

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

Date of decision: 07.10.2022

NAME OF THE BUILDER		SHREE VARDHMAN INFRAHEIGHTS PRIVATE LIMITED	
PROJECT NAME		SHREE VARDHMAN VICTORIA	
S. No.	Case No.	Case title	Appearance
1	CR/257/2019	Gaurav Sarin and anr. V/S M/s Shree Vardhman Infraheights Private Limited	Complainant in person Sh. Gaurav Rawat (Proxy counsel)
2	CR/1399/2019	Ashish Mittal V/S M/s Shree Vardhman Infraheights Private Limited	Sh. Rajan Gupta Sh. Gaurav Rawat (Proxy counsel)
3	CR/4989/2020	Naunidh Singh Arora V/S M/s Shree Vardhman Infraheights Private Limited	Sh. Kshitiz Sh. Gaurav Rawat (Proxy counsel)
4	CR/4991/2020	Maninder Singh Arora V/S M/s Shree Vardhman Infraheights Private Limited	Sh. Kshitiz Sh. Gaurav Rawat (Proxy counsel)
5	CR/1130/2021	Kishore Bala V/S M/s Shree Vardhman Infraheights Private Limited	Sh. Rishabh Gupta Sh. Gaurav Rawat (Proxy counsel)

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Member
Member

ORDER

1. This order shall dispose of all the 5 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development)

Act, 2016 (hereinafter referred as “the Act”) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as “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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Shree Vardhman Victoria (group housing complex) being developed by the same respondent/promoter i.e., Shree Vardhman Infraheights Private Limited. The terms and conditions of the buyer’s agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest.
3. The details of the complaints, reply, status, unit numbers, date of agreements, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	Shree Vardhman Infraheights Private limited, Shree Vardhman Victoria, Sector 70, Gurugram
<p>Possession clause: - 14(a) <i>The construction of the flat is likely to be completed within a period of forty months (40) of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex.</i></p>	

(Emphasis supplied)

Note: Grace period is included while computing due date of possession.

Common details: -

Occupation certificate- OC received dated 13.07.2022 for towers/block- A, B, C, H and I

Offer of possession- Offered in serial no. 1 and 3 and not offered in serial no. 2,4, and 5

Due date of Possession - Calculated from the date of commencement of construction of particular tower) *

RERA registration- 70 of 2017 dated 18.08.2017 valid upto 29.11.2020

S. no	Complaint no./title/ date of filing complaint.	Unit no. and area admeasuring	Date of execution of agreement	Due date of possession	Total sale consideration	Amount paid by the complainants
1	CR/257/2019 Case titled as Gaurav Sarin and anr. V/s M/s Shree Vardhman Date of filling- 31.01.2019	B-504 1950 sq. ft. [Page 32 of the complaint]	13.06.2013 [Page 29 of the complaint]	07.03.2018*	Rs. 1,01,088,000/- -Basic sale price (As per page 33 of complaint) Rs. 1,14,58,800/- (As per customer ledger at page 36 of reply)	Rs. 1,14,00,146/- (As alleged by complainants at page 3 of complaint)
2	CR/1399/2019 Case titled as Ashish Mittal	E-802 1950 sq. ft.	31.03.2014 [Page 15 of the complaint]	07.03.2018*	Rs.99,02,100 /- -Basic sale price	Rs. 65,97,470 /- (As alleged by

	V/s M/s Shree Vardhman Date of filling- 02.04.2019	[Page 18 of the complaint]			(As per page 19 of complaint) Rs. 1,14,47,100/- (As per customer ledger at page 35 of reply)	complainant at page 5 of complaint)
3	CR/4989/2020 Case titled as Naunidh Singh Arora V/s M/s Shree Vardhman Date of filling- 15.01.2021	H-204 1950 sq. ft. [Page 44 of the complaint]	22.07.2013 [Page 41 of the complaint]	13.08.2018*	Rs. 1,03,15,500 /- Basic sale price (As per page 45 of complaint) Rs. 1,20,06,750/- (As per customer ledger at page 38 of reply)	Rs.1,21,33,966/- (As alleged by complainant at page 24 of complaint)
4	CR/4991/2020 Case titled as Maninder Singh Arora V/s M/s Shree Vardhman Date of filling- 15.01.2021	D- 1001 1950 sq. ft. [Page 37 of the complaint]	22.07.2013 [Page 34 of the complaint]	07.03.2018*	Rs.1,03,15,500 /- - sale price (As per page 38 of complaint)	Rs.1,00,96,529/- (As alleged by complainant at page 13 of complaint)
5	CR/1130/2021 Case titled as Kishore Bala	D-902 1950 sq. ft.	15.06.2013 [Page 89 of the complaint]	07.03.2018*	Rs. 1,01,088,00 /- -Basic sale price	Rs. 97,48,968 /-

V/s M/s Shree Vardhman	[Page 95 of the complaint]			(As per page 97 of complaint)	[As alleged by complainant page 13 of complaint]
Date of filling- 23.02.2021				Rs. 1,16,53,800/- (As per customer ledger at page 36 of reply)	

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of **complaint case bearing no. 257/2019 titled as Gaurav Sarin and anr. Vs. Shree Vardhman Infraheights Private Limited is being taken as a lead case in order to determine the rights of the allottee(s) qua refund the entire amount along with interest.**

A. Project and unit related details

7. 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:

**CR/257/2019 titled as Gaurav Sarin and anr. Vs. Shree Vardhman
Infraheights Private Limited**

S. N.	Particulars	Details
1.	Name and location of the project	"Shree Vardhman Victoria", village Badshapur, Sector-70, Gurugram
2.	Project area	10.9687 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	103 of 2010 dated 30.11.2010 valid upto 29.11.2020
5.	Name of the Licensee	Santur Infrastructures Pvt. Ltd.
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 70 of 2017 dated 18.08.2017 Valid upto 31.12.2020
7.	Unit no.	Tower no. B-504 (Page 32 of complaint)
8.	Unit area admeasuring	1950 sq. ft. (Page 32 of complaint)
9.	Allotment letter	07.11.2012

		(Page 27 of complaint)
10.	Date of buyer agreement	13.06.2013 (Page 29 of complaint)
11.	Possession clause	<p>14 (a) Possession</p> <p><i>The construction of the flat is likely to be completed within a period of forty months (40) of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex.</i></p> <p>(Emphasis Supplied)</p>
12.	Date of commencement of construction	07.05.2014 (As per affidavit submitted by respondent in another case file of same project)
13.	Due date of possession	07.03.2018

		07.09.2017 + 6 months of grace period = 07.03.2018 (Calculated from date of commencement of construction which is available in another file of the same project.)
14.	Total sale consideration	Rs.1,01,088,00 /- (Page 33 of complaint) Rs. 1,14,58,800/- (As per customer ledger at page 36 of the reply)
15.	Amount paid by the complainants	Rs. 1,14,00,146/- (Page 3 of complaint)
16.	Occupation certificate	Obtained on 13.07.2022 (As per DTCP)
17.	Offer of possession	Offered on 14.07.2022 (As per page 8 of additional documents)
18.	Delay in handing over the possession till date of filing complaint	10 months and 24 days

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -

- i. The complainants were allotted a unit flat no. 504 in Tower - B in the project on 07.11.2012. An agreement dated 13.06.2013 was executed between the parties whereupon the complainants were explained that the proposed residential project would be of approximate super area of 1950 Sq. Ft i.e., equivalent to 181.23 Sq. Meter. The complainants have paid a total sum of Rs. 1,14,00,146/- against total sale consideration of Rs. 1,01,08,800/- which is in excess of Rs 12,91,346/- As per the buyer's agreement, the respondent itself agreed that the construction of the flats was likely to be completed within a period of forty months with a grace period of 6 months. But the averment of calculating the due date of possession from date of construction is against the legal provision. It should be calculated from the date of agreement.
- ii. The complainants visited the site of the project as it was shown earlier and once again to their utter shock noticed that the site was lying closed. Upon enquires with the staff of the respondent, they were once again assured that the project would be shortly completed. In fact, the ground reality is that the construction so slow that there is no possibility they would get the possession in near future.
- iii. That it has been categorically mentioned that time is essence of the builder buyer agreement. But the respondent raised the demands of instalments without adhering to the terms of the BBA, payment plan and without making construction accordingly. So, in those circumstances, the complainants could not wait endlessly for possession of booked unit.
- iv. That in view of Act of 2016, the complainants are entitled to refund of

amount paid. Furthermore, as per the provisions of Rule 15 of Haryana Real Estate Regulatory Rules 2017, the complainants are entitled for interest on the amount paid to the respondent at the rate prescribed under the RERA Act, 2016.

- v. The complainants have suffered loss and damages due to false and incorrect statement or commitment made by the respondent for delivering the possession of flat within stipulated time. Thus, they are entitled to withdraw from the project and are entitled to get the refund of the amount paid along with interest from the respondent.

C. Relief sought by the complainants: -

9. The complainants have sought following relief(s):

- I. Direct the respondent to refund the amount of Rs.1,14,00,146/- along with interest per annum in terms of section 18(1)(a) of the Act of 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017
- II. Any other relief which this hon'ble authority deems fit and proper may also be granted in favour the complainants.

10. 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

11. The respondent has contested the complaint on the following grounds.

12. The complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 is not maintainable under the said provision. The respondent has not violated any of the provisions of the Act.
13. The complainants have sought relief under section 18 of the RERA Act but the said section is not applicable in the facts of the present case and as such, the complaint deserves to be dismissed. It is submitted that the operation of Section 18 is not retrospective in nature and the same cannot be applied to the transactions that were entered prior to the RERA Act came into force. The parties while entering into the said transaction could not have possibly took into account the provisions of the Act and as such cannot be burdened with the obligations created therein. In the present case also, the agreement was executed much prior to the date when the RERA Act came into force and as such section 18 of the RERA Act cannot be made applicable to the present case. Any other interpretation of the RERA Act will not only be against the settled principles of law as to retrospective operation of laws but will also lead to an anomalous situation and would render the very purpose of the RERA Act nugatory. The complaint as such cannot be adjudicated under the provisions of RERA Act.
14. That the expression "agreement to sell" occurring in Section 18(1)(a) of the RERA Act covers within its folds only those agreements to sell that have been executed after RERA Act came into force and the FBA executed in the present case is not covered under the said expression, the same having been executed prior to the date the Act came into force.

15. That the FBA executed in the present case did not provide any definite date or time frame for handing over of possession of the apartment to the complainants and on this ground alone, the refund and/or compensation and/or interest cannot be sought under RERA Act. Even the clause 14 (a) of the FBA merely provided a tentative/estimated period for completion of construction of the flat and filing of application for occupancy certificate with the concerned authority. After completion of construction, the respondent was to make an application for grant of occupation certificate (OC) and after obtaining the OC, the possession of the flat was to be handed over.
16. The relief sought by the complainants is in direct conflict with the terms and conditions of the FBA and on this ground alone, the complaint deserve to be dismissed. The complainants signed the agreement only after having read and understood the terms and conditions mentioned therein and without any duress, pressure or protest and as such the terms thereof are fully binding upon them. The said agreement was executed much prior to RERA Act coming into force and the same has not been declared and cannot possibly be declared as void or not binding between the parties.
17. It is submitted that delivery of possession by a specified date was not essence of the FBA, and the complainants were aware that the delay in completion of construction beyond the tentative time given in the contract was possible. Even the FBA contained provisions for grant of compensation in the event of delay. As such, it is submitted without prejudice that the alleged delay on part of respondent in delivery of possession, even if assumed to have occurred,

cannot entitle the complainants to ignore the agreed contractual terms and to seek interest and/or compensation on any other basis.

18. It is submitted without prejudice that the alleged delay in delivery of possession, even if assumed to have occurred, cannot entitle the complaints to rescind the FBA under the contractual terms or in law. The delivery of possession by a specified date was not essence of the FBA and the complainants were aware that the delay in completion of construction beyond the tentative time given in the contract was possible. Even the FBA contain provisions for grant of compensation in the event of delay. As such, the time given in clause 14(a) of FBA was not essence of the contract and the breach thereof cannot entitle the complainants to seek rescind the contract.
19. It is submitted that the order of refund shall cause irreparable loss and hardship not only to the promoter of the project in question but also the majority of its allottees who are interested in taking possession of their respective flats. Any order of refund will open a floodgate for such orders and shall sound the death knell for the project in question. The project is also already under financial stress due to various reasons beyond the control of the promoters including Covid-19 pandemic and the order of refund would increase the financial stress to such a high level that completion of the project would become impossible causing loss all stake holders.
20. 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

21. 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

22. 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

23. 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.

24. 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.
25. 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) R.C.R. (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."

26. 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. Finding on objections raised by the respondent.

F.I Objection regarding force majeure conditions.

27. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 07.03.2018 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic

cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

F.II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

28. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of

Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.012.2017 which provides as under:

119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

29. Further in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed as under: -

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

30. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope

left to the allottee to negotiate any of the clause contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainants

G. I Direct the respondent to refund the amount of Rs. 1,14,00,146/- along with interest at the prescribed rate.

31. The complainants intend to withdraw from the project and are seeking return of the amount paid by them 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)

32. Clause 14(a) of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"14(a). POSSESSION

"The construction of the flat is likely to be completed within a period of forty months (40) of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex."

33. The above-mentioned clause is unconditional and provides that if the respondent is unable to complete the construction of the allotted unit within stipulated period of 40 months, then a grace period of 6 months shall be allowed to the respondent. The said possession clause incorporates unqualified reason for grace period/extended period of 6 months. Accordingly, the authority literally interpreting the same and allows this grace period of 6 months to the promoter at this stage. Therefore, as per clause 14(a) of the buyer's agreement dated 13.06.2013, the due date of

possession comes out to be 07.03.2018(calculated from date of commencement of construction i.e., 07.05.2014).

34. **Admissibility of refund along with prescribed rate of interest:** The complainants/allottees intend to withdraw from the project and are seeking refund of the amount paid by them 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.

35. 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.
36. 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., 07.10.2022 is **8%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10%**.

37. Keeping in view the fact that the allottee/complainant wish to withdraw from the project and are demanding return of the amount received 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.
38. The due date of possession as per agreement for sale as mentioned in the table above is **07.03.2018** and there is delay of **10 months and 24 days** on the date of filing of the complaint.
39. The occupation certificate of the project where the unit is situated has been obtained by the respondent/promoter on 13.07.2022 i.e., much after the due date of possession and filing of complaint which was on 31.01.2019, So it shows that after the due date has expired, the allottee have exercised their right to withdraw from the project and sought refund of the paid-up amount. Moreover, 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 they have paid a considerable amount towards the sale consideration. Moreover, the fact cannot be ignored that the said OC dated 13.07.2022 was obtained after the date of institution of present complaint.
40. 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. (Supra) 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."

41. 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 allottees 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 to return the amount received by him in respect of the unit with interest at such rate as may be prescribed as they wish to withdraw from the project, without prejudice to any other remedy available.
42. 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 along with interest 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*.

43. The complainants are claiming compensation in two complaints mentioned at serial number 3 and 5 of the table. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainants may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

H. Directions of the authority

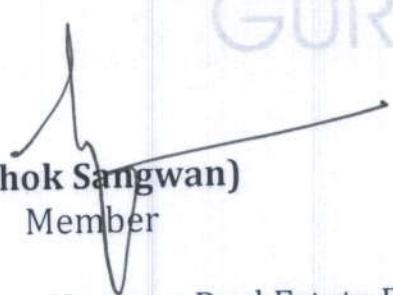
44. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount received by it from the respective complainants in each case 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 complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing the dues of the allottee-complainants.

45. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
46. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
47. Files be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 07.10.2022