

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

**Date of decision: 25.08.2022**

<b>NAME OF THE BUILDER</b>		<b>Emaar MGF Land Limited</b>	
<b>PROJECT NAME</b>		<b>Imperial Garden</b>	
<b>S. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>APPEARANCE</b>
1	CR/3148/2019	Samrat Sood V/S Emaar MGF Land Limited	Shri Tushar Kantiwal Shri J K Dang
2	CR/6766/2019	Ishwar Yadav V/S Emaar MGF Land Limited	Shri Akash Gupta Shri J K Dang

**CORAM:**

Dr. K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman**  
**Member**

**ORDER**

1. This order shall dispose of all the 2 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 allottee 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, The Imperial Garden situated at sector- 102 (group housing complex) being developed by the same respondent/promoter i.e., Emaar MGF Land 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 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	Emaar MGF Land Limited "Imperial Garden " Sector-102, Village Kherki, Majra Dhankot Gurugram.
<p><b>Possession Clause: - 14. (a) Time of handing over the Possession</b> <i>" Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 42 (Forty Two) months from the date of start of construction; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 3 (three) months after the expiry of said period of 42 months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."</i></p> <p style="text-align: right;"><b>(Emphasis supplied)</b></p>	
<p><b>Occupation certificate: -</b> ➤ OC received on 17.10.2018 for towers/block- A1, A2, C4 and C3, and EWS Block.</p>	
<p><b>Note:</b> Grace period is not included while computing due date of possession.</p>	



Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of apartment buyer agreement	Date of start of construction	Due date of possession	Total Consideration / Total Amount paid by the complainant(s)
1.	CR/3148/2019 Samrat Sood V/S Emmar MGF Land Limited Date of Filing of complaint 26.07.2019	Reply Received on 07.09.2021	IG-08-1002, 10 <sup>th</sup> floor tower /block - 08  (Page no. 24 of the complaint)	13.06.2013  (Page no. 24 of the complaint)	11.11.2013  [as per the payment request letter dated 18.10.2013 at page 42 of reply]	11.05.2017  [ due date of possession is calculated from the date of start of construction]	TSC: - Rs.1,51,17,901/-  AP: - Rs.67,20,297/-
2.	CR/6766/2019 Ishwar Yadav V/S Emmar MGF Land Limited Date of Filing of complaint 26.12.2019	Reply Received on 27.01.2020	IG-05-0302, 3 <sup>rd</sup> floor, Tower -05	03.04.2013  [page 61 of reply]	11.11.2013  [as per the payment request letter dated 18.10.2013 at page 42 of reply]	11.05.2017  [due date of possession is calculated from the date of start of construction]	TSC: - Rs.1,47,37,662/-  AP: - Rs.13,56,000/-

**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:**

**Abbreviation Full form**

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainant 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/3148/2019 titled as Samrat Sood V/S Emaar MGF Land Limited*** 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/3148/2019 titled as Samrat Sood V/S Emaar MGF Land Limited**

Sr. No.	Particulars	Details
1.	Name of the project	Imperial garden, Sector-102



2.	Nature of the project	Group housing colony
3.	OC received on	17.10.2018 [page 146-147 of reply]
4.	Unit no.	IG-08-1002, 10 <sup>th</sup> floor, Tower-08
5.	Unit area	2025 sq. ft.
6.	Application form	28.10.2012 [page 32 of reply]
7.	Date of allotment	28.02.2013 [page 27-34 of reply]
8.	Date of builder buyer agreement	13.06.2013 [page 40 of reply]
9.	Total sale consideration as per schedule of payment on 72 of reply	Rs. 1,51,17,901/-
10.	Amount paid by the complainant as per statement of account dated 27.03.2014 on 129 of reply	Rs. 67,20,297/-
11.	Possession clause	<b>14. Possession</b> <b>a. Time of handing over the Possession</b> <i>Subject to terms of this clause and barring force majeure conditions, and</i>



		<p><i>subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit <b>within 42 (Forty Two) months from the date of start of construction</b>; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of <b>3 (three) months after the expiry of said period of 42 months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</b></i></p> <p>(Emphasis supplied)</p>
12.	Date of start of construction	11.11.2013  [as per the payment request letter dated 18.10.2013 at page 42 of reply]

13.	Due date of possession	11.05.2017  [due date of possession is calculated from the date of start of construction]
14.	1. First payment request reminder dated	21.12.2017
	2. Second payment request reminder dated	01.03.2018  <b>Note:</b> as per letter dated 01.03.2018, in case no communication from the bank regarding the realization of your loan account is received within 15 days of this letter the company shall be constrained to cancel the allotment in terms of the TPT and the buyer's agreement dated 13.06.2013 and you shall be left with no right, title interest, claim, etc. of any nature whatsoever in the said unit and the company shall be free to deal with the same in any manner it deems fit.
15.	Grace period utilization	Not allowed

**B. Facts of the complaint**

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

- I. That the complainant booked a flat bearing no. 1G-08-1002, sector-102, next to Dwarka Expressway, Gurugram Haryana in the project namely Imperial Garden a unit of Emaar MGF admeasuring 188.13 sq. mts. on 02.11.2012 for a total sale consideration of Rs.1,52,49,690/-. That the complainant gave Rs.10,00,000/- as booking amount on 28.10.2012 thereafter, the respondent company was issued provisional allotment letter on 28.02.2013.
- II. That the complainant has requested and sent to repeated mails to the respondent company to provide the copy of builder buyer agreement. That the respondent company failed to provide the copy of agreement. Thereafter, the builder buyer agreement was issued on 13.06.2013, after 7 months receiving the initial payment of Rs.10,00,000/- to the respondent and that time the complainant has deposited total amount of Rs.40,94,375/- to them and the Rs/70,78,430/- deposited by the bank to the respondent account. That the terms and condition of the builder buyer agreement were not shown and taken consent before taking payment of total Rs.1,11,72,805/-. That the respondent company asked to him to sign builder buyer agreement and failing which threatened to forfeit all the money paid by the complainant. That the complainant was forced to sign one sided builder buyer agreement with no option to review it, change it, or exit it, in order to avoid forfeiting of the money already paid.
- III. That the builder told the buyer that "*the allottee shall sign and return the builder agreement within a period of 30 days of the dispatch of*



*buyer's agreement by the company. If allottee fails to deliver the agreement, they shall cancel the allotment, without notice and 15% of the total price will be deducted. This condition was forced by the respondent company in one sided allotment letter without giving any option to the complainant to review build buyer agreement and willfully accept or withdraw from the builder buyer agreement.*

- IV. That after, signing builder buyer agreement incorporated in interest of builder, the complainant has no option to exit has to approached HDFC bank for loan to pay reaming amount of installments and bear financial burden of loan.
- V. That according to the buyer's agreement the respondent assured to him that the possession of the said unit will be given in 45 months maximum including grace period of three months. Even though period of construction was much more than expected by the complainant but due to forcefully signature of builder buyer agreement complainant has no option to exit.
- VI. That the respondent company has not meet construction timeline mentioned in the buyer agreement and delayed possession of the unit that was supposed to be July 2017. This has further, added to the financial burden of the complainant. That the respondent vide letter dated 11.05.2018, agreed that there is delay in possession.
- VII. That after almost 5 years neither the respondent could get the completion certificate from the appropriate authority, nor he could handover the possession of the above said flat to complainant. Thus,

the respondent himself is guilty of breach of contract as per the terms and conditions of the buyer's agreement.

- VIII. That the respondent did not receive the possession of his flat as per commitment made by them which leads to heavy loan and interest liability from bank.
- IX. That the complainant told to the respondent that due to delayed possession there is extra burden of EMI and interest charges on buyer, which they objected to and said to buyer they do not care about delay and buyer should continue pay EMI's on, when so ever they gave possession. that the complainant told to the respondent that it's the buyer responsibility to pay installments on time then it's also, the respondent's that responsibility to deliver the flat on time.

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

9. The complainant has sought following relief(s):
- I. Direct the respondent to pay the complainant the refund amount payable under the terms of with interest 18% per annum from the date of default of payment till the date of payment that amount, along with interest loss occurred.
  - II. Direct the respondent to pay the complainant the compensation amounting to Rs.20,00,000/- towards the physical and mental agony, harassment and financial losses so suffered by the complainant because of the acts of the respondent and Rs.50,000/- towards the legal expenses so incurred by the complainant.

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.

- i. That the complainant has got 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 13.06.2013, as shall be evident from the submissions made in the following paras of the present reply. That the respondent craves leave of this authority to refer to and rely upon the terms and conditions set out in the buyer's agreement in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainant, thereunder.
- ii. That the complainant had approached the respondent and expressed an interest in booking an apartment in the residential group housing project being developed by the respondent. Prior to making the booking, the complainant had conducted extensive and independent enquiries with regard to the project and it was only after the complainant was fully satisfied about all aspects of the project, including the approvals, licences, permissions as well as the capacity

of the respondent to undertake the project in question, that the complainant took an independent and informed decision, uninfluenced in any manner by them, to book the apartment in question.

- iii. That the complainant was provisionally allotted the said unit. The complainant had opted for a construction linked payment plan. The provisional allotment letter dated 28.02.2013 and payment plan. That right from the very beginning, the complainant had been extremely irregular with regard to payment. Consequently, the respondent had to issue notices and reminders calling upon the complainant to pay the demanded amounts as per the payment plan.
- iv. That the payment request letter dated 30.04.2013, reminder dated 19.04.2013, payment request letter dated 02.04.2013, reminder dated 01.04.2013, reminder dated 01.05.2013, reminder dated 22.05.2013, reminder dated 05.06.2013, reminder dated 24.06.2013, payment request letter dated 18.10.2013, reminder dated 12.11.2013, reminder dated 27.11.2013, payment request letter dated 17.01.2014, payment request letter dated 05.05.2014, payment request letter dated 03.09.2014, payment request letter dated 21.10.2014, reminder dated 18.11.2014, reminder dated 04.12.2014, payment request letter dated 21.01.2015, payment request letter dated 26.03.2015, payment request letter dated 26.01.2016, reminder dated 16.02.2016, reminder dated 02.03.2016, payment request letter dated 06.03.2017, reminder dated 02.04.2017, payment request letter dated 05.06.2017, reminder

dated 04.10.2017 and HVAT payment request letter dated 30.03.2017 sent on behalf of the respondent requesting the complainant to remit the amount outstanding on his account. The statement of account dated 27.03.2014 correctly maintained by the respondent in due course of its business reflecting the payments made by the complainant.

- v. That the complainant despite receipt of the said letters, maliciously and consciously chose to ignore the legitimate and valid requests of the respondent and wilfully and wantonly defaulted in timely remittance of the instalments as per the schedule of payment and in due observance of the terms and conditions of the buyer's agreement. In fact, the respondent was constrained to issue final notice dated 06.05.2013, final notice dated 10.07.2013 and final notice dated 13.12.2013 to the complainant. The respondent had categorically notified the complainant that the complainant has defaulted in remittance of the amounts due and payable by him. It was further conveyed by the respondent that in the event of failure of the complainant to remit the amounts mentioned in the respective notices the respondent would be constrained to cancel the provisional allotment of the unit in question.
- vi. That upon receipt of the aforesaid final notices issued by the respondent, the complainant approached the respondent requesting it to not give effect to the said notices and further promised the respondent that the complainant would remit the remaining instalments on time. The respondent did not have any reason to

suspect the bona fide of the complainant and consequently desisted from cancellation of the provisional allotment issued in favour of the complainant. However, the complainant did not amend his ways and defaulted in remittance of the instalments on time as is evident from a perusal of paragraph no. 7 hereinabove.

- vii. That the complainant consciously and maliciously chose to ignore the payment request letters and reminders issued by them and defaulted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to them. The complainant chose to ignore all these aspects and wilfully defaulted in making timely payments. It is submitted that the respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainant.
- viii. That as per the terms and conditions of the buyer's agreement dated 13.06.2013, the complainant is under a contractual obligation to make payment of all amounts payable under the buyer's agreement on or before the due dates of the respective instalment. It is further expressed categorically that if the complainant fails to remit the

instalments on time, then in that event the respondent is entitled to levy delayed payment charges in accordance with clause 1.2(c) read with clauses 12 and 13 of the buyer's agreement dated 13.06.2013.

- ix. That the present complaint is bad for non-joinder of HDFC bank as a party. The complainant had availed a housing loan from HDFC bank by mortgaging the unit in question. The complainant is estopped from claiming any amounts from the respondent in view of the tripartite agreement dated 24.01.2014 executed between complainant, respondent and HDFC bank. The complainant had specifically subrogated all his rights for refund/compensation /interest with respect to the apartment in question, in favour of HDFC bank. Therefore, prosecution of the instant complaint without making HDFC bank a party is bad in law.
- x. That, furthermore, HDFC bank vide its letter dated 12.12.2017 had informed the respondent that the complainant has defaulted in timely remittance of the EMIs as per the schedule of the loan agreement. It was further stated by the bank that the loan account of the complainant was running into huge arrears and accordingly requested the respondent to cancel the provisional allotment issued in favour of the complainant in terms of the tripartite agreement executed between the complainant, the bank, and the respondent. Furthermore, the bank had requested the respondent to refund the amount due to the bank.

- xi. That it is evident that the complainant was not forthcoming with the payments even after receipt of several payment request letters, reminders etc. sent on behalf of respondent and there were persistent defaults on the part of the complainant in remittance of the instalments to the respondent as well as the bank. It is submitted that the complainant did not have adequate funds to purchase the unit in question. The complainant has preferred the instant complaint in order to needlessly linger on the matter. The complainant has needlessly filed the instant complaint with the intent of blackmailing and harassing them. The present complaint is nothing but an abuse of process of law.
- xii. That even after receipt of the aforesaid letter dated 01.03.2018, the complainant did not rectify his defaults and consequently the allotment in favour of the complainant in respect of the unit in question was cancelled by the respondent in accordance with the terms and conditions of the buyer's agreement. It is pertinent to note that the complainant is left with no right, title or entitlement in respect of the unit in question after cancellation of the allotment in favour of the complainant. That in terms of tripartite agreement dated 24.01.2014 in event of cancellation of the unit booked by the complainant, any amount payable by the complainant, is liable to be paid to HDFC bank Ltd. The complainant was requested to pay the aforesaid amount to HDFC bank Ltd. The respondent reserves its right to initiate appropriate proceedings against the complainant in case complainant has failed to do the needful.



- xiii. That without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the complainant has consciously, knowingly, wilfully and maliciously refrained from performing his obligations as envisaged in the buyer's agreement and consequently the allotment in favour of the complainant had been cancelled by them. Therefore, the complainant is not entitled to contend that any interest or refund or compensation for the alleged delay in delivery of possession is liable to be paid to the complainant by the respondent especially when the complainant is not an allottee in the project in question after cancellation of his allotment. Moreover, the complainant has failed to challenge the cancellation of the provisional allotment and consequently the complaint preferred by the complainant is liable to be dismissed at the threshold.
- xiv. That the respondent is in receipt of occupation certificate dated 17.10.2018. The unit in question has been allotted to Mr. Amit Upreti and the said allottee had been offered possession of the unit in question vide letter dated 22.10.2019.
- xv. That the rights and obligations of complainant as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. It is submitted that as per clause 14 of the buyer's agreement the time period for delivery of possession was 42 months along with grace

period of 3 months from the execution of the buyer's agreement subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of occurrence of the facts/reasons beyond the power and control of them. The complainant has completely misconstrued, misinterpreted, and miscalculated the time period as determined in the buyer's agreement. It is pertinent to mention that it was categorically provided in clause 14(b)(iv) that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of them. Since the complainant has defaulted in timely remittance of payments as per schedule of payment the date of delivery of possession is not liable to be determined in the manner sought to be done in the present case by the complainant.

- xvi. That the respondent had registered the project under the provisions of the Act. The project had been registered initially till 31.12.2018. However, the respondent has applied for extension of the validity of

the project till 31.12.2019 in respect of a few towers that were yet to be completed on 31.12.2018.

- xvii. That the respondent had completed construction of the apartment/ tower by March 2018 and had applied for issuance of the occupation certificate on 21.03.2018. The occupation certificate was issued by the competent authority on 17.10.2018. It is respectfully submitted that after submission of the application for issuance of the occupation certificate, the respondent cannot be held liable in any manner for the time taken by the competent authority to process the application and issue the occupation certificate. Thus, the said period taken by the competent authority in issuing the occupation certificate as well as time taken by Government/Statutory authorities in according to approvals, permissions etc., necessarily have to be excluded while computing the time period for delivery of possession.
- xviii. That the complainant has admittedly purchased the apartment in question as a speculative investment. The complainant never intended to reside in the said apartment and had booked the same with a view to earn a huge profit from resale of the same or from leasing out the same. However, no prospective lessor or purchaser was found by the complainant, and it is for this reason that the complainant was reluctant to make timely payment of the instalments. The complainant is an investor who never had any intention to buy the apartment for his own personal use and had kept on intentionally avoiding the performance of his contractual

obligations of making timely payments and has now filed the present complaint on false and frivolous grounds. The complainant is not an "Allottee" under the Act but an investor and thus the present complaint is not maintainable at his behest. Moreover, in the aforesaid circumstances no compensation or refund is liable to be paid to the complainant.

- xix. That without admitting or acknowledging in any manner the truth or legality of the frivolous and false allegations levelled by the complainants and without prejudice to the contentions of the respondent, that the respondent has been prevented from timely implementation of the project by reasons beyond its power and control. It is submitted that the respondent had appointed a contractor on 17.09.2013 operating under the name and style of Capacite Infraprojects Ltd. for construction and implementation of the project in question. The said contractor had represented and claimed that it has the necessary resources, competence, capacity, capability, and expertise for undertaking, performing, effectuating, and completing the work undertaken by it. The respondent had no reason to suspect the bona fide of the said contractor at the relevant time and awarded the work to the said contractor. However, the said contractor was not able to meet the agreed timeline for construction of the project. The said contractor failed to deploy adequate manpower, shortage of material, etc. The respondent was constrained to issue several notices, requests etc. to the said contractor to expedite progress of the work at the project site but to

no avail. The said contractor consciously and deliberately chose to ignore the legitimate and just requests of the respondent on one pretext or the other and defaulted in carrying out the work in a time bound manner. Therefore, no fault or lapse can be attributed to the respondent of the facts and circumstances of the case.

- xx. That, without admitting or acknowledging the truth or legality of the allegations advanced by him 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. The provisions of the Act relied upon by the complainants for seeking interest or compensation cannot be called in to aid in derogation and in negation of the provisions of the buyer's agreement. The complainants cannot claim any relief which is not contemplated under the provisions of the buyer's agreement. Assuming, without in manner admitting any delay on the part of the respondent in delivering possession, it is submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond or contrary to the agreed terms and conditions between the parties.

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 objections raised by the respondent**

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

21. The respondent has taken a stand that the complainant is an investor and not consumer, and therefore, is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & 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 apartment buyer's agreement, it is revealed that the complainant is a buyer and paid total price of **Rs.67,20,297/-** to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

In view of above-mentioned definition of "allottees" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is an allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 000600000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya*



**Leasing (P) Lts. And anr.** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

**F. II Objection regarding jurisdiction of authority w.r.t. booking application form executed prior to coming into force of the Act**

22. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the booking application form executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal**

**Realtors Suburban Pvt. Ltd. Vs. UOI and others. (Supra)** which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

23. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

24. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments /competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

**G. Findings on the relief sought by the complainants**

**G. I Direct the respondent to pay the complainant the refund amount payable under the terms of with interest 18% per annum from the date of default of payment till the date of payment that amount, along with interest loss occurred.**

30. That the respondent stated that the complainant was extremely irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainant to make payment of outstanding amounts payable by her under the payment plan opted by her. After repeated reminders the respondent was to terminate the allotment of the unit vide termination letter dated 01.03.2018.
31. On consideration of the documents available on record and submission by both the parties, the authority is of the view that the allottee has failed to

abide by the terms of agreement by not making the payments in timely manner as per the payment plan opted by her, the complainant paid an amount of Rs. 67,20,297/- out of the total amount of Rs. 1,51,17,901/-. The complainant failed to pay the remaining amount as per the schedule of payment and which led to issuance of notice of cancellation by the respondent on 01.03.2018. Now the question before the authority is whether this cancellation is valid?

32. As per clause 1.2 (c) of the builder buyer agreement the allottee was liable to pay the installment as per payment plan opted by the complainant. Clause C of the agreement is reproduced under for ready reference:

*Clause 1.2 Sale price of sale of unit*

*(C) Payment Plan*

*The allottee agrees and undertakes to pay the balance amount of the total sale consideration strictly in accordance with the payment plan. In case of delay in making payment by the allottee to the company as per the schedule of payments the company shall have the right to terminate the agreement and forfeit the earnest money along with the non-refundable amount. However, the company may in its sole discretion waive its right to terminate the agreement and enforce all the payments in seek specific performance of the buyers agreement. The company if it decides to waive its right of termination, shall be entitled to charge delayed payment charges at the rate 24% p.a at the time of every succeeding instalments from the due date of instalment, as per the schedule of the payment, till the date of payments. In such a case the parties agree that the possession of the unit will be handed over to the allottee only upon the payment of all outstanding dues penalties etc . along with delayed*

*payment charges by the allottee to the satisfaction of the company.*

33. The respondent had issue various reminders dated 21.12.2017 and 01.03.2018. That the OC for the unit of the complainant was granted on 17.10.2018. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation of unit is valid.
34. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

***"5. AMOUNT OF EARNEST MONEY***

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

35. Keeping in view the aforesaid legal provisions, the respondent is directed to refund the balance amount of the unit by deducting the earnest money which shall not exceed the 10% of the sale consideration of the said unit as per statement of account and shall return the balance amount to the complainant within a period of 90 days from the date of this order. The refund should have been made on the date of termination i.e., 01.03.2018

accordingly interest at the prescribed rate i.e., 10% is allowed on the balance amount from the date of termination to date of actual refund.

**G. II Compensation**

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.

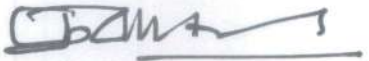
**H. Directions of the authority**

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 after deducting the earnest money which shall not exceed the



- 10% of the total sale consideration of the said unit as per statement of account and shall return the balance amount to the complainant from the date of termination till the realization of the payment along with interest at the rate of 9.80% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- 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.
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.1-3  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate Regulatory Authority, Gurugram

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

Dated: 25.08.2022