

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

Complaint no. : 4220 of 2021  
First date of hearing: 04.01.2022  
Date of decision : 31.08.2022

Mr. Ram Kumar  
R/o: - 8/14, Rajnagar, Ghaziabad, U.P. - 201002

**Complainant**

Versus

1. M/s Ramprashtha Developers Private Limited.  
**Regd. office:** Plot No. 114, Sector-44, Gurugram-  
122002  
2. Choudhary Balwant Singh  
Office at: - 67, Niketan, Chankya Puri, New Delhi-  
110021

**Respondents**

**CORAM:**

Shri K.K. Khandelwal  
Shri Vijay Kumar Goyal

Chairman  
Member

**APPEARANCE:**

Sh. Garvit Gupta (Advocate)  
Ms. Gayathri Mansa (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint dated 11.11.2021 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 of the project	Cannot be ascertained
2.	Project area	Cannot be ascertained
3.	plot no.	N.A.
4.	Unit area admeasuring	300 sq. Yds. (Page no. 11 of the complaint)
5.	Date of booking application	N.A.
6.	Welcome letter	N.A.
7.	Allotment letter	N.A.
8.	Date of execution of plot buyer's agreement	N.A.
9.	Possession clause	N.A.
10.	Due date of possession	Cannot be ascertained



11.	Basic price of the plot	Rs.1,06,50,000/- [As per payment plan page no. 11 of complaint]
12.	Amount paid by the complainant	Rs.10,00,000/- [Page no. 10 of complaint]

**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- a. On April 17, 2014, the complainant deposited Rs. 10.00 lacs with M/s Ramprastha Developers, Pvt. Ltd. Gurugram as an initial amount against the purchase of a 300 sq. mts. residential plot in Sector 37D, "Primera" Ramprastha City, Gurugram. After one year, the complainant visited the site and found that there is no development at the site of the said project.
- b. The complainant contacted Ch. Balwant Singh immediately in his office & discussed the matter & requested him to refund his deposited amount of Rs. 10 lacs and for which he agreed. Since, then the complainant met him many times, at an interval of every 2-3 months in the company's Ghaziabad office and requested him for refund. Balwant Singh assured that the refund was being processed, and you would get soon. But the complainant has not received the same till date. In the first week of May 2018, he again met Balwant Singh and requested him for refund. He reassured him that he would get the

refund soon. Again, there was no compliance from his end for refund. After that he tried to seek his appointment many times but failed. Finally, in the last week of January 2020, he succeeded to meet him in the Ghaziabad office for refund and was again promised that refund payment would be made next week positively but with no results. After failing to receive refund, he tried to contact him and his office but failed to get any response. Finally, he asked him to send a request letter for refund along with the related documents of plot. Thereafter, he would make the refund. He immediately forwarded the request letter and related documents as required by him but till now again no refund has been processed by him or his company.

c. At last, on dated 30.06.2021, he sent a legal notice to Mr. Ch. Balwant Singh and his company for refund within a month, but no response has been received from his side till date.

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

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

I. Direct the respondent to refund the entire amount of Rs.10,00,000/- paid by the complainant along with 18% interest per annum.

II. To pay cost of litigation

5. The respondent no. 1 filed reply on 10.02.2022. However, neither respondent no. 2 put in appearance nor plead any reply.

6. 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 no. 1.**

7. The respondent no. 1 has contested the complaint on the following grounds.

- I. That the present complaint has been filed by the complainant before this authority for refund along with interest and legal cost against the investment made in one of the plots in the futuristic project of the respondent. In this behalf, it is most respectfully submitted that the adjudicating officer is precluded from entertaining the present matter due lack of jurisdiction.
- II. That the complainant has now filed a complaint in terms of the Haryana Real Estate (Regulation & Development) Amendment Rules, 2019 under the amended rule 28 in the amended 'Form CAO' and is seeking the relief of refund along with interest under section 18 of the Act. It is most respectfully submitted in this behalf that the power of the appropriate Government to make rules under section 84 of the said Act is only for the purpose of carrying out the provisions of the said Act and not to dilute, nullify or supersede any provision of the said Act.
- III. The power to adjudicate the complaints pertaining to refund and interest for a grievance under Sections 12,14,18 and 19 are vested

with the adjudicating authority under Section 71 read with Section 31 of the said Act and not under the said rules and neither the said rules or any amendment thereof can dilute, nullify or supersede the powers of the adjudicating officer vested specifically under the said Act and therefore, the adjudicating officer has no jurisdiction in any manner to adjudicate upon the present complaint.

- IV. That in the present case, the complaint pertains to the alleged delay in delivery of possession for which the complainant has filed the present complaint and is seeking the relief of refund, interest and compensation u/s 18 of the said Act. Therefore, even though the project i.e. "Rise" Ramprastha City, Sector-37D, Gurgaon is covered under the definition of "ongoing projects" and registered with the regulatory authority, the complaint, if any, is still required to be filed before the regulatory authority under the amended rule -28 of the said rules and not before adjudicating officer under the amended rule-29 as the adjudicating officer has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.
- V. That, without prejudice to the above, now, in terms of the said amendment rules, the complainant has filed the present complaint under the amended rule-29 (but not in the amended 'Form CAO') and is seeking the relief of refund, interest and compensation u/s 18 of the said Act. It is pertinent to mention here that as the present complaint is not in the amended 'Form

CAO', therefore the present complaint is required to be rejected on this ground alone.

- VI. That the complainant had requested the respondent seeking investment in undeveloped agricultural land in the year 2014 in the hope of making speculative gains on the approval of the zoning plans. But since the zoning plans were not approved by the government, the complainant has sought to file this vexatious complaint. The respondent has not agreed to provide service of any kind to the complainant unless the plans were approved as it was merely a transaction for sale of plot. The complainant has filed the present complaint with malafide intention of abusing the process of this authority for wrongful gains in the form of interest at the cost of the respondent while in reality, the speculative investments have failed to give any return in present harsh real estate market conditions.
- VII. That the complainant has approached the respondent in the year 2014 to invest in undeveloped agricultural land in one of the futuristic projects of the respondent located in Sector 37C and 37D Gurugram. The complainant fully being aware of the prospects of the said futuristic project and the fact that the said land is a mere futuristic project decided to make an investment in the said project of the respondent for speculative gains. That thereafter, in 2014, the complainant allegedly paid a booking amount of Rs.10,00,000/-.

- VIII. That from the date of booking till the date of filing of the present complaint, the complainant has never raised any issue whatsoever and has now approached the adjudicating officer with concocted and fabricated story to cover up his own defaults and raise false and frivolous issues and has therefore, filed the present complaint on false, frivolous, and concocted grounds. The conduct of the complainant clearly indicates that he is a mere speculative investor having invested with a view to earn quick profit and due to unprecedented slowdown in the real estate market conditions, is hereby intending to make profit out of the miserable condition of the respondent.
- IX. That, without prejudice to the above, it is herein submitted that despite the wrath of real estate market conditions and crippling adversities faced, the respondent herein has continued to complete the development of the project and would positively be able to handover possession at the soonest.
- X. The claims for possession are superfluous and non-est in view of the fact that the complainant is actually not even entitled to claim possession of the plot as on date. It is submitted that it is only on default in offer/handover of possession that the petitioner's right to claim possession/refund crystalizes.
- XI. That it is evident that the complainant has approached the authority by suppressing crucial facts with unclean hands which is evident from its own Complaint. Therefore, the present



complaint is liable to be rejected in limine based on this ground alone.

- XII. Statement of objects and reasons as well as the preamble of the said Act categorically specify the objective behind enacting the said Act to be for the purpose of protecting the interests of consumers in the real estate sector. However, the present complainant cannot be termed as a consumer or a genuine buyer in any manner within the meaning of Consumer Protection Act or the RERA Act. The present complainant is only an investor in the present project who has purchased the present property for the purposes of investments/commercial gain. The complaint is a desperate attempt of the complainant to harass the respondents and to harm the reputation of the respondents.
- XIII. The Act of 2016 does not provide any definition for the term "Consumer", the same may be imported from the terminology prescribed under the Consumer Protection Act, 1986. A plain reading of the definition of the term "Consumer" envisaged under the CPA makes it clear that the present complainant does not fall within the walls of the term "Consumer". The complainant is a mere investor who has invested in the project for commercial purposes.
- XIV. That further, the complainant is already in ownership of one property which the complainant has materially concealed herein. Hence, by any standard of imagination, the present complainant cannot to be said to have purchased the present property for



personal use; rather it can be clearly interpreted that the said unit was only purchased for the purposes of commercial advantage or gain, hence, the complainant is plainly investor who has filed the present complaint on the basis of a totally concocted and fabricated story filled with fallacies and concealments. Therefore, the complainant cannot be said to have approached this authority with clean hands and have approached this authority only with malafide intention to harass the respondents in the most harm causing way possible.

- XV. That the entire transaction of the complainant with the respondent of purchasing a unit in the project was for a "commercial purpose" and hence, in view of catena of judgments of the Hon'ble National Consumer Disputes Redressal Commission, the complaint before the regulatory authority is not maintainable in its present form and hence is liable to be dismissed at its very beginning.
- XVI. That the complainant has not approached this adjudicating authority with clean hands and has concealed the material fact that the complainant is defaulter, having deliberately failed to make the timely payment of installments within the time prescribed, which resulted in delay payment charges/interest.
- XVII. Even all through these years, the complainant has never raised any dispute regarding delay in possession or any other aspect. Furthermore, filing a complaint after all these years only hints at the malafide intentions of the complainant. Apparently, the

complainant has been waiting eagerly all this while to raise dispute only to reap the benefits of the increase in value of property.

- XVIII. That the complainant primary prayer for the refund of the amount paid towards the said plot is entirely based on imaginary and concocted facts by the complainant and the contention that the opposite party was obliged to hand over possession within any fixed time period from the date of issue of provisional allotment letter is completely false, baseless and without any substantiation; whereas in reality the complainant had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking dated 17.04.2014 was made by the complainant towards a *future potential project* of the respondent company and hence there was no question of handover of possession within any fixed time period as falsely claimed by the complainant; hence the complaint does not hold any ground on merits as well.
- XIX. That further the respondent has applied for the mandatory registration of the project with the authority but however the same is still pending approval on the part of the authority. However, in this background it is submitted that by any bound of imagination the respondent cannot be made liable for the delay which has occurred due to delay in registration of the project under the Act of 2016. It is submitted herein that since there was delay in zonal approval from the DGTCP the same has acted as a causal effect in prolonging and obstructing the registration of the

project under the Act of 2016 for which the respondent is in no way responsible. That the approval and registration is a statutory and governmental process which is way out of power and control of the respondents. This by any matter of fact be counted as a default on the part of the respondent.

XX. There is no averment in the complaint which can establish that any so-called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages etc. which have been elaborated in further detail herein below. The complainant while investing in a plot which was subject to zoning approvals were very well aware of the risk involved and had voluntarily accepted the same for their own personal gain. There is no averment with supporting documents in the complaint which can establish that the respondent had acted in a manner which led to any so-called delay in handing over possession of the said plot. Hence the complaint is liable to be dismissed on this ground as well.

XXI. The respondent company is owner of vast tracts of undeveloped land in the revenue estate of Village Basai, Gadauli Kalan and falling within the boundaries of Sectors 37C and 37D Gurugram also known as Ramprastha City, Gurugram.

- XXII. That when the complainant had approached the promoter, it was made unequivocally clear to him that a specific plot cannot be earmarked out of large tracts of undeveloped and agricultural land; and (ii) specific plot with preferred location can be demarcated only when the government releases the zoning plans applicable to the area Village Basai, Gadauli Kalan, Gurugram. It was on this basic understanding that a preliminary allotment was made in favour of the complainant. On the date of the receipt of payment, the said preliminary allotment was nothing more than a payment towards a prospective undeveloped agricultural plot of them.
- XXIII. That even in such adversities and the unpredicted wrath of falling real estate market conditions, the respondent has made an attempt to sail through the adversities only to handover the possession of the property at the earliest possible to the utmost satisfaction of the buyers/allottees. That even in such harsh market conditions, the respondent has been continuing with the construction of the project and sooner will be able to complete the construction of the project.
- XXIV. The below table shows the project name, its size, and the current status of the project. It can be seen that the respondent has been diligent in completing its entire project and shall be completing the remaining projects in phased manner. The respondent has completed major projects mentioned below and has been able to provide occupancy to the allottees.



S. No	Project Name	No. of Apartments	Status
1.	Atrium	336	OC received
2.	View	280	OC received
3.	Edge		
	Tower I, J, K, L, M	400	OC received
	Tower H, N	160	OC received
	Tower-O	80	OC received
	(Nomenclature-P) (Tower A, B, C, D, E, F, G)	640	OC to be applied
4.	EWS	534	OC received
5.	Skyz	684	OC to be applied
6.	Rise	322	OC to be applied

8. 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.
9. 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. SPL(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.

10. 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. 2021-2022 (1) RCR (C), 357** 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

pleadings and submissions made by both the parties during the proceedings.

**E. Jurisdiction of the authority**

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**

11. 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**

12. 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.*

13. 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.
14. 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."*

15. 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.**

16. The respondent has taken a stand that the complainant is the investor and not consumer and therefore, he 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.10,00,000/-** to the promoter towards purchase of a unit in the project of the promoter. At this stage, it is important to stress upon the definition of the 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 "allottee" as well as all the terms and conditions of the provisional receipt, 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. 0006000000010557 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 is

being an investor is not entitled to protection of this Act also stands rejected.

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

**G.I Direct the respondent to refund the entire amount of Rs.10,00,000/- paid by the complainant along with 18% interest per annum.**

17. The complainant submits that vide receipt dated 17.04.2014, he paid an amount of Rs.10,00,000/- to the respondent /promoter. The respondent confirmed the amount received and promised the allotment of a plot admeasuring 300 sq. yards. in any of the project namely "Ramprastha City" located in Gurugram. Thereafter, till date, the respondent has miserably failed to specify the project as well as plot number where 300 sq. yards. has been allotted. On 30.06.2021, the complainant sent a legal notice for refund the amount paid by him along with interest to which the respondent did not respond. The complainant tired of the neglectful behavior of the respondent filed the present complaint pleading for refund along with interest before this authority.
18. The respondent vide reply dated 10.02.2022 submitted that the complaint is time barred by limitation as the complainant made the payment in the year 2014, and thereafter he never came forward for booking application form and buyer's agreement. Accordingly, the complaint is liable to be rejected. Moreover, the complainant was aware from the very inception that he is making payment w.r.t. future project which is not yet launched.

19. Before coming to the facts of the case, it is to be seen as to the receipt issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of the contract Act, 1872 and which provides that:

*"Every promise and every set of promise forming the consideration for each other is an agreement."*

20. Further, section 10 of the act defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

*"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."*

21. There is a large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money and only issued receipt against the allotment of a plot either in the existing or in its upcoming project at Gurugram. Neither it issued any allotment letter nor executed any builder buyer's agreement. Even in some cases, the builder accepted more than 50 lacs either in cash or through cheque and promising to allot an apartment/plot in the upcoming or existing projects and then vanishing or not taking any further steps with regard to either allotment of the unit of the property in any project or refunding the amount received. The holders of those receipt/allotments are harassed lot failing to act on the basis of the documents issued by the developer and to initiate any civil or criminal action against the builder. This position existed in Pre- Rera cases as

after Act of 2016, a promoter is obligated to comply with the provisions of the Act and follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.

22. But the document/receipt so issued in favour of a person can be termed as an **agreement for sale** to drag the developer before RERA Authority, compelling him to fulfil his obligations against the holder of that document. It is also pertinent to mention in many cases that the allottee has been sleeping over his rights which is evident from the fact that after payment of an amount, he did not make any effort to get the agreement executed; and having no proof of any request or reminder in this regard made by the allottee to the promoter with the complainant. However, the promoter is duty bound to explain the reasons for which he has kept such a huge amount for so long, considering the fact that the promoter company is not a bank or non-banking financial company (NBFC). In case of failure on the part of promoter to give an explanation, it shall be liable to refund the principal amount deposited by the allottee.
23. In the present complaint, 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)(b) of the Act. Sec. 18(1)(b) 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)*

24. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the prescribed rate of interest 18%. However, the allottee is seeking refund of the amount paid by him 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.*

25. 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.

26. 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%**.
27. 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;"*
28. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainant is well within his right for seeking refund under section 18(1)(b) of the Act, 2016.
29. The instant matter falls in the category where the promoter has failed to allot a plot in its any of the upcoming project as detailed earlier





despite receipt of Rs.10,00,000/- made in the year 2014. So, the case falls under section 18(1)(b) of the Act of 2016.

30. In the instant matter, even after lapse of 7 years from the date of payment till the filling of complaint, no buyer's agreement has been executed inter- se parties. Therefore, the due date of possession cannot be ascertained, and the complainant cannot be expected to wait endlessly for his plot 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....."*

31. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1)(b) 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 him 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.*

#### **G. II Cost of litigation**

33. 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**

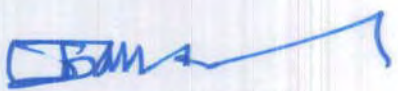
34. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount i.e., Rs.10,00,000/- 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.

35. Complaint stands disposed of.

36. File be consigned to registry.

  
**(Vijay Kumar Goyal)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.08.2022