

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

Complaint no.:	1252 of 2018
First date of hearing:	02.09.2019
Date of decision:	03.08.2022

1. Mr. T.C Arora
2. Raj Arora
R/o Hno. 537 Sector 7, Gurugram.

Complainants

Versus

M/s Ansal Housing Ltd.
Office address: 2nd Floor, Ansal Plaza, Sector 1, Vaishali,
Ghaziabad, UP-201010

Respondent

CORAM:

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri. TC Arora (complainants in person)
Smt. Meena Hooda (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint dated 29.03.2019 has been filed by the complainants/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the

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

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Townwalk", Sector 104, Gurugram.
2.	Total area of the project	2.1 acres
3.	Nature of the project	Commercial project
4.	DTCP license no.	103 of 2012 dated 01.10.2012 valid up to 30.09.2016
5.	Name of licensee	Jagrati Realtors Pvt. Ltd.
6.	Registered/not registered	Not Registered
7.	Unit no.	SHOP-133 [annexure P2, pg. 25 of complaint]
8.	Area of the unit	445.81 sq. ft. [annexure P2, pg. 25 of complaint]
9.	Date of execution of buyer's agreement	06.02.2014 [annexure P2, pg. 22 of complaint]
10.	Possession clause	Clause 30. <i>30. The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely</i>



		<p>payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.</p> <p>(Emphasis supplied)</p> <p>[annexure P2, pg. 30 of complaint]</p>
11.	Due date of possession	06.02.2018 (Note: 42 months from date of agreement i.e., 06.02.2014 as date of start of construction is not known + 6 months grace period allowed being unqualified)
12.	Delay in handing over possession till the date of filing of this complaint i.e., 29.03.2019	1 year 1 month 23 days
13.	Basic sale consideration as per BBA at page 25 of complaint.	₹ 36,27,555.94/-
14.	Total amount paid by the complainants as per sum of receipts	₹ 38,45,743.43/-
15.	Legal notice for refund of the amount paid by the complainants	05.02.2019 [annexure P4, pg. 40 of complaint]
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants pleaded the complaint on the following facts:
 - a. That the complainants came across advertisements/brochures during October 2012 that the respondent Company (formerly known as M/s Ansal Housing & Construction Limited) claiming itself to be a renowned Developer is launching a commercial

project in the name of 'Ansals Town walk' at Sector 104, Gurugram, Haryana. Based on the presentations of the agents/officials of the respondent that the project will be developed completely in three and half years, the complainants booked a shop/office unit in the project floated by the respondent. The complainants were shown site plans from the brochure and other printed material. At the time of the initial application/booking, the complainants paid an amount of Rs.4,00,000/- vide cheque no. 043868 dated 26.10.2012 towards advance registration and signed an application for allotment on 01.01.2013.

- b. That the complainants further paid Rs.13,34,611/- in four instalments as per demand from the respondent before entering into shop/office buyer's agreement on 06.02.2014 wherein shop-133 having sale area of 445.81 sq. ft. (41.41 sq. mtrs.) at a preferential location-plaza facing at a total basic sale consideration of Rs.36,27,555/- net of discount but inclusive of PLC was provisionally allotted to the complainants. An amount of Rs. 7,25,511.18/- (20% of basic sale price) was specifically marked as earnest money in the shop/office buyer's agreement.
- c. That the respondent is deficient in service, inasmuch as, they intentionally delayed the execution of the shop/office buyer's agreement for almost 13 months. However, at the time of booking of the shop/office the complainants were assured that the possession of the shop/office will be given within 42 months from the date of booking and not from the date of execution of the shop/office buyer's agreement. Therefore, essentially, the effective



- date for calculating the time of delivering possession should be the date on which booking was made after charging substantial consideration that is 26.10.2012 and not the date when shop/office buyer's agreement was executed i.e., 06.02.2014.
- d. That as per clause 30, the shop/office buyer's agreement stipulated that the possession of the shop/office shall be offered within a period of 42 months from the date of execution of shop/office buyer's agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction. Further there shall be a grace period of 6 months allowed to the developer. Although the respondent received sale consideration in parts between 26.10.2012 to 31.05.2018 yet dishonestly, starting date for the commitment period of 42 months for handing over of the possession was not specifically stated. The payment plan was construction linked but the developer failed to provide report on construction status of the project before raising demand of instalments.
- e. That the shop/office buyer's agreement is unilateral, arbitrary, and contrary to the well accepted norms of the industry followed by all leading developers. The conduct of the respondent amounts to unfair trade practice. The only person benefitting from the aforesaid act of delay in signing the shop/office buyer's agreement is the respondent, inasmuch as, it fraudulently attempted to defer its liability to raise the construction, which otherwise ought to have been commended on the date of acceptance of the booking amount.

- f. That the total sale consideration of the shop/office is Rs. 36,27,555.94/- (pre-escalation) out of which the complainants had paid Rs. 38,45,743.43/- (including taxes) till date. It is matter of record that the complainants have paid all instalments as per the demand raised by them. The complainants are always ready and willing and had resources for payment of the balance amount, if any, computed and found payable after taking into consideration the compensation receivable by the complainants.
- g. That again, RERA requires that demand should be calculated based on carpet area, but in the present case, the demand has been calculated on sale area basis without intimating the actual carpet area of the shop/office. The respondent is fraudulently charging excess consideration by calculating total price of the shop/office based upon tentative sale area. The provisions of the Act of 2016 being now applicable even to the ongoing projects, especially, model sale agreements provided in terms of rule 8, having statutory flavor should be read into the buyer's agreement and the respondent should be punished.
- h. That the project is far from completion. A legal notice was sent to the respondent on 05.02.2019 to hand over the physical possession by 28.02.2019. The notice was received by the respondent on 12.02.2019 at Ghaziabad address and on 08.02.2019 at Delhi address but the respondent had deliberately avoided to reply or confirm the date of handing over of physical possession of the shop/office.



- i. That the respondent had failed to abide by the contractual terms stipulated in the shop/office buyer's agreement and it is in breach of the same. The cause of action to file the complaint is continuing as the respondent had failed to deliver possession of the developed shop/office as per buyer's agreement.
- j. That the respondent had failed to develop the project and is misusing unilateral and one-sided terms of the shop/office buyer's agreement to further harass the Complainants who are senior citizens. It is stated that clause no. 23 of the shop/office buyer's agreement stipulated for 24% per annum compoundable interest (compounded quarterly) in case of delay in payment of sale consideration and therefore, in terms of the Act of 2016, the complainants are entitled to same rate of interest for delayed period in handing over of the physical possession of the shop/office duly completed in all respect.

C. Relief sought by the complainants:

4. The complainants have sought following reliefs:
 - a. Direct the respondent to refund entire amount paid by the complainants along with the interest.
 - b. Compensation for mental agony & cost of litigation.
5. Any On the date of hearing, the authority explained to the respondents/promoters about the contravention 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 has contested the complaint on the following grounds:

- a. That the present complaint is not maintainable in law or on facts. The complainants have filed the present complaint seeking refund and interest for alleged delay in delivering possession of the unit/ space booked by the complainants. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of Act, 2016 read with rule 29 of the Rules, 2017 and not by this authority. The present complaint is liable to be dismissed on this ground alone.
- b. That even otherwise, the complainants have no locus-standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 06.02.2014, as shall be evident from the submissions made in the following paragraphs of the present reply.
- c. That the complainants approached the respondent sometime in the year 2013 for purchase of an independent unit in its upcoming residential project "Ansal Town walk" situated in sector-104, Village Dhanwapur, Gurugram. It is submitted that the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainants took an independent and informed decision to



- purchase the commercial unit, un-influenced in any manner by them.
- d. That thereafter the complainants vide application form dated 01.01.2013 applied to the respondent for provisional allotment of a commercial unit in the project. The complainants, in pursuance of the aforesaid application form, was allotted an independent unit shop bearing no.133, sales area 445.81 sq. ft. (41.41 Sq. mtrs.), at the rate of Rs.7,900/- per sq. ft. along-with preferential location plaza facing at the rate of Rs.395/- per sq. ft. The complainants consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants. The complainants further undertook to be bound by the terms and conditions of the application form.
- e. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and have diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period as given by the respondent to the authority.
- f. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainants within time had there been no force majeure circumstances beyond the control of the

respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors in delaying giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only buy liquid cash. The sudden restriction on withdrawals led the respondent to be unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana Government.

- g. That the complaint is not maintainable or tenable under the eyes of law as the complainants has not approached this authority with clean hands and have not disclosed the true and material facts relates to this case of complaint, thus, the complainants has approached this authority with unclean hands and has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been discloser of these material facts and proceedings the

question of entertaining the present complaint would have not arising in view of the case law titled as ***S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994(1) SCC*** page 1 in which the Hon'ble Apex Court of the land opined that non-discloser of material facts and documents amounts to a fraud on not only the respondent company, but also upon the authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as ***Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012*** decided on 25.09.2013.

- h. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants seeking interest cannot be called in-to aid in derogation and ignorance of the provisions of the buyer's agreement.
- i. That without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by limitation. The complainants himself alleged that the possession of the commercial unit was to be given not later than February 2014 and therefore, cause of action, if any, accrued in favour of the complainants in

February 2014. Thus, the complaint seeking interest as a form of indemnification for the alleged delay is barred by limitation.

- j. That several allottees, including the complainants, have defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualization and development of the project. Furthermore, when the proposed allottees default in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is further submitted that the respondent had applied for registration with the authority of the said project by giving a fresh date for offering of possession, which is up to the end of 2020. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

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.

E. Jurisdiction of the authority



8. 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

9. 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

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation

which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (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."

13. 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 relief sought by the complainants



F.I. Direct the respondent to refund entire amount paid by the complainants along with the interest.

14. 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)

15. Clause 30 of the BBA dated 06.02.2014 provides for the handing over of possession and is reproduced below for the reference:

"30. The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and

above the period of 42 months as above in offering the possession of the unit."

16. At the outset, it is relevant to comment on the pre-set 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 agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters 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 flat buyer agreement by the promoters are 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.

Admissibility of grace period: The promoter has proposed to hand over the possession of the apartment within a period of 42 months plus 6 months from date of agreement or the date of commencement of construction which whichever is later. The due date of possession is calculated from the date of execution of agreement i.e., 06.02.2014. The period of 42 months expired on 06.08.2017. Since in the present matter



the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified.

17. **Admissibility of refund along with prescribed rate of interest:** The complainants is seeking refund the amount paid alongwith interest at the prescribed rate. However, the allottee 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.”

18. 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.
19. 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., **03.08.2022** is 7.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.80%.
20. Keeping in view the fact that the allottee complainants wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure

of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per agreement for sale as mentioned in the table above is 06.02.2018 and there is delay of 1 year 1 month 23 days on the date of filing of the complaint.

21. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021:***

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

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

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the



Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed"

23. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
24. This is without prejudice to any other remedy available to the allottee including compensation for which allottee 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.
25. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 38,45,743.43/- with interest at the rate of 9.80% (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*.

F.II. Compensation for mental agony.

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

G. Directions of the authority

27. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the entire amount of Rs. 38,45,743.43/- paid by the complainants along with prescribed rate of interest @ 9.80% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the 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 builder is directed not to create third party right against the unit before full realization of the amount paid by the complainants. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainants-allottee.

28. Complaint stands disposed of.

29. File be consigned to registry.

V.K.
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.08.2022

[Signature]
(Dr. K.K. Khandelwal)

Chairman

