

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

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| Complaint no. | 2968 of 2021 |
| Date of filing complaint | 02.08.2021 |
| First date of hearing | 01.09.2021 |
| Date of decision | 08.12.2022 |

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|--|--------------------|
| Manoj Kumar Tyagi R/o: House no. 963/9A, Gokul Dham, Krishna Colony, Gurugram, Haryana | Complainant |
| Versus | |
| 1. M/s International land Developers Pvt. Ltd. 2. Mr. Alimuddin 3. Mr. Salman Akbar All R/o: ILD Trade Centre, 9 th floor, Sector 47, Sohna Road, Gurugram-122018 | Respondents |

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| CORAM: | |
| Shri Vijay Kumar Goyal | Member |
| Shri Ashok Sangwan | Member |
| Shri Sanjeev Kumar Arora | Member |
| APPEARANCE: | |
| Ms. Sujata Rao | Complainant |
| Shri Pankaj Chandola and Mayank Grover | Respondents |

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

| S. N. | Particulars | Details |
|-------|----------------------------------|---|
| 1. | Name and location of the project | "ARETE", Village Dhunela, Sector-33, Sohna, Gurgaon, Haryana. |
| 2. | Nature of the project | Group Housing Colony |
| 3. | Project area | 11.61 acres |
| 4. | DTCP license no. | 44 of 2013 dated 04.06.2013 valid upto 03.06.2019 |
| 5. | Name of licensee | Brijesh-Sanjeev Ss/o Satbir and 2 others |
| 6. | RERA Registered/ not registered | 06 of 2019 dated 08.02.2019 valid upto 02.07.2022 |
| 7. | Allotment Letter | 29.11.2014 (Page 100 at annexure C/6 of complaint) |

| | | |
|-----|---|---|
| 8. | Unit no. | 602, 6 th floor, tower G (Page 102 at annexure C/7 of complaint) |
| 9. | Unit area admeasuring (super area) | 1275 sq. ft. (Page 106 of complaint) |
| 10. | Date of execution of apartment agreement buyer | 10.06.2015 (Page 103 of complaint) |
| 11. | Possession clause | <p>10. Possession of Apartment</p> <p>10.1 Subject to timely grant of all approvals (including revisions thereof), permissions, certificates, NOCs, permission to operate, full/part occupation certificate etc. and further subject to the Buyer having complied with all its obligations under the terms and conditions of this Agreement, and subject to all the buyers of the apartments in the Project making timely payments including but not limited to the timely payment of the Total Sale Consideration, stamp duty and other charges, fees, IAC, Levies & Taxes or increase in Levies & Taxes, IFMSD, Escalation Charges, deposits, Additional Charges to the Developer and also subject to the Buyer having complied with all formalities or documentation as prescribed by the Developer, the Developer shall endeavor to complete the construction</p> |

| | | |
|-----|--------------------------------|---|
| | | of the Said Apartment within 48(Forty Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months. |
| 12. | Due date of possession | 10.12.2019 (Calculated as 48 months from date of execution of BBA plus 6 months grace period as the same is unqualified) |
| 13. | Total sale consideration | Rs. 74,14,325/- (As per BBA on page 123 of complaint) |
| 15. | Amount paid by the complainant | Rs. 17,11,510/- (As alleged by complainant on page 22 of CRA) |
| 16. | Occupation certificate | Not obtained |
| 17. | Offer of possession | Not obtained |
| 18. | Legal Notice | 31.01.2019 (Page 182 at annexure C/11 of complaint) |

B. Facts of the complaint:

- That the respondents advertised with different means and channels about their upcoming residential project namely "ARETE" at Village Dhunela, Sector-33, Sohna, Gurgaon, Haryana. However, the Project was launched at Pre-Launch stage without having all the necessary approvals, license and permissions from the government authorities.

4. That the complainant who was interested to purchase an apartment for his own residential purposes was lured by the respondents to book a flat in the said project by misleading advertisements and wrongful representation via the brochure of the project while emphasizing upon the high- lighting and key features of their said project including **"Timely Possession"** and usage of **Monolithic Aluminium Form Work Technology along with using of Building Information Model(BIM) for construction**. It was their own pro-claimed statement that the said project was comparatively better than the other residential projects offered by other competitor builders as respondents were : **"Offering of Construction by using Monolithic Aluminium Form Work Technology along with using of Building Information Model(BIM)"**.
5. That the complainant in December, 2013, on the impressive projection of the usage of afore-said technology of construction as per their own version was much better than conventional technology and further more on respondent's own projection of offer of handing-over the possession of the said flat within **48 months** from the date of execution of apartment buyer agreement. The complainant booked one residential 2bhk flat with tentative super area 1250 sq. ft. on payment of initial booking amount of Rs.3,00,000/- (Rs. Three Lakh Only) via Cheque No.098554 dated-10/12/2013 drawn on ICICI Bank, Sector-15, Gurugram, in the afore-said project.
6. It is categorically stated that complainant booked the said residential flat on the given specific and categorical representations of usage of MAFW Technology along with BIM for construction as well as handing over of possession within **48 months** from the date of execution of apartment buyer agreement with additional grace period of 6 months.

7. After the booking of the said flat, a demand for Rs.9,61,822/- via demand notice cum invoice dated 06.02.2014 was raised. Under the mutual understanding between the complainant, broker and respondent company, the broker passed his incentive in favour of the former and accordingly payment against the said invoice/demand letter was made to the respondent in the following manner:-

| S.No. | Mode of Payment | Date of Receipt | Amount |
|--------------|--|-----------------|-------------------|
| 1. | Cash | 29.04.2014 | 5,50,000/- |
| 2. | Cheque no.- 098555 Dated- 04.05.2014 (ICICI Bank) | 06.05.2014 | 2,99,622/- |
| 3. | Credit Note issued on behalf of Broker Right Investments Consulting Company. | 23.07.2014 | 1,12,200/- |
| Total | | | 9,61,822/- |

8. That after receiving the aforesaid amount the respondent issued provisional allotment letter dated- 29.11.2014 with detailed payment schedule for flat no.-G-602, located on 6th floor in tower-G, in the aforesaid project against the total consideration amount of Rs.74,14,325/- . The complainant opted for the construction linked payment plan for payment of balance consideration amount.
9. The respondent again raised demand of Rs.6,67,585/- vide demand notice cum invoice dated-21/3/15 in corresponding to the alleged stage

of construction: "Commencement of Excavation" which was also duly paid by the complainant in three parts in the given manner:

| S. No. | Mode of Payment | Amount |
|---------------|--|------------|
| 1. | Cheque No.- 098562 Dated- 10/6/2015 (ICICI Bank) | 5,43,145/- |
| 2. | Credit Note issued on behalf of Broker Right Investments Consulting Company. | 1,12,200/- |
| 3. | TDS & Delay Penalty | 18,743/- |
| Total: | Rs.6,74,088/- | |

10. Thereafter, the parties to the case entered into apartment buyer agreement dated-10/6/2015 in respect of said residential flat no.-G-602, 6th floor, tower-G, with super area 1275 sq.ft in the afore-said Group Housing Project: "ARETE", Village Dhunela, Sector-33, Sohna, Gurgaon, Haryana.
11. Accordingly under apartment buyer agreement dated-10/6/2015, it was specifically and categorically assured by the respondent that it shall handover the said residential unit within 48 months of execution of the apartment buyer agreement dated-10/6/2015 with a grace period of 6 months. It means that, the respondent was supposed to handover the said unit along with all required amenities and facilities which are fairly necessitated and promised under the said brochure/booking form/ letter of allotment/ apartment buyer agreement; by 9/6/2019 and at most 9/12/2019 (Including 6 months of extension/grace period).

12. Accordingly, the complainant had deposited a total sum of Rs.19,35,910/- (including Brokerage amount of Rs.2,24,400/- adjusted and respective credit notes issued)) by the date of execution of said apartment buyer agreement dated-10/6/2015.
13. However, after the initial excavation work at the tower site, there was no progress in construction at the site. It appears that respondent with fraudulent intention to cheat, to lure and persuade the public at large to book and invest in the said project, initiated excavation work at the tower site, but after receiving substantial amount, the respondents have abandoned the tower site. The complainant repeatedly approached the respondents personally as well as via email communication, requested them to increase the pace of work and handover the booked flat in stipulated time. But a part of frivolous assurances, nothing constructive was yield out, causing lots of immense mental agony, physical harassment & financial loss to the complainant. In such scenario, the complainant via emails dated- 6/5/2017, 30/5/2017 & 12/11/2017 requested the respondent either to refund the deposited amount along with interest & inflation amount or shift/transfer his booking into their other project in-progress.
14. However, the respondents with malafide intentions to usurp the hard-earned money, kept mum and did not put heed to the requests of the complainant to transfer his booking in another project. Hence, having no other option left, the complainant demanded for the refund of his entire deposited amount of along with the interest and inflation amount through emails dated- 29.05.2018 and 05.01.2019. But again, respondent opted to not to reply to his emails.

15. Hence, in the constrained circumstances, the complainant sent a legal notice on dated- 31.01.2019 through counsel calling upon the respondents for compliance of their obligation to handover the said residential unit within the stipulated time frame or to refund the deposited amount. The complainant also filed a complaint before Economic Offences Wing, Gurugram in hope that good sense would prevail on the respondents, and they would refund the deposited amount but again with no positive results.
16. That the respondents have utterly failed to perform according to the terms and conditions of said agreement. However, the pace of construction in the entire project is utterly slow. Moreover, there was/is no construction at the site after initial excavation work at the Tower site. The respondent in fact has abandoned the tower site which is verified from the fact that respondent has not demanded or raised any further invoice after the last invoice/demand letter dated- 21.03.2015 corresponding to initial excavation work at the tower site, thereby giving reasonable apprehension to the complainant that respondents would not be able to handover the unit within the stipulated timeframe since. Henceforth, the complainant preferred to file RERA complaint no.- HRR/GGM/CRN/773/2019, titled as Manoj Kumar Tyagi & Anr. Vs ILD, before this Hon'ble Tribunal. Though the respondent filed reply to the complaint but failed to raise any substantial ground of defence. However, it was observed by the Hon'ble Tribunal that complaint was filed in CRA format and direction was given to file in CAO form. Hence, the previous counsel representing the complainant preferred to withdraw the case with liberty to file fresh on the same cause of action.

17. The respondents accepted the booking at pre-launch stage without all necessary approvals from the governing authority(s) in grave contravention of law. Timely delivery of the unit with projected methodology of construction was the essence/spirit of the contract between the parties of the case. Hence, the complainant is entitled for refund under the provisions of section 18 of RERA. The faith of the complainant over the respondents has completely shattered. The respondents have acted arbitrarily and unilaterally. The misdeeds and omissions on the part of respondents are self-evident and without any fair, just and rational justification. Besides, it is opposed to the public policy, equity and fair play and are not unsustainable in the eyes of law. The complainant is the aggrieved party and is entitled for the relief of refund of the paid up amount besides interest from the respondent.

C. Relief sought by the complainant:

18. The complainant has sought following relief(s):

- i. Direct the respondent to refund the entire amount along with prescribed rate of interest.

D. Reply by respondents:

The respondents by way of written reply made following submissions:

19. That at the outset each and every averment, statement, allegation, contention of the complainant which is contradictory and inconsistent with the reply submitted by the respondent is hereby denied and no averment, statement, allegation, contention of the complainant shall deem to be admitted save as those specifically admitted to be true and correct. It is respectfully submitted that the same be treated as a specific

- denial of the complaint. The respondent is a leading real estate company aiming to provide state of art housing solutions to its customers and have achieved a reputation of excellence for itself in the real estate market.
20. That the complaint, filed by the complainant, is bundle of lies and hence liable to be dismissed as it is filed on baseless grounds.
 21. That the complainant has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. The complainant is raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
 22. That the complainant has not approached the authority with clean hands and has suppressed relevant material facts. It is submitted that the complaint under reply is devoid of merit and the same should be dismissed with cost.
 23. It was submitted that an affidavit is utmost necessary for filing any complaint before any court or the Authority. It is submitted that no pleadings or documents in the complaint can be relied upon without verifying the same by filing a duly attested proper affidavit. The present complaint has been filed without an affidavit to verify the truthfulness of the averments made under the complaint. Therefore, for the said reason, the present complaint is liable to be dismissed with heavy cost.
 24. At the outset in 2013, the complainant, learnt about the project launched by the respondents titled as 'Arete' (herein referred to as 'Project') and approached them repeatedly to know the details of the said project. The complainant further inquired about the specification and veracity of the

- project and was satisfied with every proposal deemed necessary for the development of the project.
25. That after having keen interest in the project constructed by the respondents, the complainant booked a flat unit i.e., one residential 2BHK flat with tentative super area of 1250 Sq. ft. in the project. Thereafter, the respondents issued the provisional allotment letter to him on 29.11.2014 against booking in the Arete project and allotted apartment bearing no. G-602, located on the 6th floor in Tower-G, admeasuring super area of 1275 Sq. Ft.
26. That on 10.06.2015, a builder buyer agreement was executed between the parties wherein the unit admeasuring super area of 1275 Sq. Ft. at Village Dhunela, Sector-33, Tehsil Sohna, Gurugram, was allotted to the complainant in the said project of the respondent. It is submitted that the complainant was aware of the project and was also satisfied with every proposal deemed necessary for the development of the project in question.
27. It is a matter of fact, that time was essence in respect to the allottee's obligation for making the respective payment. And, as per the agreement so signed and acknowledged the allottee was bound to make the payment of instalment as and when demanded by the respondent. The relevant clause 8 is of the said agreement.
28. It was submitted that the project was got delayed due to reasons beyond control of the respondent. It was further submitted that major reason for delay for the construction and possession of project is lack of infrastructure in the said area. The twenty-four- meter sector road was not completed on time. Due to non- construction of the sector road, the

respondent faced many hurdles to complete the project. The aforementioned road has been recently constructed.

29. It was submitted that the building plan has been revised on 16.06.2014 vide Memo No. ZP370/AD(RA)/2014/16 dated 16/06/2014 and further revised on 21.09.2015 vide Memo No. ZP370/AD(RA)/2015/18145 dated 21/09/2015. It is further submitted that the building plan has been changed for the benefit of the purchaser/allottee and due to that reason the project got delayed.
30. It is submitted that in the agreement, the respondents had inter alia represented that the performance by the company of their obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to time by the Company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.
31. That due to ban levied by the competent authorities, the migrant labour was forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Despite, lifting of ban by the Hon'ble court, the construction activity could not resume at full throttle due to such acute shortage.
32. It was submitted that the project was not completed within time due to the reasons mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008

whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affected the progress of the project.

33. In past few years the construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L- 49 dated 25.10.2019 banned construction activities in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L- 53 dated 01.11.2019.
34. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labour to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the construction activities could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
35. The demonetization and new tax law i.e., GST, affected the development work of the project. In the view of the facts stated above it is submitted

that the respondent has intention to complete the project soon for which it is making every possible effort in the interest of allottees of the project.

36. Even before the normalcy could resume, the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and such period shall not be added while computing the delay.
37. The Covid-19 pandemic has resulted in serious challenges for the project with no available labour, contractors etc. for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020- DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, and construction activities. In pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.

38. It is an evident fact the respondent had been running after the complainant for the timely payment of instalments due towards the unit in question. In spite of being aware of the payment schedule, the complainant has failed to pay the instalment on time.
39. That the respondents are committed to complete the development of the project at the earliest for which every necessary action is being taken by it. It is further submitted that as the development of the project was delayed due to the reasons beyond the control of the respondent, the complainant is not entitled for compensation in any which way and the same was agreed between them under clause 10.1, 10.2, 10.3, 10.4, and clause 18. Therefore, the complainant is not entitled for compensation for delay.
40. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondents are nothing but an afterthought and a concocted story. Hence, the complaint filed by the complainant deserves to be dismissed with heavy costs for wasting the precious time and resources of the Ld. Authority. The complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
41. All other averments made in the complaint were denied in toto.
42. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

E. Jurisdiction of the authority:

43. The plea of the respondents regarding lack of jurisdiction of Authority is rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

44. 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

45. 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)(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.

46. 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 complainant at a later stage.

F. Findings on the objections raised by the respondents:

F.1 Objections regarding delay due to force majeure:

47. The respondent-promoter raised the contention that the construction of the project was delayed due to conditions beyond its control such as non-construction of sector roads by Government, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the months of April, 2015 and again in November, 2016 along with demonetization and new tax law i.e., GST. All these factors affected the development work of the project. First of all, the orders of High Court in the year 2012 do not have any impact on the project as the same were passed even before the apartment buyer's agreement was executed between the parties. Secondly, the orders banning construction and extraction of ground water were imposed for a very short duration and thus, a delay of such a long duration cannot be justified by the same. The plea regarding delay due to GST and demonetisation is also devoid of merit and thus, all the pleas stand rejected. The promoter-respondents cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

G. Entitlement of the complainant for refund:

G.I Direct the respondents to refund the amount deposited by the complainant along with interest at the prescribed rate.

48. The complainant booked a unit in the respondents' project and was allotted unit no. 602, 6th floor in tower G vide allotment letter 29.11.2014. A buyer's agreement in this regard was executed between the parties on 10.06.2015. As per clause 10 of the said agreement, the possession of the unit was to be given within a period of 48 months from date of execution of the agreement along with a grace period of 6 months. Given the fact that the grace period was unqualified, the due date of possession comes out to be 10.12.2019.
49. During the in course of proceedings, the authority vide its order dated 15.09.2022, appointed Executive Engineer to check and submit a report w.r.t. physical progress of the tower/block where the unit of the complainant is situated. Shri Nikhil Sharma Executive Engineer visited the project site and submitted report dated 16.11.2022 and the relevant part of the report is reproduced hereunder: -

"1. Only structure work and brickwork for towers A, B, C and D is completed upto 14th, 15th, 14th and 13th floors respectively. Further basement floor for tower E has been casted till date.

2. The work for complainant towers i.e., Tower G has not been started till date. Further as per site conditions, it seems work at the site has been stopped.

3. Internal development works such as construction of roads, sewerage system, water supply and electrical works have not been started till date except a small patch of internal road approximately 20-25 meter has been constructed at site".

50. As per the report of executive engineer of authority detailed above, and no objections being filed to the same by either of the party, the unit of the complainant is situated in tower G and the work in that tower has yet not started.
51. In view of aforesaid circumstances, the authority is of considered view that the due date of handing over of possession comes out to be 10.12.2019 & it has already expired. Even as per report of executive engineer of authority dated 16.11.2022, the construction of tower G in which the unit of the complainant is situated has yet not started.
52. The Hon'ble Supreme Court of India in the case of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors., 2021-2022(1) RCR (civil), 357* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022 and wherein it was 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.

53. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
54. This is without prejudice to any other remedy available to the allottee including compensation for which he may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
55. The authority hereby directs the promoters to return the amount received by him i.e., **Rs. 17,11,510/-** with interest at the rate of 10.35 % (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the Authority:

56. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.

- i. The respondent/promoters are directed to refund the amount i.e., **Rs. 17,11,510/-** received by them from the complainant/allottee along with interest at the rate of 10.35% 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 amount.
- ii. The respondent/promoters are directed not to create third party rights over the allotted unit till the payment of the amount received from the complainant is paid. If any negotiations for sale of that unit are made, then the receivables from that unit would be paid to the complainant and the remainder if any is liable to be retained by them.
- iii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

57. Complaint stands disposed of.

58. File be consigned to the registry.



Sanjeev Kumar Arora
Member



Ashok Sangwan
Member



Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.12.2022