

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

Date of decision: 31.08.2022

NAME OF THE BUILDER		ANSAL HOUSING & CONSTRUCTION LTD.	
PROJECT NAME		ANSAL HEIGHTS 86	
S. No.	Case No.	Case title	APPEARANCE
1	CR/601/2019	Ajay Yadav V/s Ansal Housing & Construction Ltd.	Shri. Sushil Yadav Smt. Meena Hooda
2	CR/544/2021	Rajat Gera V/s Ansal Housing & Construction Ltd.	Shri. Rajat Gera Smt. Meena Hooda

CORAM:Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal**Chairman**
Member**ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project.

namely, "Ansal Heights 86" (group housing colony) being developed by the same respondent/promoter i.e., M/s Ansal Housing & Construction Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	ANSAL HOUSING & CONSTRUCTION LTD "ANSAL HEIGHTS 86" Sector-86, Gurugram.
Possession Clause: - 31	<p><i>"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 32. 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."</i></p> <p style="text-align: right;">(Emphasis supplied)</p>
Occupation certificate: - Not obtained	
Note: Grace period is allowed being unqualified & included while computing due date of possession.	

Sno.	Complaint No. & Case Title	CR/610/2019 Ajay Yadav V/s Ansal Housing & Construction Ltd.	CR/544/2021 Rajat Gera V/s Ansal Housing & Construction Ltd.
1.	Reply status	Reply received on 01.08.2022	Reply received on 29.06.2021
2.	Unit no.	G-1103 [pg. 17 of complaint]	F-0801 [pg. 72 of complaint]
3.	Date of apartment buyer agreement	14.12.2012 [pg. 14 of complaint]	03.06.2013 [pg. 54 of complaint]
4.	Due date of possession	01.10.2017	01.10.2017
(Note: 42 months from date of start of construction i.e., 01.10.2013 being later + 6 months grace period allowed being unqualified)			
5.	Total Consideration / Total Amount paid by the complainant(s)	BSP: ₹ 46,95,707/- AP: ₹ 49,85,745/-	TSC: ₹ 61,00,675.5/- AP: ₹ 60,05,114/-
6.	Relief sought	1. Refund the entire amount paid by the complainant along with the interest. 2. Compensation & cost of litigation.	1. Refund the entire amount paid by the complainant along with the interest. 2. Compensation

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/601/2019 Ajay Yadav V/s Ansal Housing & Construction Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.

A. Project and unit related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/601/2019 Ajay Yadav V/s Ansal Housing & Construction Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Heights-86", Sector 86, Gurugram.
2.	Total area of the project	12.843 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	48 of 2011 dated 29.05.2011 valid upto 28.05.2017
5.	Name of licensee	Resolve Estate Pvt. Ltd.



6.	Registered/not registered	Not registered
7.	Unit no.	G-1103 [pg. 17 of complaint]
8.	Area of the unit	1360 sq. ft. [pg. 17 of complaint]
9.	Date of execution of buyer's agreement	14.12.2012 [pg. 14 of complaint]
10.	Possession clause	31. <i>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 32. 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.</i> (Emphasis supplied) [page 22 of complaint]
11.	Date of start of construction from another complaint of similar project	01.10.2013
12.	Due date of possession	01.10.2017 (Note: 42 months from date of start of construction i.e., 01.10.2013 being later + 6 months grace period allowed being unqualified)

13.	Delay in handing over possession till the date of filing of this complaint i.e., 08.02.2019	1 year 4 months 7 days
14.	Basic sale consideration as per BBA at page 17 of complaint.	₹ 46,95,707/-
15.	Total amount paid by the complainant as per sum of receipts	₹ 49,85,745/-
16.	Offer of possession	Not offered

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -

- a. That the respondent gave advertisement in various leading newspapers about their forthcoming project named Ansals Heights, Sector 86 Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements Mr. Ajay Yadav, booked an apartment/flat admeasuring 1360 sq. ft. in aforesaid project of the respondent for total sale consideration is Rs 5244265/- which includes BSP, car parking, IFMS, Club membership, PLC etc.
- b. That as per the flat buyers' agreement the respondent had allotted unit no. G-1103 in Tower G admeasuring 1360.00 Sq. Ft. in Ansals Heights, Sector 86 to the complainant. As per para-no.31 of the builder buyer agreement, the respondent had agreed to deliver the possession of the

- flat within 42 months from the date of approval of building plans or start of construction plus a grace period of six months.
- c. That complainant regularly visited the site but was surprised to see that construction work was very slow in progress and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to make payments for the project without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant. That despite receiving the payment as demands raised by the respondent for the said Flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted Flat to the complainant within stipulated period.
- d. That it could be seen that the construction of the project in which the complainant flat was booked with a promise by the respondent to deliver the flat by 14.12.2016 but was not completed within time for the reasons best known to the respondent, which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.
- e. The complainant visited the site but are shocked to see that construction was going on very slow speed then the complainant contacted the respondents through mails and personal visit, about the project but the respondent did not give any satisfactory answer and complainant had paid Rs. 49,85,245/- by then as and when demanded

by the respondent but the construction was going on at a very slow speed and even the respondent did not know when they would be able to deliver the project.

- f. That due to this omission on the part of the respondent the complainant has been suffering from disruption, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the flat on time or refunded the money. As per clause 37 of the flat buyer agreement dated 14.12.2012 it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.5/- per sq. ft. per month of the super area of the apartment/flat. It is, however, pertinent to mention here this is unjust and the respondent has exploited the complainant by neither providing possession of the flat even after a delay nor refunded the amount paid by the complainant. The respondent cannot escape liability merely by mentioning a clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyers' agreement and usurp such a huge amount of the complainant.
- g. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent to refund the amount along with interest @ 24% per annum on the amount deposited by the complainant, but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge

amount and wrongfully gain himself and caused wrongful loss to the complainant.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)
 - a. Refund the entire amount paid by the complainant along with the interest.
 - b. Compensation for mental agony (₹ 5,00,000/-) & cost of litigation (₹ 55,000/-).
10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

11. The respondent has contested the complaint on the following grounds.
 - a. That the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this authority. The complainant has filed the present complaint seeking refund and interest for alleged delay in delivering possession of the unit booked by the complainant. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under Section 71 of the Real Estate (Regulation and Development) Act, read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, and not by this authority. The present complaint is liable to be dismissed on this ground alone.

- b. The relief sought in the complaint by complainant is based on false and frivolous grounds and they are not entitled to any discretionary relief from this hon'ble authority as the person does not come with clean hands may be thrown out without going into the merits of the case. However, the true facts of the case are that the land of the project is owned and possessed by the respondent through its subsidiary M/s Resolve Estates Pvt. Ltd., having its Registered Office at 153, Okhla Industrial Estate, Phase-III, New Delhi-110020. The said company has under an arrangement granted, conveyed and transferred all its rights, entitlement and interest in the development, construction and ownership of the total permissible FSI on the land aforesaid to M/s Optus Corona Developers Pvt. Ltd., having registered office at J 181, Saket, New Delhi. The said M/s Resolve Estates Pvt. Ltd. has further under an arrangement granted, conveyed and transferred all its rights, entitlement and interest in the development, construction and ownership of the total permissible FSI on the land aforesaid to M/s Samyak Project Pvt. Ltd., having its registered office at 111, First Floor, Antriksh Bhawan, K.G. Marg, and New Delhi.
- c. The respondent is a public limited company registered under the Companies Act, 1956 having its registered office at 606, Indraprakash, 21, Barakhamba Road, New Delhi-110001. The present reply is being filed by the respondent through its duly authorized representative

named Mr. Vaibhav Chaudhary, whose authority letter is attached herewith. The above said project relates to License no.48 of 2011 dated 29.05.2011 received from the Director General Town and Country Planning (DGTCP), Haryana, Chandigarh over the land measuring 12.843 acres comprising in Rect. No.19, Killa No.3 Min (6-0), 4 (8-0), 5 (8-0), 8/1 (0-8), 13/2 (0-8), 1/1 Min (0-4), 17/1 (17/1 (5-14), 24/2/1 (1-8), 25 (8-0), 7 (8-0), 14 (8-0), 17/2 Min (0-18), Rect. No.14, Killa No.19 (8-0), 20 (8-0), Rect. No.15, Killa No.14/2 (3-7), 16 (8-0), 17 (8-0), 24/1 (4-8), 22/2 Min (0-5), 23 Min (7-15) situated within the revenue estate of Village Nawada-Fatehpur, Gurugram, which falls within Sector-86, Gurugram, Manesar-Urban Development Plan. The building plans of the project have been approved by the DGTCP; Haryana vide memo no. ZP-781/D/(BS)/2013/50373 dated 03.09.2013. Thereafter, respondent herein was granted the approval of firefighting scheme from the fire safety point of view of the housing colony measuring 12.843 acres by the Director, Haryana Fire Service, Haryana, Chandigarh vide letter memo no. DFS/F.A./2015/326/66492 dated 24.11.2015.

- d. That, even otherwise, the complainant has no locus-standi and 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 flat

buyer's agreement dated 14.08.2012, as shall be evident from the submissions made in the following paragraphs of the present reply.

- e. That, since the Real Estate (Regulation of Development) Act, 2016, and the Haryana Real Estate (Regulation of Development) Rules, 2016, came into force, the respondent has decided and has already been applied for the registration of the project named ANSALS HEIGHTS with the authority.
- f. The complainant approached the respondent sometime in the year 2011, for the purchase of an independent unit in its upcoming, residential project "ANSALS HEIGHTS" (hereinafter be referred to as "the project") situated in Sector-86, Village Nawada-Fatehpur, Gurugram. It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant were 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 complainant took an independent and informed decision to purchase unit, un-influenced in any manner by the respondent.
- g. That, thereafter, complainant through an application form dated 08.12.2011, applied to the respondent for provisional allotment of a unit in the project. The complainant in pursuance of the aforesaid

- application form, were allotted the unit bearing no. G-1103, type of unit 2 BHK, sales area 1360 sq. ft., (126.35 sq. mtrs.), in tower -G, in the project, namely, ANSALS HEIGHTS, situated at Sector 86, Village Nawada Fatehpur, Gurugram. The complainant consciously and willfully 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 complainant shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant. The complainant further undertakes to be bound by the terms and conditions of the application form and the flat buyer's agreement as well.
- h. That, it is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has 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 had there been no force majeure.
- i. 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 complainant well 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, excavation work causing air quality index being worse, maybe harmful to the public at large without admitting any liability. Apart from these, the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only by liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labor pressure. However, the respondent is carrying its business in letter and spirit of the flat buyer's agreement as well as in compliance of other local bodies of Haryana Government as well as Government of Haryana or the Centre Government and autonomous body, as the case may be. Apart from this, the Union of India and respective States including Haryana State in order to breakout the surge of global pandemic, named, COVID-19, has imposed the lockdown throughout India and Haryana State, due to which construction work is almost stopped since March 2020, the respondent could not resume the same

because all the labors under the scare-of lockdown left for their houses, by leaving the project in mid. The lockdown was beyond the control and command of the respondent.

- j. That, it is submitted that the complaint is not maintainable and tenable under the eyes of law, as the complainant have not approached the hon'ble authority with clean hands and not disclosed the true and material facts relates to this case of complaint. The complainant, thus, have approached the hon'ble authority with unclean hands and suppressed and concealed the material facts and proceedings which has direct bearing on the very maintainability of purported complaint and if there had been disclosure 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-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the hon'ble 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.
- k. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant 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 complainant seeking interest, compensation and interest cannot be called in to aid in derogation and ignorance of the provisions of the flat buyer's agreement. It is further submitted that the interest and compensation for the alleged delay demanded by the complainant is beyond the scope of the flat buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the flat buyer's agreement. However, in view of the law as laid down by the hon'ble Bombay High Court in case titled as Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR(C) 298, the liberty to the promoters/developers has been given U/s 4 to intimate fresh date of offer of possession while complying with the provisions of Section 3 of the RERA Act, as it was opined that the said Act, namely, RERA, is having prospective effect instead of retrospective.

- l. That, without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by law of limitation. The complainant has alleged that due date of possession in respect of the said unit was 13.08.2016, and therefore, no cause of action is arisen in favor of the complainant on 13.08.2016, therefore, the present complaint is barred by law of limitation and the hon'ble authority lacks jurisdiction.
- m. That, it is submitted that several allottee(s) including complainant, have defaulted in timely remittance of payment of instalment which was/is an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees defaulted 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 evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully

submitted that the present complaint deserves to be dismissed at the very threshold.

n. That, as far as labor cess, firefighting works and Haryana VAT/ and GST are concerned, the Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the flat buyer's agreement, vide which complainant were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainant further agreed to pay his proportionate share in any future enhancement additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.

12. 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.

13. 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.

14. 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

15. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands 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

16. 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

17. 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.

18. 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.

19. 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."

20. 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 Refund entire amount paid by the complainant along with the interest

21. In the present complaints, the complainant intends to withdraw from the project and is seeking return of the amount paid by him 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)

22. Clause 31 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"31.

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 32. 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."

23. 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 these 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 allottees 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.
24. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment 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. The authority calculated due date of possession from the date of date of commencement of construction i.e., 01.10.2013 being later. The period of 42 months expired on 01.04.2017. Since in the present

matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.

25. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him 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.

26. 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.
27. 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., 31.08.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.
28. 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;”*

29. 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 31 of the agreement executed between the parties on 14.12.2012, the possession of the subject apartment was to be delivered within stipulated time i.e., by April 2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 01.10.2017.
30. Keeping in view the fact that the allottee/complainant 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.

31. The due date of possession as per agreement for sale as mentioned in the table above is 01.10.2017 and there is delay of 1 years 4 months and 7 days on the date of filing of the complaint.
32. 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....."

33. 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."

34. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, 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.
35. 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 complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II Compensation for mental agony & litigation cost

36. The complainant is 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 complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

G. Directions of the authority

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

- i. The respondent/promoter is directed to refund the amount received by it from the complainant along with interest at the rate of 10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent builder is directed not to create third party right against the unit before full realization of the amount paid by the complainant. 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 complainant-allottee.

38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
39. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter. There shall be separate decrees in individual cases.
40. Files be consigned to registry.

V.K.
(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.08.2022

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