

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

Complaint no. : 415 of 2020
First date of hearing: 25.03.2020
Date of decision : 20.10.2021

30/10/2022

1. Mr. Atul Sanghal
2. Mrs. Neeti Aggarwal
Both RR/o: -208, Priyadarshini, G-34A, Sector- 56,
Gurugram- 120001

Complainants

Versus

M/s Ramprashtha Promoters and Developers Private
Limited.
Regd. office: Plot No. 114, Sector-44, Gurugram-122002

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan

**Member
Member**

APPEARANCE:

Col. M.S. Sehrawat (Advocate)
Shri Dheeraj Kapoor (Advocate) with Shri Tarun Arora

Complainants
Respondent

ORDER

1. The present complaint dated 10.02.2020 has been filed by the complainant/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 details

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

| S. N. | Particulars | Details |
|-------|--------------------------------------|--|
| 1. | Name of the project | "RISE", Sector 37D, Village Gadauli Kalan, Gurugram |
| 2. | Project area | 60.5112 acres |
| 3. | Registered area | 48364 sq. mt. |
| 4. | Nature of the project | Group housing colony |
| 5. | DTCP license no. and validity status | 33 of 2008 dated 19.02.2008 valid upto 18.02.2025 |
| 6. | Name of licensee | Ramprastha Builders Pvt Ltd and 11 others |
| 7. | Date of approval of building plans | 12.04.2012 [As per information obtained by planning branch] |
| 8. | Date of environment clearances | 21.01.2010 [As per information obtained by planning branch] |
| 9. | RERA Registered/ not registered | Registered vide no. 278 of 2017 dated 09.10.2017 |



| | | | |
|-----|--|--|-----------------|
| 10. | RERA registration valid up to | 30.06.2019 | |
| 11. | HARERA extension certificate no. | 08 of 2020 | |
| 12. | Extension certificate detail | Date | Validity |
| | | In principal approval on 17.06.2020 | 30.12.2020 |
| 13. | Unit no. | C-303, 3 rd floor, tower/block- C (Page no. 58 of the complaint) | |
| 14. | Unit area admeasuring | 1765 sq. ft. (Page no. 58 of the complaint) | |
| 15. | Date of booking application form | 19.03.2012 (Page no. 49 of the reply) | |
| 16. | Welcome letter | 22.03.2012 (Page no. 20 of the complaint) | |
| 17. | Allotment letter | 25.09.2012 (Page no. 26 of the complaint) | |
| 18. | Date of execution of apartment agreement buyer | 04.09.2012 (Page no. 54 of the complaint) | |
| 19. | Possession clause | 15. POSSESSION (a) Time of handing over the Possession Subject to terms of this clause and subject to the Allottee | |



| | | |
|-----|--------------------------|---|
| | | <p>having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over <i>the possession of the Apartment by September 2015 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</i></p> <p style="text-align: right;">(Emphasis supplied)</p> <p style="text-align: right;">(Page no. 68 of the complaint)</p> |
| 20. | Due date of possession | 30.09.2015 [As per mentioned in the buyer's agreement] |
| 21. | Grace period | Not utilized |
| 22. | Total sale consideration | Rs.84,37,359/- (As per schedule of payment page 82 of the complaint) |



| | | |
|-----|---|--|
| 23. | Amount paid by the complainants | Rs,69,72,006/- (As per receipt information page 66 of the reply) |
| 24. | Occupation certificate /Completion certificate | Not received The AR confirms that construction work is in progress and OC of the unit of the allottee is neither applied nor obtained till date. |
| 25. | Offer of possession | Not offered |
| 26. | Delay in handing over the possession till date of filing complaint i.e., 10.02.2020 | 4 years 4 months and 11 days |

B. Fact of the complaint

3. The complainants have made the following submissions: -

- I. That in response to the advertisement of the project namely "Rise" in Sector 37 D, Gurgaon by the respondent company namely M/s Ramprastha Promoters & Developers Private Limited, the complainants booked a 3 BHK flat, measuring 1765 sq. ft., along with a covered parking in the said project, on 19.03.2012 with a booking amount of Rs.7,06,075/- (10% of the basic price Rs.70,60,000/- vide cheque no 184776 dated 19.03.2012 drawn on HDFC Bank. The total consideration of the flat was Rs.84,37,359/-. A welcome letter dated 22.03.2012 was issued by the respondent/promoter to the complainants along with the payment

plan and sketch of the layout of the booked flat. According to the payment plan, the payments were construction linked.

- II. That a letter of allotment dated 25.09.2012 was issued by the respondent company in the name of the complainants and flat no C-303 with area 1765 sq. ft. was allotted in their name. The total consideration of the flat was given as Rs 82,16,025/- only.
- III. That the complainants started making payment according to the payment plan and in between 19.03.2012 and 25.07.2015, a sum of Rs.69,72,005/- has been paid to the respondent company by them.
- IV. That an apartment buyer agreement was executed between both the parties on 04.09.2012, governing the terms and conditions of purchase of the flat in the said project "Rise". According to clause 15 (a) of the agreement, the possession of the flat was to be handed over to the complainant by September 2015 and over and above, the respondent allowed itself a grace period of 120 days. Thus, the final date of possession was 31.01.2016 including the grace period.
- V. That the provisions of clause 15 (b) of the agreement allowing automatic extension of time in handing over the possession are one sided and legally untenable. Moreover, the grace period of 120 days is provided specifically for "applying and obtaining the occupation certificate in respect of the Group Housing Complex". However, even after giving the benefit of 120 days grace period to

the respondent, the possession ought to have been offered latest by 31.01.2016.

- VI. That the complainants arranged all the funds of their savings to buy the said flat and even jointly applied for a loan. Accordingly, a loan of Rs.60,00,000/- was sanctioned by the State Bank of India vide letter dated 26.10.2012. The allottees have paid the EMIs against the loan taken at quite steep rates of interest. Due to the inordinate delay in completion of the project, the complainants have been put to an extreme financial difficulty.
- VII. That according to the update on the website of the respondent, 16th floor was completed on 11.09.2015 whereas the complainants had already made payment for that stage in July 2015. The complainants sought clarification in this regard by means of email dated 13.09.2015 after which a number of emails were sent by them to the respondent enquiring about the progress of construction and probable date of handing over possession of the flat, but the respondent did not give any reply to the complainants.
- VIII. That for the first time, the respondent company replied to the mails of the complainants vide their mail dated 24.09.2016 and intimated that the company would endeavor to complete the construction of A,B,C,D,E towers by 31.12.2017. After that, the respondent remained silent and did not give any further information about the progress of the project. The complainants

again requested the respondent vide Email dated 12.01.2017 to share the current status of the project. The respondent informed them vide Email dated 28.02.2017 that the tentative completion date of C, D & E towers was June 2018. The respondent has thus been changing the promised date of possession arbitrarily and unilaterally time and again. The complainants again wrote to the respondent on 13.06.2017, 02.09.2017 and on 26.09.2018 respectively asking about the status of the project and expressing concern over the undue delay in completion of the project but it has not replied to those communications.

- IX. That even after accepting the one-sided clause of 120 days grace period, the time limit of offering possession of the flat has gone past by almost 4 years. Hence, the complainants are within their rights to withdraw from the project in terms of section 18(1) of the Act, 2016. The complainants are further entitled to claim refund of amount paid along with interest and compensation in terms of Section 19(4) of the Act of 2016.
- X. That the failure of the respondent company to handover the possession of the flat has caused serious financial difficulty, mental agony, and harassment to the complainants. The complainants are a working couple and have no time to run around to get the refund of paid money from the respondent company. They had to engage an advocate to file and process their complaint. Hence, the

complainants are also entitled to compensation for harassment and reimbursement of legal expenses incurred by them.

C. Relief sought by the complainants:

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

- I. Direct the respondent to refund the amount deposited by the complainant along with interest.
 - II. Direct the respondent to pay to complainants to the cost of Rs.1,00,000/- as litigation in terms of section 19(4) and section 17 of the Act.
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 filed an application for rejection of complaint on the ground of jurisdiction along with reply. The respondent has contested the complaint on the following grounds.

- I. The complaint filed by the complainants is not maintainable and the Haryana Real Estate Regulatory Authority, Gurugram, Haryana has no jurisdiction whatsoever to entertain the present complaint. According to the respondent, the jurisdiction to entertain the complaints pertaining to refund, possession, compensation, and interest i.e., prescribed under sections 12, 14, 18 and section 19 of

the Act lies with the adjudicating officer under sections 31 and 71 read with rule 29 of the rules.

- II. In the present case, the complaint pertains to the alleged delay in delivery of possession for which the complainants have filed the present complaint and is seeking the relief of possession, interest, and compensation u/s 18 of the said Act. Therefore, even though the project of the respondent i.e., "Rise" Ramprastha City, sector-37D, Gurugram is covered under the definition of "ongoing projects" and registered with this authority, the complaint, if any, is still required to be filed before the adjudicating officer under rule 29 of the said rules and not before this authority under rule 28 as this authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.
- III. That the complaint is 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.
- IV. That the complainant is an investor and not consumer and nowhere in the complaint, the complainant pleaded as to how the complainant is consumer as defined in the Consumer Protection Act, 1986 qua the respondent. The complainant has deliberately not pleaded the purpose for which the complainant has entered into an agreement with the respondent to purchase the apartment in question. The complainant, who is already the owner and resident of 208, Priyadarshini, GH-34A, Sector- 56, Gurugram-122001 (address mentioned in the booking application form,

apartment buyer's agreement and in the present complaint) is investor, who never had any intention to buy the apartment for own personal use and kept on avoiding the performance of contractual obligations of executing the apartment buyer agreement and making timely payments and have now filed the present complaint on false and frivolous grounds.

- V. Despite several adversities, the respondents have continued with the construction of the project and are in the process of completing the construction of the project and should be able to apply the occupation certificate for the apartment in question by 30.06.2022 (as mentioned at the time of application for extension 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, as the complainants were only short term and speculative investors, therefore they were not interested in taking over the possession of the said apartment. It is apparent that the complainants 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 and because of slump in the real estate market, the complainants have developed an intention to raise false and frivolous issues to engage the respondents in unnecessary, protracted, and frivolous litigation. The alleged grievance of the complainants has origin and motive in sluggish real estate market.
- VI. That this authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement signed by the

complainants/allotment offered to him. 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 apartment buyer's agreement dated 04.09.2012, 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 respondents *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.

- VII. The respondent has submitted that out of the total amount paid by the complainants i.e., Rs.69,72,005/- towards the sale consideration. The balance amount of Rs.2,20,927/- is towards the service tax as reflected in the statement of account.
- VIII. The respondent has submitted that the proposed estimated time of handing over the possession of the said apartment i.e., September 2015 + 120 days, which comes to 31.01.2016, is applicable only subject to force majeure and the complainants having complied with all the terms and conditions and not being in default of any terms and conditions of the apartment buyer's agreement, including but not limited to the payment of instalments. In case of any default/delay in payment, the date of handing over of

possession shall be extended accordingly solely at the respondent's discretion, till the payment of all outstanding amounts and at the same time in case of any default, the complainants will not be entitled to any compensation whatsoever in terms of clause 15 and clause 17 of the apartment buyer's agreement.

- IX. That section 19(3) of the Act provides that the allottee shall be entitled to claim the possession of the apartment, plot, or building, as the case may be, as per the declaration given by the promoter under section 4(2)(l)(C). The entitlement to claim the possession or refund would only arise once the possession has not been handed over as per the declaration given by the promoter under section 4(2)(l)(C). In the present case, the respondent had made a declaration in terms of section 4(2)(l)(C) that it would complete the project by 30.06.2019 and has also applied for a further extension of one year with the revised date as 30.06.2020. Thus, no cause of action can be said to have arisen to the complainants in any event to claim possession or refund, along with interest and compensation, as sought to be claimed by them.
- X. The projects in respect of which the respondent has obtained the occupation certificate are described as hereunder: -

| S. No | Project Name | No. of Apartments | Status |
|-------|--------------|-------------------|-------------|
| 1. | Atrium | 336 | OC received |
| 2. | View | 280 | OC received |

| | | | |
|----|--|-------------------------|--|
| 3. | Edge Tower I, J, K, L, M Tower H, N Tower-O (Nomenclature-P) (Tower A, B, C, D, E, F, G) | 400 160 80 640 | OC received OC received OC received OC to be applied |
| 4. | EWS | 534 | OC received |
| 5. | Skyz | 684 | OC to be applied |
| 6. | Rise | 322 | OC to be applied |

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
8. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. SLP(Civil) No(s). 3711-3715 OF 2021*, the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.5.2022 in *CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP* and was observed

that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.

9. Keeping in view the judgement of Hon'ble Supreme Court in case titled as *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra)* the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/CRA. Both the parties want to proceed further in the matter accordingly. The Hon'ble Supreme Court in case of *Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019* has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the pleading and submissions made by both the parties during the proceedings.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

11. 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

12. 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.

13. 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.

14. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act, if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent**F.I Objection regarding handing over possession as per declaration given under section 4(2)(I)(C) of RERA Act**

16. The counsel for the respondent argued that the entitlement to claim possession or refund would arise once the possession has not been handed over as per declaration given by the promoter under section 4(2)(I)(C). Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act.
17. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.
18. Section 4(2)(I)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(I)(C) of the Act and the same is reproduced as under: -

Section 4: - Application for registration of real estate projects

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —.....

(I): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —

.....

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be....”

19. The time period for handing over the possession is committed by the builder as per the relevant clause of apartment buyer agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the apartment buyer's agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(l)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as ***Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors.*** and has observed 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..."

F. II Objection regarding complainants being investors.

20. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating 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 & 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 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 apartment buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of **Rs.69,72,006/-** to the promoter towards purchase of an apartment 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;"

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investors 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 allottees being investors are not entitled to protection of this Act also stands rejected.

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

21. 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 apartment 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 will 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. 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)* 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."

22. Also, 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-

"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."

23. 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 clauses 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.1 Direct the respondent to refund the amount deposited by the complainant along with interest.

24. In the present complaint, 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)."

25. Clause 15(a) of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"15. POSSESSION

(a) Time of handing over the possession

Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over the possession of the Apartment by September 2015 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."

26. The authority has gone through the possession clause of the agreement and observed that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction,

approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.

27. At the outset it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in 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 date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.



28. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 30.09.2015 and further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the promoter in the apartment buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 120 days cannot be allowed to the promoter at this stage.
29. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest. However, the 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.

30. 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.
31. 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., 20.10.2022 is **8.25%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.25 %**.
32. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. — For the purpose of this clause—*
- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
33. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the



due date as per the agreement. By virtue of clause 15(a) of the agreement executed between the parties on 04.09.2012, the possession of the subject apartment was to be delivered within stipulated time i.e., by September 2015. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 30.09.2015.

34. Keeping in view the fact that the allottee/complainants wish to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.
35. The due date of possession as per agreement for sale as mentioned in the table above is 30.09.2015 and there is delay of 4 years 4 months 11 days on the date of filing of the complaint.
36. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in

Ireo Grace Realtech Pvt. Ltd, Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase I of the project....."

37. Further, the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022, observed as under: -

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

38. 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 allottees, as they wish 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.

39. 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., @ 10.25% 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 Direct the respondent to pay to complainants to the cost of Rs.1,00,000/- as litigation in terms of section 19(4) and section 17 of the Act.

40. The complainants are seeking above mentioned 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. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the authority

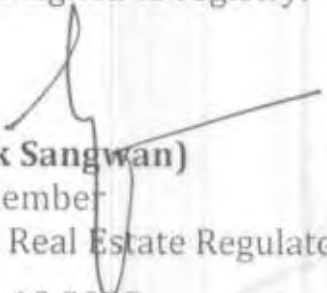
41. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount i.e., Rs.69,72,006/- received by it from the complainants along with interest at the rate of 10.25% 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 dues of allottee/ complainant.

42. Complaint stands disposed of.
43. File be consigned to registry.


(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.10.2022


(Vijay Kumar Goyal)

Member



HARERA
GURUGRAM

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

Complaint no. : 415 of 2020
First date of hearing: 25.03.2020
Date of decision : 20.10.2021

1. Mr. Atul Sanghal
 2. Mrs. Neeti Aggarwal
- Both RR/o: -208, Priyadarshini, G-34A, Sector- 56,
Gurugram- 120001

Complainants

Versus

M/s Ramprashtha Promoters and Developers Private
Limited.
Regd. office: Plot No. 114, Sector-44, Gurugram-122002

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Member
Member

APPEARANCE:

Col. M.S. Sehrawat (Advocate)
Shri Dheeraj Kapoor (Advocate) with Shri Tarun Arora

Complainants
Respondent

ORDER

1. The present complaint dated 10.02.2020 has been filed by the complainant/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 details

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

| S. N. | Particulars | Details |
|--------------|--------------------------------------|--|
| 1. | Name of the project | "RISE", Sector 37D, Village Gadauli Kalan, Gurugram |
| 2. | Project area | 60.5112 acres |
| 3. | Registered area | 48364 sq. mt. |
| 4. | Nature of the project | Group housing colony |
| 5. | DTCP license no. and validity status | 33 of 2008 dated 19.02.2008 valid upto 18.02.2025 |
| 6. | Name of licensee | Ramprastha Builders Pvt Ltd and 11 others |
| 7. | Date of approval of building plans | 12.04.2012 [As per information obtained by planning branch] |
| 8. | Date of environment clearances | 21.01.2010 [As per information obtained by planning branch] |
| 9. | RERA Registered/ not registered | Registered vide no. 278 of 2017 dated 09.10.2017 |



| | | | |
|-----|--|--|-----------------|
| 10. | RERA registration valid up to | 30.06.2019 | |
| 11. | HARERA extension certificate no. | 08 of 2020 | |
| 12. | Extension certificate detail | Date | Validity |
| | | In principal approval on 17.06.2020 | 30.12.2020 |
| 13. | Unit no. | C-303, 3 rd floor, tower/block- C (Page no. 58 of the complaint) | |
| 14. | Unit area admeasuring | 1765 sq. ft. (Page no. 58 of the complaint) | |
| 15. | Date of booking application form | 19.03.2012 (Page no. 49 of the reply) | |
| 16. | Welcome letter | 22.03.2012 (Page no. 20 of the complaint) | |
| 17. | Allotment letter | 25.09.2012 (Page no. 26 of the complaint) | |
| 18. | Date of execution of apartment agreement buyer | 04.09.2012 (Page no. 54 of the complaint) | |
| 19. | Possession clause | 15. POSSESSION (a) Time of handing over the Possession Subject to terms of this clause and subject to the Allottee | |



| | | |
|-----|--------------------------|---|
| | | <p>having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over <i>the possession of the Apartment by September 2015 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</i></p> <p style="text-align: right;">(Emphasis supplied) (Page no. 68 of the complaint)</p> |
| 20. | Due date of possession | 30.09.2015 [As per mentioned in the buyer's agreement] |
| 21. | Grace period | Not utilized |
| 22. | Total sale consideration | Rs.84,37,359/- (As per schedule of payment page 82 of the complaint) |



| | | |
|-----|---|--|
| 23. | Amount paid by the complainants | Rs.69,72,006/- (As per receipt information page 66 of the reply) |
| 24. | Occupation certificate /Completion certificate | Not received The AR confirms that construction work is in progress and OC of the unit of the allottee is neither applied nor obtained till date. |
| 25. | Offer of possession | Not offered |
| 26. | Delay in handing over the possession till date of filing complaint i.e., 10.02.2020 | 4 years 4 months and 11 days |

B. Fact of the complaint

3. The complainants have made the following submissions: -

- I. That in response to the advertisement of the project namely "Rise" in Sector 37 D, Gurgaon by the respondent company namely M/s Ramprastha Promoters & Developers Private Limited, the complainants booked a 3 BHK flat, measuring 1765 sq. ft., along with a covered parking in the said project, on 19.03.2012 with a booking amount of Rs.7,06,075/- (10% of the basic price Rs.70,60,000/- vide cheque no 184776 dated 19.03.2012 drawn on HDFC Bank. The total consideration of the flat was Rs.84,37,359/-. A welcome letter dated 22.03.2012 was issued by the respondent/promoter to the complainants along with the payment

plan and sketch of the layout of the booked flat. According to the payment plan, the payments were construction linked.

- II. That a letter of allotment dated 25.09.2012 was issued by the respondent company in the name of the complainants and flat no C-303 with area 1765 sq. ft. was allotted in their name. The total consideration of the flat was given as Rs 82,16,025/- only.
- III. That the complainants started making payment according to the payment plan and in between 19.03.2012 and 25.07.2015, a sum of Rs.69,72,005/- has been paid to the respondent company by them.
- IV. That an apartment buyer agreement was executed between both the parties on 04.09.2012, governing the terms and conditions of purchase of the flat in the said project "Rise". According to clause 15 (a) of the agreement, the possession of the flat was to be handed over to the complainant by September 2015 and over and above, the respondent allowed itself a grace period of 120 days. Thus, the final date of possession was 31.01.2016 including the grace period.
- V. That the provisions of clause 15 (b) of the agreement allowing automatic extension of time in handing over the possession are one sided and legally untenable. Moreover, the grace period of 120 days is provided specifically for "applying and obtaining the occupation certificate in respect of the Group Housing Complex". However, even after giving the benefit of 120 days grace period to

the respondent, the possession ought to have been offered latest by 31.01.2016.

- VI. That the complainants arranged all the funds of their savings to buy the said flat and even jointly applied for a loan. Accordingly, a loan of Rs.60,00,000/- was sanctioned by the State Bank of India vide letter dated 26.10.2012. The allottees have paid the EMIs against the loan taken at quite steep rates of interest. Due to the inordinate delay in completion of the project, the complainants have been put to an extreme financial difficulty.
- VII. That according to the update on the website of the respondent, 16th floor was completed on 11.09.2015 whereas the complainants had already made payment for that stage in July 2015. The complainants sought clarification in this regard by means of email dated 13.09.2015 after which a number of emails were sent by them to the respondent enquiring about the progress of construction and probable date of handing over possession of the flat, but the respondent did not give any reply to the complainants.
- VIII. That for the first time, the respondent company replied to the mails of the complainants vide their mail dated 24.09.2016 and intimated that the company would endeavor to complete the construction of A,B,C,D,E towers by 31.12.2017. After that, the respondent remained silent and did not give any further information about the progress of the project. The complainants

again requested the respondent vide Email dated 12.01.2017 to share the current status of the project. The respondent informed them vide Email dated 28.02.2017 that the tentative completion date of C, D & E towers was June 2018. The respondent has thus been changing the promised date of possession arbitrarily and unilaterally time and again. The complainants again wrote to the respondent on 13.06.2017, 02.09.2017 and on 26.09.2018 respectively asking about the status of the project and expressing concern over the undue delay in completion of the project but it has not replied to those communications.

- IX. That even after accepting the one-sided clause of 120 days grace period, the time limit of offering possession of the flat has gone past by almost 4 years. Hence, the complainants are within their rights to withdraw from the project in terms of section 18(1) of the Act, 2016. The complainants are further entitled to claim refund of amount paid along with interest and compensation in terms of Section 19(4) of the Act of 2016.
- X. That the failure of the respondent company to handover the possession of the flat has caused serious financial difficulty, mental agony, and harassment to the complainants. The complainants are a working couple and have no time to run around to get the refund of paid money from the respondent company. They had to engage an advocate to file and process their complaint. Hence, the

complainants are also entitled to compensation for harassment and reimbursement of legal expenses incurred by them.

C. Relief sought by the complainants:

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

- I. Direct the respondent to refund the amount deposited by the complainant along with interest.
 - II. Direct the respondent to pay to complainants to the cost of Rs.1,00,000/- as litigation in terms of section 19(4) and section 17 of the Act.
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 filed an application for rejection of complaint on the ground of jurisdiction along with reply. The respondent has contested the complaint on the following grounds.

- I. The complaint filed by the complainants is not maintainable and the Haryana Real Estate Regulatory Authority, Gurugram, Haryana has no jurisdiction whatsoever to entertain the present complaint. According to the respondent, the jurisdiction to entertain the complaints pertaining to refund, possession, compensation, and interest i.e., prescribed under sections 12, 14, 18 and section 19 of

the Act lies with the adjudicating officer under sections 31 and 71 read with rule 29 of the rules.

- II. In the present case, the complaint pertains to the alleged delay in delivery of possession for which the complainants have filed the present complaint and is seeking the relief of possession, interest, and compensation u/s 18 of the said Act. Therefore, even though the project of the respondent i.e., "Rise" Ramprastha City, sector-37D, Gurugram is covered under the definition of "ongoing projects" and registered with this authority, the complaint, if any, is still required to be filed before the adjudicating officer under rule 29 of the said rules and not before this authority under rule 28 as this authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.
- III. That the complaint is 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.
- IV. That the complainant is an investor and not consumer and nowhere in the complaint, the complainant pleaded as to how the complainant is consumer as defined in the Consumer Protection Act, 1986 qua the respondent. The complainant has deliberately not pleaded the purpose for which the complainant has entered into an agreement with the respondent to purchase the apartment in question. The complainant, who is already the owner and resident of 208, Priyadarshini, GH-34A, Sector- 56, Gurugram-122001 (address mentioned in the booking application form,

apartment buyer's agreement and in the present complaint) is investor, who never had any intention to buy the apartment for own personal use and kept on avoiding the performance of contractual obligations of executing the apartment buyer agreement and making timely payments and have now filed the present complaint on false and frivolous grounds.

- V. Despite several adversities, the respondents have continued with the construction of the project and are in the process of completing the construction of the project and should be able to apply the occupation certificate for the apartment in question by 30.06.2022 (as mentioned at the time of application for extension 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, as the complainants were only short term and speculative investors, therefore they were not interested in taking over the possession of the said apartment. It is apparent that the complainants 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 and because of slump in the real estate market, the complainants have developed an intention to raise false and frivolous issues to engage the respondents in unnecessary, protracted, and frivolous litigation. The alleged grievance of the complainants has origin and motive in sluggish real estate market.
- VI. That this authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement signed by the

complainants/allotment offered to him. 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 apartment buyer's agreement dated 04.09.2012, 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 respondents *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.

- VII. The respondent has submitted that out of the total amount paid by the complainants i.e., Rs.69,72,005/- towards the sale consideration. The balance amount of Rs.2,20,927/- is towards the service tax as reflected in the statement of account.
- VIII. The respondent has submitted that the proposed estimated time of handing over the possession of the said apartment i.e., September 2015 + 120 days, which comes to 31.01.2016, is applicable only subject to force majeure and the complainants having complied with all the terms and conditions and not being in default of any terms and conditions of the apartment buyer's agreement, including but not limited to the payment of instalments. In case of any default/delay in payment, the date of handing over of

possession shall be extended accordingly solely at the respondent's discretion, till the payment of all outstanding amounts and at the same time in case of any default, the complainants will not be entitled to any compensation whatsoever in terms of clause 15 and clause 17 of the apartment buyer's agreement.

- IX. That section 19(3) of the Act provides that the allottee shall be entitled to claim the possession of the apartment, plot, or building, as the case may be, as per the declaration given by the promoter under section 4(2)(l)(C). The entitlement to claim the possession or refund would only arise once the possession has not been handed over as per the declaration given by the promoter under section 4(2)(l)(C). In the present case, the respondent had made a declaration in terms of section 4(2)(l)(C) that it would complete the project by 30.06.2019 and has also applied for a further extension of one year with the revised date as 30.06.2020. Thus, no cause of action can be said to have arisen to the complainants in any event to claim possession or refund, along with interest and compensation, as sought to be claimed by them.
- X. The projects in respect of which the respondent has obtained the occupation certificate are described as hereunder: -

| S. No | Project Name | No. of Apartments | Status |
|-------|--------------|-------------------|-------------|
| 1. | Atrium | 336 | OC received |
| 2. | View | 280 | OC received |

| | | | |
|----|--|-------------------------|--|
| 3. | Edge Tower I, J, K, L, M Tower H, N Tower-O (Nomenclature-P) (Tower A, B, C, D, E, F, G) | 400 160 80 640 | OC received OC received OC received OC to be applied |
| 4. | EWS | 534 | OC received |
| 5. | Skyz | 684 | OC to be applied |
| 6. | Rise | 322 | OC to be applied |

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
8. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. SLP(Civil) No(s). 3711-3715 OF 2021*), the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.5.2022 in *CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP* and was observed



that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.

9. Keeping in view the judgement of Hon'ble Supreme Court in case titled as *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra)* the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/CRA. Both the parties want to proceed further in the matter accordingly. The Hon'ble Supreme Court in case of *Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019* has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the pleading and submissions made by both the parties during the proceedings.

E. Jurisdiction of the authority

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



E.I Territorial jurisdiction

11. 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

12. 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.

13. 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.

14. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent

F.I Objection regarding handing over possession as per declaration given under section 4(2)(I)(C) of RERA Act

16. The counsel for the respondent argued that the entitlement to claim possession or refund would arise once the possession has not been handed over as per declaration given by the promoter under section 4(2)(I)(C). Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act.
17. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.
18. Section 4(2)(I)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(I)(C) of the Act and the same is reproduced as under: -

Section 4: - Application for registration of real estate projects

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —.....

*(I): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —
.....*

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be...."

19. The time period for handing over the possession is committed by the builder as per the relevant clause of apartment buyer agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the apartment buyer's agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(I)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as ***Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors.*** and has observed 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..."

F. II Objection regarding complainants being investors.

20. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating 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 & 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 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 apartment buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of **Rs.69,72,006/-** to the promoter towards purchase of an apartment 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;"

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investors 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 allottees being investors are not entitled to protection of this Act also stands rejected.

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

21. 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 apartment 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 will 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. 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)*** 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."

22. Also, 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-



"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."

23. 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 clauses 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.1 Direct the respondent to refund the amount deposited by the complainant along with interest.

24. In the present complaint, 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)."

25. Clause 15(a) of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"15. POSSESSION

(a) Time of handing over the possession

Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over the possession of the Apartment by September 2015 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."

26. The authority has gone through the possession clause of the agreement and observed that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction,



approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.

27. At the outset it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in 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 date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

28. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 30.09.2015 and further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the promoter in the apartment buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 120 days cannot be allowed to the promoter at this stage.
29. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest. However, the 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.

30. 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.
31. 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., 20.10.2022 is **8.25%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.25 %**.
32. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
33. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the



due date as per the agreement. By virtue of clause 15(a) of the agreement executed between the parties on 04.09.2012, the possession of the subject apartment was to be delivered within stipulated time i.e., by September 2015. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 30.09.2015.

34. Keeping in view the fact that the allottee/complainants wish to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.
35. The due date of possession as per agreement for sale as mentioned in the table above is **30.09.2015** and there is delay of 4 years 4 months 11 days on the date of filing of the complaint.
36. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in



***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal
no. 5785 of 2019, decided on 11.01.2021***

“.... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

37. Further, the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022, observed as under: -

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

38. 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 allottees, as they wish 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.

39. 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., @ 10.25% 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 Direct the respondent to pay to complainants to the cost of Rs.1,00,000/- as litigation in terms of section 19(4) and section 17 of the Act.

40. The complainants are seeking above mentioned 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. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the authority

41. 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.69,72,006/- received by it from the complainants along with interest at the rate of 10.25% 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 dues of allottee/ complainant.

42. Complaint stands disposed of.

43. File be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.10.2022

(Vijay Kumar Goyal)

Member



HARERA
GURUGRAM