint]
11.	Possession clause	<p>11. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p><i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's 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 24 months from the date of execution of buyer's agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project.</i></p> <p style="text-align: right;">(Emphasis supplied) [page 39 of complaint]</p>
12.	Due date of possession	19.03.2014 [Note: Grace period is not included]
13.	Total consideration as per the statement of account dated 14.09.2020 at page 54 of reply	Rs.1,42,55,309/-
14.	Total amount paid by the complainant as per statement of account dated 14.09.2020 at page 54 of reply	Rs.1,03,99,847/-
15.	Occupation certificate dated	11.11.2020

		OC documents submitted during proceedings by the counsel for the respondent.
16.	Offer of possession	19.11.2020
17.	Legal notice sent by the complainant	09.01.2018
18.	Delay in handing over possession w.e.f. due date of handing over possession till filing of the complaint i.e., 24.02.2020	5 years 7 month and 5 days

B. Facts of the complaint

3. The complainants have made the following submissions: -

- i. That in the year 2011 launched various projects in Sector-65, Revenue Estate of Village Maidawas, Tehsil & District Gurugram, Haryana and through the advertisements and publications respondent induced through many lucrative offers to the customers and in view of the same the complainant had booked a flat in the project "Emerald Floors Premier III" having approximate super area of 183.48 square meter /1975 square feet as brought/launched by respondent in the year 2011 for BSP Rs. 12146250/- and for the total sales consideration (including service tax) of Rs. 13551228/- inclusive of usage of covered car park, EDC, IDC and applicable PLC, if any, and club membership charges. That respondent's office had made the provisional allotment of flat no. EFP-III-40-0502 located at the 5th floor.

- ii. That in continuation and as per respondent's requirement for the booking of the flat apartment in the above-mentioned project, the complainant had deposited a sum of Rs. 1000000/- vide cheque no. 768104 dated 08.09.2011 drawn on ICICI Bank for which respondent's office had issued receipt dated 14.09.2011. The complainant further paid respondent the amount of Rupees 266,625/- by way of RTGS in respondent's favour on 18.10.2011 and Rupees 902,788/- on the same day by way of RTGS again and respondent's office had issued the receipts dated 18.10.2011 in favour of the complainant. That respondent's office assured the complainant for the possession to be delivered well in time as per the terms of the agreement.
- iii. That as per buyer's agreement was executed by the authorized person with complainant on 19.03.2012 at the time of registration of the above said flat giving assurance by respondent that the possession of the above said flat will be delivered to complainant soon i.e., within a period of 24 month with the grace period of 3 (three) months from the date of execution of this agreement. The complainant believing on such version kept waiting and enquires about the progress of the above said project many times while their visits to India, but respondent kept lingering the matter.
- iv. That after the laps of the period as promised by respondent addressees, the complainant made an enquiry numerous time with respondent to know about the status of the project while personally

visited the site but found no progress and asked about the same but no use except the vague assurances as given by respondent addressees.

- v. That despite such assurance, the complainant was not given the possession of the flat booked, moreover no further information regarding the approval/progress of the above said project were ever supplied to the complainant till date, which clearly shows the irregularity/deficiency in services, unfair trade practices by enjoying the money of the complainant with respondent's irregularity /deficiency in services on the part of respondent addressees.
- vi. That further respondent the addressees, mischievously received the amount of the complainant on false assurance/promises as made by respondent though it was well within respondent's knowledge that even partial completion certificate has not been received by respondent's office from the competent authority of the state for the site which comes within the ambit of unfair trade practice as conducted by respondent addressees, therefore respondent admitted the fact that respondent have received major portion of the total consideration in lieu of the aforesaid project, therefore respondent is liable for deficiency of services, unfair trade practices and breach of terms of agreement, however, the complainant has fulfilled all obligations of his side very well in time but respondent's project had to be completed by 19.06.2014 but has been delayed by 7 years and 9 months as of now and further complainant shall not wait until

indefinite period. Since the project has already been delayed complainant are under no obligation to continue with respondent's project as decided by catena of judgments by National Commissions and the Supreme Court of India.

- vii. That such casual and nonchalant approach of the respondent is established from the fact that the respondent has failed to respond to the requests of the complainant. That the complainant has undergone tremendous amount of mental stress and agony because of the lethargic and lackadaisical approach of the respondent in handing over the possession of the plot, inspite of having received the consideration of the said plot. That it is evident from the facts and circumstances stated above that the respondent has caused inordinate delay in delivering the said possession of the plot to the complainant instead of he is being diligent enough to perform all the obligations on his part of under the said allotment letter and subsequent communications made by the respondent. That a legal notice dated 09.01.2018 was sent by the counsel of the complainant duly authorized claiming the amount mentioned in the legal notice. Thereafter, a reply dated 06.02.2018 to the legal notice dated 09.01.2018 was sent by the respondent through its attorney rejecting the claim of the complainant.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).



- i. The respondent is in clear violation of section 18(1) of the Act as it has failed to deliver the vacant and peaceful possession of the plot to the complainants even after lapse of more than 8 years, therefore, the respondent is liable to return the amount paid by them to the respondent along with interest as may be deemed appropriate by the authority from the date of receiving actual money by the respondent till the date of actual realization of the payment by the respondent to the complainants.
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 contested the complaint on the following grounds: -
 - i. That at the very outset, it is most respectfully submitted that the complaint filed by the complainants is not maintainable and the Id. adjudicating officer has no jurisdiction whatsoever to entertain the present complaint.
 - ii. That it is also submitted that the complaint is not signed by the complainants and is also not supported by any proper affidavit with a proper verification. In the absence of a proper verified and attested affidavit supporting the complaint, the complaint is liable to be rejected. That, without prejudice to the above, it is stated that the statement of objects and reasons as well as the preamble of the said Act clearly state that the RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate



sector. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "consumer" as provided under the consumer protection act, 1986 has to be referred for adjudication of the present complaint. The complainants are investors and not consumers and nowhere in the present complaint have the complainants pleaded as to how the complainants are consumers as defined in the consumer protection act, 1986 qua the respondent. The complainants have deliberately not pleaded the purpose for which the complainants entered into an agreement with the respondent to purchase the apartment in question. The complainants, who are NRI's and already the owners and residents of E-198, Sarita Vihar, New Delhi and Flat No. 6, Hawkfield Court, Woodlands Road, Isleworth TW76NU Middlesex, United Kingdom and Flat No. 22, Ardmay Gardens, Surbiton, Surrey, KT6 4SW, United Kingdom are investors, who never had any intention to buy the apartment for their own personal use and kept on avoiding the performance of their contractual obligations of making timely payments and has now filed the present complaint on false and frivolous grounds. It is submitted that these facts have been deliberately concealed by the complainant from the Ld. adjudicating officer and having concealed the material facts from the ld. adjudicating officer, the complaint is liable to be dismissed on this ground alone.

- iii. That it is also most respectfully submitted that the adjudicating officer has no jurisdiction to entertain the present complaint as the complainants have not come to the ld. adjudicating officer with clean hands and have concealed the material fact that the complainants are



defaulters, having deliberately failed to make the payment of installments within the time prescribed, which resulted in outstanding dues and delay payment charges of Rs. 35,51,724/-, as reflected in the statement of account dated 14.09.2020, collectively annexed herewith along with various payment requests, reminders, etc. and marked as **annexure R-2**. It is submitted that these facts and documents have been deliberately concealed by the complainants from the adjudicating officer and having concealed the material facts from the Id. adjudicating officer, the complaint is liable to be dismissed on this ground alone.

- iv. That the complainants are investors and due to financial crunch, the complainants became defaulters, having deliberately failed to make the payment of installments within the time prescribed, which resulted in delay payment charges. That from the date of booking i.e. 20.09.2011 till the legal notice dated 09.01.2018, for more than 6 years, the complainants had never ever raised any issue whatsoever and on the contrary the complainants kept on making the payment of installments, though not within the time prescribed, which resulted in outstanding dues and delay payment charges.
- v. The complainants have concocted a false story to cover up their own defaults of having failed to make the payments within the time prescribed, which resulted in outstanding dues and delay payment charges, and raised false and frivolous issues and have filed the present complaint on false, frivolous and concocted grounds. This conduct of the complainants clearly indicates that the complainants are mere speculators having invested with a view to earn quick profit and due to slowdown in the market conditions, the complainants have



- failed to perform their contractual obligations of making timely payments which resulted in outstanding dues delay payment charges.
- vi. That despite several adversities, the respondent has continued with the construction of the said project and is in the process of completing the construction of the said project and is required to apply the occupation certificate for the apartment in question i.e. EFP-III-40-0502 by 23.08.2022 (as mentioned at the time of registration of the project with RERA) or within such extended time, as may be extended by the authority, as the case may be. However, the respondent has already applied the OC for the apartment in question on 20.07.2020. That upon issuance of the occupation certificate and subject to force majeure conditions (as mentioned hereinafter), possession of the apartment shall be offered to the complainant. However, as the complainants were only speculative investors and not interested in taking over the possession of the said apartment and because of slump in the real estate market, the complainants failed to make the payments in time. It is apparent that the complainants are mere short term and speculative investors who had the motive and intention to make quick profit from sale of the said apartment through the process of allotment. Having failed to resell the said apartment due to general recession, the complainants could not make the payments in time and have now developed an intention to raise false and frivolous issues to engage the respondent in unnecessary, protracted and frivolous litigation. The alleged grievance of the complainant has origin and motive in sluggish real estate market.
- vii. That in the humble submission of the respondent, the adjudicating officer is deprived of the jurisdiction to go into the interpretation of,



or rights of the parties inter-se in accordance with the buyer's agreement signed by the complainants/allotment offered to them. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of said act or said rules, has been executed between the complainants and the respondent. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the buyer agreement dated 19.03.2012, executed much prior to coming into force of said act or said rules. The adjudication of the complaint for interest and compensation, as provided under sections 12, 14, 18 and 19 of said Act, has to be in reference to the agreement for sale executed in terms of said act and said rules and no other agreement. This submission of the respondent *inter alia*, finds support from reading of the provisions of the said Act and the said rules. Thus, in view of the submissions made above, no relief can be granted to the complainants.

- viii. That no cause of action has ever accrued in favour of the complainant to file the present complaint before the adjudicating officer. The complaint being without any cause of action is liable to be dismissed on this ground alone.
- ix. That the respondent has made huge investments in obtaining approvals and carrying on the construction and development of the project in question and despite several adversities is in the process of completing the construction of the project and should be able to apply the occupation certificate for the said apartment in question i.e. EFP-III-40-0502 by 23.08.2022 (as mentioned at the time of registration of the project with RERA) or within such extended time, as may be



extended by the authority, as the case may be. That upon issuance of the occupation certificate and subject to force majeure conditions (as mentioned hereinafter), possession of the apartment shall be offered to the complainant. The complainants persuaded the respondent party to allot the said apartment in question to them with promise to execute all documents as per format of the respondent and to make all due payments. The respondent continued with the development and construction of the said apartment and also had to incur interest liability towards its bankers. The complainants prevented the respondent from allotting the said apartment in question to any other suitable customer at the rate prevalent at that time and thus the respondent has suffered huge financial losses on account of breach of contract by the complainants.

- x. The fact that (a) the complainants kept on making payment as per the payment plan, though not in time; and (b) that from the date of booking i.e. 20.09.2011 till the legal notice dated 09.01.2018, for more than 6 years, the complainants never raised any issue whatsoever, clearly reveals that the complainants had no issue or concern about the said apartment/agreement and terms and conditions of the said buyer's agreement and are now unnecessarily raising false and frivolous issues and have filed the present complaint.
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.



8. The present complaint was filed in 'Form CAO' on 18.02.2019 and the reply has been filed by the respondent on 05.03.2020. Thereafter, the complaint has been filed in 'Form CRA' on 28.03.2022.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

10. 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

11. 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.

12. 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.
13. 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."

14. 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 objections raised by the respondent

F.I Objection regarding complainants are investors not consumer

15. The respondent submitted that the complainants are investor and not consumer/allottee, thus, the complainants are not entitled to the protection of the Act and thus, the present complaint is not maintainable.
16. The authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under section 31 of the Act, any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are an allottees/buyers and they have paid total price of Rs. 1,03,99,847/- to the promoter towards purchase of the said unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:



"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

17. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainants, it is crystal clear that the complainants are allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the complainant-allottee being investors is not entitled to protection of this Act stands rejected.

F.II Objection regarding the complaint not signed by the complainants.

18. The counsel for the respondent has raised a contention that the complaint is not signed by the complainants. The authority observes that the complaint is signed by the complainants and their counsel, and vakalatnama is also signed by the complainants and their counsel. So, this plea of the respondent is liable to be rejected.



G. Findings on the relief sought by the complainants.

- G.I. The respondent is in clear violation of section 18(1) of the Act as it has failed to deliver the vacant and peaceful possession of the plot to the complainants even after lapse of more than 8 years, therefore, the respondent is liable to return the amount paid by them to the respondent along with interest as may be deemed appropriate by the authority from the date of receiving actual money by the respondent till the date of actual realization of the payment by the respondent to the complainants.
19. In the present complaint, the complainants intend 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 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."



20. As per clause 11 of the flat buyer agreement dated 19.03.2012 provides for handing over of possession and is reproduced below:

11. POSSESSION

(a) Time of handing over the Possession

*Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's 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 24 months from the date of execution of buyer's agreement.** The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of **three months, for applying and obtaining the occupation certificate** in respect of the Unit and/or the Project*

21. 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 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.

22. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 24 (twenty four) months from the date of execution of agreement and further provided in agreement that promoter shall be entitled to a grace period of 3 months 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 19.03.2012. The period of 24 months expired on 19.03.2014 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.

23. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate interest. However, the allottees intend 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.

24. 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.
25. 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., 14.09.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.
26. 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 11(a) of the buyers agreement dated 19.03.2012 the possession of the subject unit was to be delivered within 24 (twenty-four) months from the date of execution of agreement i.e. 19.03.2012 which comes out to be 19.03.2014. As far as grace period is concerned, the same is disallowed for the reasons quoted above.
27. It is forthwith to note that in the present case, the complainants had sent legal notice dated 09.01.2018 to the respondent demanding/claiming



refund of the amount so deposited along with interest on account of failure on the part of the respondent of deliver possession of the subject unit till date despite inordinate delay. Thereafter, vide reply dated 06.02.2018 to the aforesaid legal notice, the respondent rejected the claim of the respondent. Keeping in view the fact that the allottees/complainants 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.

28. The due date of possession as per agreement for sale as mentioned in the table above is **19.03.2014 and there is delay of 5 years 7 months 5 days on the date of filing of the complaint.**
29. 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 allottee 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.....”

30. 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.”*

31. 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.



32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them 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*.

G.II Award cost of present litigation in favour of the complainants and against the respondent.

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

H. Directions of the authority




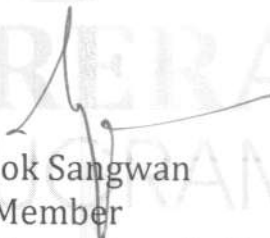
34. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):


- i. The respondent/promoter is directed to refund the amount i.e., Rs. 1,03,99,847/- received by it from the complainants 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.

35. Complaint stands disposed of.

36. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Dr. K.K. Khandelwal
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2022