

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

Complaint no. : 2229 of 2021  
First date of hearing: 06.07.2021  
Date of decision : 09.08.2022

Smt. Alka Jain  
R/o : A-71, The Pinnacle, Golf Course Road,  
DLF-5, Gurgaon

**Complainant**

Versus

M/s Vatika Limited  
Office: Vatika Triangle, 4<sup>th</sup> Floor, , Sushant Lok-  
Phase-I, Block-A, Mehrauli-Gurgaon Road,  
Gurgaon-122002.

**Respondent**

**CORAM:**

Shri K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Sh. Munish Malik (Advocate)  
Sh. CK Sharma & Dhruv Dutt Sharma  
(Advocate)

**Counsel for the complainant  
Counsels for the Respondent**

**ORDER**

1. The present complaint dated 28.05.2021 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 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations

made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name and location of the project	"Tranquil Heights Ph.-I" at sector 82A, Gurgaon, Haryana
2.	Nature of the project	Group housing
3.	Project area	11.218 acres
4.	DTCP license no.	22 of 2011 dated 24.03.2011 valid upto 23.03.2019
5.	Name of licensee	M/s Ganesh buildtech Pvt. Ltd. & others, C/o Vatika Ltd
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 area admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Unit no.	2602, tower A (page 13 of complaint)
8.	Unit area admeasuring	1635 sq. ft. (Page no. 13 of complaint)
9.	Date of allotment	15.09.2014 (page 13 of complaint)
10.	Date of builder buyer agreement	10.09.2015 (page 14 of complaint)
11.	Due date of possession	10.09.2019
12.	Possession clause	<b>13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT</b> <i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Apartment within a</i>

		<i>period of 48 (Forty Eight) months three years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 14 to 17 &amp; 37 or due to failure of Allottee(s) to pay in time the price of the said Apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure I or as per the demands raised by the company from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.</i> <b>Emphasis supplied</b>
13.	Total sale consideration	Rs. 1,18,01,430/- [as per SOA dated 10.05.2021 on page 119 of reply]
14.	Amount paid by the complainant	Rs. 63,94,197/- [as per SOA dated 10.05.2021 on page 119 of reply]
15.	Occupation certificate	Not obtained

## B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That the complainant had booked an apartment in the group housing colony "VATIKA TRANQUIL HEIGHTS" in sector 82A, Gurugram, Haryana and had published many advertisements for the project to attract the public at large. The complainant was allotted a unit no. 2602 in tower A, 1635 sq. ft., in the said project by respondent and the builder buyer agreement was executed between parties on dated 10.09.2015. The respondent has registered the project with HRERA vide. 359/2017 on dated 17.11.2011 which expired on dated 30.04.2021.

- II. That respondent has breached a clause no. 13 of the builder buyer agreement i.e., possession of unit within 48 months i.e., on or before 10.09.2019. The respondent had executed the builder buyer agreement after a delay of more than one and half year (1.5 year) from the date of booking. It is further stated that the respondent had collected the payment of approx. Rs. 31,55,000/- from the complainant even before executing any written agreement and hence infringing the well settled law u/s 13 of the Act, 2016.
- III. That the construction activity is not going as per the terms of agreement as there is some dispute between the said respondent and farmers. The total sale consideration of the said unit is Rs. 1,18,01,430/-. As per the account statement dated 08.08.2020 provided by the respondent, the complainant has paid an amount of Rs. 63,94,197/-. It is pertinent to mention here that all the payments made by the complainant were on time and without any delay.
- IV. That the possession has been delayed for more than one and half years now and as per the information received from the respondent through email dated 13.08.2020, the project would tentatively be handed over in 3<sup>rd</sup> quarter of year 2022. Thus, on account of facing serious financial and emotional hardship on account of such delay, the complainant wishes to withdraw from the project and seeking refund with interest as prescribed under the Act.
- V. That it is humbly submitted that the complainant has suffered great losses in terms of loss of rental income, opportunity to own and enjoy a home in Gurugram, burden of bank EMI's against the undelivered unit etc. The complainant has not been able to buy another flat in Gurugram as majority of the life's hard-earned money is stuck in this project. The complainant

continue to travel from pillar to post to safeguard the hard-earned money and seek justice. The respondent is liable to compensate its mala-fide acts and deeds causing loss of time, opportunity and resources of the complainant.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s).
  - I. Direct the respondent to refund the paid amount along with interest.
  - II. Direct the respondent to pay Rs. 15,00,000/- towards mental harassment and mental agony, loss of income, bank EMI interest and Rs. 1,50,000/- towards the litigation cost.( Inadvertently Rs. 2,00,000/- written in the proceeding).
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds.
  - a. That at the outset, respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts.
  - b. That the complaint filed by the complainant before the adjudicating officer, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected in filing the above captioned complaint before this adjudicating officer as the reliefs being claimed by her, besides being illegal, misconceived and erroneous,

cannot be said to even fall within the realm of jurisdiction of this adjudicating officer.

- c. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
- d. That the reliefs sought by the complainant appear to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
- e. That the complainant has miserably and willfully failed to make payments in time or in accordance with the terms of the builder buyer's agreement. It is submitted that the complainant has frustrated the terms and conditions of the agreement, which were the essence of the arrangement between the parties and therefore, the complainant now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. The complainant has also misdirected in claiming refund on account of alleged delayed offer for possession.
- f. That the respondent contemplates to complete construction of the said apartment within a period of 48 months from the date of execution of the agreement unless, there shall be delay due to force majeure events and failure of allottee(s) to pay in time the price of the said apartment.
- g. Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond the control of the developer then the developer would be automatically entitled to the extension of time for delivery of possession. Further, the developer may also suspend the



project for such period as it may consider expedient. It has been categorically agreed between the parties that subject to the complainant having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said apartment within a period of 48 months from the date of execution of the agreement unless there shall be delay due to force majeure events and failure of allottee(s) to pay in time the price of the said apartment. Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond the control of the developer then the developer shall be automatically entitled to the extension of time for delivery of possession. Further, the developer may also suspend the project for such period as it may consider expedient.

- h. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:
- i. Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project of the respondent which further constrained the respondent to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the respondent were adversely affected and the respondent was forced to reevaluate its construction plans which caused a long delay.



- ii. Initially, HUDA has to develop the major sector roads for the connectivity of the projects on the licensed land. But no development for the connectivity and movement across the sectors, for ingress or egress was done by HUDA for long time. Later on, due to the change in the master plan for the development of Gurugram, the Haryana Government has decided to make an alternate highway passing through between sector 87 and sector 88 and further Haryana Government had transferred the land falling in sector 87, 88 and others sectors to GMDA for constructing new highway 352 W. Thereafter in a process of developing the said highway 352 W, the land was uplifted by 4 to 5 mtrs. It is pertinent to note that respondent has already laid down its facilities before such upliftment. As a result, respondent is constrained to uplift the project land and re-align the facilities. Thereafter GMDA handed over the possession of the land properties/land falling in NH 352 W to NHAI for construction and development of NH 352 W. All this process has caused considerable amount of delay and thus hampered the project in question which are beyond the control and ambit of developer.
- iii. The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in Air Quality in the Delhi-NCR region, especially during winter months. Among these measures were bans imposed on construction activities for a total period of 70 days between November, 2016 to December, 2019.
- iv. Due to the implementation of MNREGA Schemes by the Central Government, the construction industry as a whole has been facing shortage of labor supply, due to laborer's regularly travelling away from Delhi-NCR to avail benefits of the scheme. This has directly caused a detrimental impact to the respondent, as it has been difficult



to retain laborer's for longer and stable periods of time and complete construction in a smooth flow.

- v. Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana. Disruptions caused by unusually heavy rains in Gurgaon every year.
- vi. Due to the slums in real estate sector, major financial institutions are facing difficulty in providing funding to the developers. As a result, developers are facing financial crunch.
- vii. Declaration of Gurgaon as a Notified Area for the purpose of Groundwater and restrictions imposed by the state government on its extraction for construction purposes.
- viii. Delayed re-routing by DHBVN of a 66KVA high-tension electricity line passing over the project.
- ix. Additionally, imposition of several partial restrictions from time to time prevented the Respondent from continuing construction work and ensuring fast construction. Some of these partial restrictions are:
  - a. Construction activities could not be carried out between 6 p.m. to 6 a.m. for 174 days.
  - b. The usage of Diesel Generator Sets was prohibited for 128 days.
  - c. The entire of truck traffic into Delhi were restricted.
  - d. Manufacturers of construction material were prevented from making use of close brick kilns, Hot Mix plants, and stone crushers.
  - e. Stringently enforced rules for dust control in construction activities and close non-compliant sites.
- x. The imposition of several total and partial restrictions on construction activities and suppliers as well as manufacturers of necessary material required, has rendered the respondent with no option but to incur



delay in completing construction of its projects. This has furthermore led to significant loss of productivity and continuity in construction as the respondent was continuously stopped from dedicatedly completing the project. The several restrictions have also resulted in regular demobilization of labour, as the respondent would have to disband the groups of workers from time to time, which created difficulty in being able to resume construction activities with required momentum and added many additional weeks to the stipulated time of construction

- xi. The Government of India imposed lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic. This severely impacted the respondent as the respondent was constrained to shut down all construction activities for the sake of workers' safety, most of the labour workforce migrated back to their villages and home states, leaving the respondent in a state where there is still a struggle to mobilize adequate number of workers to start and complete the construction of the project due to lack of manpower. Furthermore, some suppliers of the respondent, located in Maharashtra, are still unable to process orders which inadvertently have led to more delay.
- i. Further, it had been also agreed and accepted that in case the delay is due to the force majeure, then the developer shall not be held responsible for delay in delivery of possession.
- j. That it is not disputed that due to the outbreak of Covid 19, the entire world went into lockdown and all the construction activities were halted and no laborer's were available. Inf act all the developers are still facing hardship because of acute shortage of laborer's and even the HRERA, Gurugram has vide order dated 26.05.2020 declared the Covid 19 as a calamity under the force majeure clause and therefore there



cannot be said to be any delay in delivering the possession by the respondent.

- k. That the project "Tranquil Heights" (for Phase-1) has been registered with the authority vide registration no. 359 of 2017. That due to the various reasons and not limited to delay on the part of the allottees, NGT Notifications, Covid-19 pandemic, etc., the construction has been delayed.
- l. That the complainant has failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the buyer's agreement and as such the complaint is liable to be rejected. It is submitted that out of the sale consideration of Rs. 1,18,01,430/-, the amount actually paid by the complainant is Rs. 63,94,197/- i.e. around 54% of the sale consideration of the unit. It is further submitted that there is an outstanding amount of Rs. 6,86,238/- to be paid by the complainant as on 10.05.2021 as per the construction linked plan opted. It is further submitted that the complainant is a real estate investor who has made the booking with the respondent only with an intention to make speculative gains and huge profit in a short span of time. However, it appears that her calculations and planning have gone wrong on account of severe slump in the real estate market and the complainant is now raising several untenable pleas on highly flimsy and baseless grounds. The complainant after defaulting in complying with the terms and conditions of the buyer's agreement, now wants to shift the burden on the part of the respondent whereas it has suffered a lot financially due to such defaulters like the present complainant.
- m. That it is to be appreciated that a builder constructs a project phase wise for which it gets payment from the prospective buyers and the

money received from the prospective buyers are further invested towards the completion of the project. It is important to note that a builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. It is submitted that it is important to understand that one particular buyer who makes payment in time can also not be segregated, if the payment from other prospective buyer does not reach in time. It is relevant that the problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers. It is relevant to note that the slow pace of work affects the interests of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. It is most respectfully submitted that the irregular and insufficient payment by the prospective buyers such as the complainant freezes the hands of developer/builder in proceeding towards timely completion of the project.

7. Copies of all the relevant documents have been files 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 submissions made by the parties

**E. Jurisdiction of the authority**

8. The authority has complete territorial and 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, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for

all purposes. 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 complainant 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.*" 2021-2022(1)RCR(C), 357 and followed in case of *Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of*

**India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021**  
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 objections raised by the respondent.**

**F. I Objections regarding the complainant being investors**

14. It is pleaded on behalf of respondent that complainant are investors and not consumers. So, they are not entitled to any protection under the Act and the complaint filed by them under Section 31 of the Act, 2016 is not maintainable. It is pleaded that the preamble of the Act, states that the Act is enacted to protect the interest of consumers of the real estate sector. The Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is

settled principle of interpretation that preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is buyer and paid considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of term allottee under the Act, and the same is reproduced below for ready reference:

*"Z(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold(whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."*

In view of above-mentioned definition of allottee as well as the terms and conditions of the flat buyer's agreement executed between the parties, it is crystal clear that the complainant is an allottee as the subject unit allotted to them by the respondent/promoter. The concept of investor is not defined or referred in the Act of 2016. As per definition under section 2 of the Act, there will be 'promoter' and 'allottee' and there cannot be a party having a status of 'investor'. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal No.0006000000010557 titled as **M/s Srushti Sangam Developers Pvt Ltd. Vs Sarvapriya Leasing (P) Ltd. and anr.** has also held that the concept of investor is not defined or referred in

the Act. Thus, the contention of promoter that the allottee being an investor are not entitled to protection of this Act also stands rejected.

**F.II Objection regarding force majeure conditions.**

15. The respondent-promoter has raised the contention that the construction of the project in which the apartment is situated, has been delayed due to force majeure circumstances such as HUDA has to develop the major sector roads for the connectivity of the projects on the licensed land, gas pipeline passed through the sanctioned project, NGT issued directives and measures to counter deterioration in air quality in the Delhi-NCR region, and many other reasons. It is observed by the authority that the construction of the project was delayed on account of gas pipe line passing through land of the subject project & HUDA has to develop the major sector roads for the connectivity of the projects on the licensed land. The said factors might be taken into consideration however, the respondent may get the required period declared as "zero period" from the competent authority. Till then the said period cannot be excluded while calculating the delay in handing over of the possession. Moreover, as far as NGT orders to directives and measures to counter deterioration in air quality in the Delhi-NCR region, cannot be taken into consideration as the same were imposed for a shorter period of the time. In view of these circumstances, no grace on account of force majeure circumstances can be allowed to the respondent/builder.

**G. Finding of the relief sought:**



**G.I Direct the respondent to refund the paid amount along with interest.**

16. The complainant was allotted a unit no. 2602 in tower A, 1635 sq. ft., in the said project by respondent and the builder buyer agreement was executed between parties on dated 10.09.2015. The respondent has breached a clause no. 13 of the builder buyer agreement i.e., possession of unit within 48 months i.e., on or before 10.09.2019. The respondent had executed the builder buyer agreement after a delay of more than one and half year (1.5 year) from the date of booking. It is further stated that the respondent had collected the payment of approx. Rs. 31,55,000/- from the complainant even before executing any written agreement and hence infringing the well settled law of the Act. The total sale consideration of the said unit is Rs. 1,18,01,430/-. As per the account statement dated 10.05.2021 provided by the respondent, the complainant has paid an amount of Rs. 63,94,197/-. That the possession has been delayed for more than one and half years now and as per the information received from the respondent through email dated 13.08.2020, the project would tentatively be handed over in 3<sup>rd</sup> quarter of year 2022. Thus, the complainant wishes to withdraw from the project and is seeking refund with interest as prescribed under the Act.
17. In its reply, the respondent submitted that the complainant has failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the buyer's agreement and as such, the complaint is liable to be rejected. It is submitted that out of the sale

consideration of Rs. 1,18,01,430/-, the amount actually paid by the complainant is Rs. 63,94,197/- i.e. around 54% of the sale consideration of the unit. It is further submitted that there is an outstanding amount of Rs. 6,86,238/- as on 10.05.2021 as per the construction linked plan opted by the complainant.

18. Keeping in view the fact that the allottee/complainant 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 **10.09.2019 and there is delay of 1 years 8 months 18 days** on the date of filing of the complaint. 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....."*

19. 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"*

20. 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 she 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.
21. The authority hereby directs the promoter to return the amount received by him along 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*.

**FII. Direct the respondent to pay Rs. 15,00,000/- towards mental harassment and mental agony, loss of income, bank EMI interest and Rs. 1,50,000/- towards the litigation cost. (Inadvertently Rs. 2,00,000/- written in the proceeding).**

22. The complainant is also seeking 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.

**F. Directions of the authority**

23. 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):
- The respondent is directed to return to the complainant of Rs. 63,94,197/- i.e. the amount of received by him along 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.

- 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.

24. Complaint stands disposed of.

25. File be consigned to registry.

V.I - 3  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Dr. K.K. Khandelwal)

Chairman

Dated: 09.08.2022

HARERA  
GURUGRAM