

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

Date of decision: 30.08.2022

NAME OF THE BUILDER		AGRANTE DEVELOPERS PVT. LTD.	
PROJECT NAME		BEETHOVENS 8	
S. No.	Case No.	Case title	APPEARANCE
1	CR/3674/2020	Ravinder Amraik V/s Agrante Developers Pvt. Ltd.	Shri. Geetansh Nagpal Shri Tarun Biswas
2	CR/4012/2020	Sangita Uppal V/s Agrante Developers Pvt. Ltd.	Shri. S.M. Maheshwari Shri Tarun Biswas

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

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

namely, "Beethovens 8" (Group Housing Colony) being developed by the same respondent/promoter i.e., M/s **Agrante Developers Pvt. Ltd.** The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.

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

Project Name and Location	AGRANTE DEVELOPERS PVT. LTD "BEETHOVENS-8" Sector-107, Gurugram.		
Clause 18(a) of buyer's agreement			
<p><i>"Subject to other terms of this agreement/agreement, including but not limited to timely payment of the total price, stamp duty and other charges by the vendee(s), the company shall endeavour <u>to complete the construction of the said apartment within 42 (forty-two) months from the date of allotment, which is not the same as date of this agreement.</u> The company will offer possession of the said apartment to the vendee(s) as and when the company receives the occupation certificate from the competent authority(ies). Any delay by the vendee(s) in taking possession of the said apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof."</i></p> <p style="text-align: right;">(Emphasis supplied)</p>			
Occupation certificate: - Not obtained			
Sn o.	Complaint No. & Case Title	CR/3674/2020	CR/4012/2020
		Ravinder Amraik V/s Agrante Developers Pvt. Ltd.	Sangita Uppal V/s Agrante Developers Pvt. Ltd.
1.	Reply status	Reply received on 19.08.2021	Reply received on 15.03.2021

2.	Unit no.	Minor/H/A/602 on 6 th floor [pg. 32 of complaint]	Symphony/]/B/1701 on 17th floor [pg. 35 of complaint]
3.	Date of agreement to sell	31.10.2013 [pg. 33 of complaint]	24.09.2014 [pg. 26 of complaint]
4.	Due date of possession	21.05.2017	24.03.2018
5.	Total Consideration / Total Amount paid by the complainant(s)	BSC: ₹ 68,86,100/- AP: ₹ 40,50,456/-	BSC: ₹ 1,07,86,470/- AP: ₹ 38,44,483/-
6.	Relief sought	1. Refund the entire amount paid by the complainant along with the interest. 2. Compensation	1. Refund the entire amount paid by the complainant along with the interest. 2. Compensation & cost of litigation

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the 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/3674/2020 Ravinder Amraik V/s Agrante Developers Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.

A. Project and unit related details

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

CR/3674/2020 Ravinder Amraik V/s Agrante Developers Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	"Beethoven's 8", Sector- 107, Gurgaon
2.	Nature of project	Group housing complex
3.	RERA registered/not registered	Not Registered
4.	DTPC License no.	23 of 2012 dated 23.03.2012
	Validity status	Not available on record
	Name of licensee	Narendra Kumar Gupta & others
	Licensed area	18.0625 acres
5.	Unit no.	Minor/H/A/602 on 6 th floor [pg. 32 of complaint]

6.	Unit area admeasuring	1300 sq. ft. [pg. 32 of complaint]
7.	Allotment letter	21.11.2013 [pg. 32 of complaint]
8.	Date of agreement to sell	31.10.2013 [pg. 33 of complaint]
11.	Possession clause	<p>Clause 18(a) of buyer's agreement</p> <p><i>Subject to other terms of this Agreement/Agreement, including but not limited to timely payment of the Total Price, stamp duty and other charges by the Vendee(s), the Company shall endeavour to complete the construction of the Said Apartment within 42 (Forty two) months from the date of Allotment, which is not the same as date of this Agreement. The Company will offer possession of the Said Apartment to the Vendee(s) as and when the Company receives the occupation certificate from the competent authority(ies). Any delay by the Vendee(s) in taking possession of the Said Apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof.</i></p>
13.	Due date of possession	21.05.2017
14.	Delay in handing over possession till the date of filing of this complaint i.e., 04.11.2020	3 year 5 months 14 days
15.	Sale consideration as per BBA at page 42 of complaint.	₹ 68,86,100/-

16.	Total amount paid by the complainant as per sum of receipts	₹ 40,50,456/-
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- a. That the respondent company, "AGRANTE DEVELOPERS PRIVATE LIMITED" is entitled to develop the property vide collaboration agreements with its associates/ subsidiary companies in reference to the land measuring 18.0625 Acres falling in Sector- 107, Gurugram under the revenue estate of village Dharampur, Tehsil and District- Gurugram (Haryana). The said land was embarked for the purpose of building a group housing scheme herein referred to as 'Beethoven's 8.
 - b. That the respondent no.1 in the year 2013 launched its project "Beethoven's 8", at Sector- 107, Gurugram, Haryana and sought applications from interested persons/buyers. Wherein the complainant/applicant relying on the representation and assurances of the opposite party with respect to construction quality, availability of incidental facilities/amenities and timely delivery of possession, the complainant got lured and after completing necessary booking formalities booked a residential studio apartment on 14.08.2013 bearing unit no. H/A/602 in the residential project developed by the respondent for a sale consideration of Rs. 68,86,100/-.
 - c. That on 21.11.2013 the respondent company allotted a flat bearing unit no. Minor/H/A/0602 area 1300 sq. ft. in the residential project

for a total sale consideration of Rs. 68,86,100/- (excluding applicable Service Tax) and proportionate share of External (EDC), Internal (IDC), Infrastructure Development Charges (IDC), Conversion charges or any other charges payable to the concerned authority.

- d. That on 31.10.2013 an agreement was executed between the complainant and the respondent company with respect to the said unit. It is pertinent to mention here that as per the agreed terms of the agreement dated 31.10.2013 delivery of the possession of the booked flat in question was to be offered to the complainant within 42 months. However, the project in question is still under construction stage and seeing the progress and development of the project it is evident that there is no hope in the near future for the respondent to complete the construction and deliver the possession of the booked flat to the complainant as per the agreed terms and conditions of the agreement dated 31.10.2013.
- e. That the period of 42 months as mentioned in the agreement dated 31.10.2013 for delivery of the possession of the said flat has already elapsed and there has been inordinate delay on the part of the respondent which still continues and due to which the complainant has suffered a lot due to the said delay in construction of the project resulting into delay in delivery of possession of the flat. Thus accordingly the possession of the said flat was to be delivered to the complainant by May, 2017. However, the flat is still under the construction stage and seeing the progress of the project it appears clearly that there is no hope that in near future for delivery of the possession of the said flat to the complainant.

- f. That as per the agreement dated 31.10.2013 the total sale consideration of the said apartment was Rs. 68,86,100/- (excluding applicable Service Tax) and proportionate share of External (EDC), Internal (IDC), Infrastructure Development Charges (IDC), Conversion charges or any other charges payable to the concerned authority. The complainant had opted for construction link plan and till date the complainant had paid Rs. 40,50,456/- i.e., 60% of the total sale consideration. The respondent on the other hand has also acknowledged the payment of the complainant and has accordingly issued receipts to the effect.
- g. That the complainant/applicant has paid approximately 60% of the total sale consideration amount to the respondent and till date the respondent has not given the possession of the said /booked flat to the complainant in-spite of the repeated requests of the complainant.
- h. That the complainant even sent a Legal notice dated 22.02.2018 to the respondent company and its directors which was duly received by them but was not replied back.
- i. That a period of more than 6 years has passed since the complainant had booked the aforesaid apartment vide application dated 14.08.2013 and till date the complainant has paid an amount of Rs. 40,50,456/- which is approximately 60% of the total sale consideration yet the respondent has not bothered to provide the complainant with the possession of the booked flat as promised by the respondent while applying for the aforesaid apartment vide the application dated 14.08.2013. Thus, it has become crystal clear that the respondent company is not interested into entering in the

agreement with the complainant and completing the construction and completing the said project within time as is clear from the conduct of the respondent. The complainant feels cheated and hence wants compensation of the amount of Rs. 40,50,456/- along with interest @ 18% p.a. from the date of payment till date.

- j. That the applicant/complainant has further come to know that the respondent has not taken due sanctions, approvals, permissions, licenses, NOC etc. from the concerned Government Departments/ Agencies, i.e., District Town and Country Planning, District Town Planner, etc. It is pertinent to mention here that the respondent did not convey the complainant about the delay in the construction of the said project. On the other hand, the construction of the said project had started approximately between 14.10.2013 to 01.05.2015. That the complainant had also taken a bank loan on 23.05.2016 against the said booked unit, though at present no loan is due against the complainant as the same has been cleared and closed on 17.10.2018.
- k. That the respondent has misappropriated the hard-earned money of the gullible complainant for its selfish use without utilizing the same for the said project resulting in almost abandoning the construction work in between for which he is liable to refund the principal amount along with an interest besides compensation for the harassment, mental agony and litigation charges.
- l. That the complainant avers that in view of the principle of the parity the respondent is also liable to pay interest at the rate of 18% per annum as the same rate is being charged by him from the allottees in case of delayed payments. The respondent is also liable to pay pendent

lite and future interest till the date of actual payment at the rate of 18% per annum.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)
 - a. Refund the amount of **Rs.40,50,456/-** out of the total sale consideration fraudulently received by the respondent from the complainant along with interest @ 18% p.a. from the date of respective deposits till date of its realization with cost of the complaint.
 - b. Award of compensation for Rs 5,00,000/- for the harassment and mental agony and Rs 50,000/- for the litigation charges.
10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

11. The respondent has contested the complaint on the following grounds.
 - a. That it is pertinent to mention here that delayed possession hurts and damages the respondent more than it does the complainant. It is submitted that any additional one-year delay increases the cost of project by 20%. It is further submitted that the respondent has not demanded or is in receipt of more than 40% of the total sale consideration of the proposed apartment from any allottee and is undertaking the cost of construction from its own pocket. The

- respondent is taking all measures to complete the project with procuring necessary approvals from the competent authority.
- b. That the tower-H is ready and the construction of building structure comprising of fourteen floors is completed. The necessary electrical wiring and works pertaining to plumbing and sanitation are also ready. It is submitted that the respondent would be in a position in all probability to offer possession of the flats in tower-H in 4-5 months from the date of filing of the present reply. The respondent has incurred and utilised his own funds and loans towards construction of the project and if the complaints pertaining to refunds are entertained at this stage it would jeopardize the fate of the project which would consequently hamper the valuable rights of the other allottees of project. The respondent is in the process of applying for occupation certificate for tower- H. The respondent is willing to adjust for the interest components as computed for delay in offering possession towards the balance sale consideration of the complainant as the respondent will offer possession in tower-H to the complainant.
- c. That the statement of objects, reasons and preamble of the Act makes it manifestly clear that it is not only the interest of the consumers of the real estate sector which the Act seeks to protect and safeguard but also the promotion of the real estate with a view to ensure sale of plot, apartment etc. Therefore, this AO should consider the said objective

especially in light of preceding paragraphs. The authority is empowered not only to monitor the projects but also to ensure their timely completion where projects are held up or stopped and to take steps so the same are completed in time and in the interest of the allottees who are awaiting possessions of the units in the project. It is not out of place to mention here that due to pending registration of the project with the authority the respondent since the implementation of the Act unable to raise funds from its existing customers nor could it raise finance by selling unsold inventory. The shortage of funds to enable rapid construction had been a determining factor for the delay as it slowed down the pace of construction considerably. It is reiterated that the Respondent is undertaking costs of constructions from its own pockets and is not demanding anything from the allottees, an act which is unprecedented by any other real estate company, and it is now for this authority to balance the interest of the consumers and the promoters harmoniously to achieve the maximum good and benefits.

- d. That M/s RMS Estate Pvt Ltd (Now known as "Agrante Developers Pvt Ltd") ("Respondent herein") was granted development licence from Director Town and Country Planning, Haryana ("DTCP") for development of land spread over a total area of 18.0625 acre of land

- on which the present project is being developed. The said license was granted on 27.03.2012 and was valid for 4 years.
- e. That subsequent to grant of the above licence the respondent had executed a development/collaboration agreement dated 23.05.2013 with M/s Sarvaram Infrastructure Pvt Ltd ("Collaborator"). An area admeasuring 10.218 acre out of the aforesaid total land was handed to the collaborator with absolute and exclusive rights for the purposes of developing the same. It is pertinent to mention here that M/s Sarvaram Infrastructure Pvt Ltd himself or through his nominee had proposed to build a separate project namely "ELACASSA" on that parcel of land with which the respondent has no association whatsoever. Thus, resultantly there were two projects being developed under the same license by two distinct colonizers with rights and liabilities strictly framed under the said collaboration agreement. It would not be out of place to mention here that such agreements were in common practice then.
- f. The development/collaboration agreement dated 23.05.2013 stipulated strict liability on M/s Sarvaram Infrastructure Pvt Ltd or his appointed nominee to be in compliance of all statutory compliances, bye-laws applicable as per HUDA, DTCP etc as applicable for his parcel of land. M/s Sarvaram Infrastructure Pvt Ltd was further under the obligation to remit all the dues accrued towards governmental

authorities arising under the agreement for the portion of land with the collaborator under the agreement.

g. That M/s Sarvaram Infrastructure Pvt Ltd however, started defaulting in his compliance of statutory duties and contractual obligations. The respondent had on several occasions issued written requests and even served legal notices to M/s Sarvaram Infrastructure Pvt Ltd to rectify the said defaults inter-alia payment of EDC and IDC charges. The respondent had taken every step to ensure compliance of statutory obligations as non-compliance by M/s Sarvaram Infrastructure Pvt Ltd would directly prejudice the respondent's project completion having the common license. It is submitted that the license for the land lapsed due to non-renewal, and it cannot be renewed until outstanding EDC & IDC charges along with penalty is not cleared for the total land jointly by the respondent and M/s Sarvaram Infrastructure Pvt Ltd in proportion to their respective projects. Needless to mention here that the respondent is ready and willing to pay its share of EDC and IDC charges for the purposes of renewal of license.

h. That the bona-fide of the respondent can be further gathered by the fact that the respondent is running post to pillar and has filed a representation before financial commissioner (Haryana) seeking a bifurcation of the license in two parts for two projects respectively

and pursuing the same sincerely. It is pertinent to mention that only after renewal of license the respondent will be competent to obtain RERA registration. The respondent has undertaken every possible measure in his armoury to salvage the project and complete the same. The process for bifurcation of license is still under consideration.

- i. It is submitted that the respondent has filed for HRERA registration vide order letter dated 09.08.2018 of its project on the said land which was to be with the applicant as per the agreement. The fate of the application is dubious and is still pending as the aforesaid license has lapsed and not existing anymore as on date and further, EDC and IDC charges are unpaid which were to be paid by the M/s Sarvarm Infrastructure Pvt Ltd. It is pertinent to mention here that the directors of the Sarvarm Infrastructure Pvt Ltd are lodged in jail presently. The respondent is crippled in the sense that he is unable to correspond with them which could perhaps lead to any fruitful results. Moreover, insolvency proceedings are pending against them before NCLT.
- j. It is submitted that due to non-registration with HRERA the respondent is unable to sell its proposed units in its project. More particularly the applicant is crippled financially as no demand can be raised by the respondent from its existing members. It is to be kindly considered by this hon'ble court that the respondent has accordingly

not raised a single demand from its members and has not collected more than 40% of total sale consideration of a unit from any of its members. On the contrary the respondent has undertaken the tedious task of completing the construction of the project from its own finances and loans so as to offer possession and is also remitting the interests on subvention scheme on behalf of customers so as to protect them from further loss.

- k. That, it would be of high importance to mention one similar complaint filed with this authority wherein similar issues were being adjudicated. The authority under HARERA had the opportunity to deal with similar complex issued faced by developers in respect of the licensed land wherein the original licensee had further sub-divided the land for development purposes on the basis of collaboration agreements. This authority in complaint no. 826/2018, 1402/2018, 1343/2018, 1344/2018 had passed common orders. The issues in these complaints were similar to the applicant's issues. In this case also the original licensee Triveni Ferrous Infrastructure Pvt Ltd a joint venture comprising of two groups Seth and Mittal Group who had subsequently divided/assigned development/marketing rights into five separate lands holding to be developed separately pursuant to which similar issues arose which are being faced by the applicant. This authority in that complaint had passed its conclusions and

recommendations more particularly the recommendation to Town and Country Planning Department, Haryana stressing the grave importance that DTCP must divide license in five parts (As there were Five assignee developers) and determine liabilities of each party individually and separately (Liability on account of overdue License fee, EDC, IDC penal interest and other charges).

- l. It is submitted that the tower H in question shall be completed in another 4-5 months from the date of filing the present reply. The respondent further requests the Ld. AO, keeping in view the interest of other allottees and the completion of the project, not to allow refund at this stage as by granting right to one party, rights of others shall not be jeopardised as refund at this stage shall adversely affect completion of the project and consequently all other allottees who intend to continue in the project will suffer.
- m. That lastly it is submitted that the crisis of COVID-19 pandemic has also given a blow to smooth working of the respondent. It is pertinent to mention here that during the lockdown imposed by the Central Government, the workforce at the project site left for their homes and there was a complete halt in the work which added to further delay. It was after sincere efforts of the respondent that the workforce could be again mobilised and presently the works are being carried out at the site.

12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
13. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. SLP(Civil) No(s). 3711-3715 OF 2021*, the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.5.2022 in *CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP* and was observed that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.
14. Keeping in view the judgement of Hon'ble Supreme Court in case titled as *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra)* the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/CRA. Both the parties want to proceed further in the matter accordingly. The Hon'ble Supreme Court in case of *Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431*

of 2019 decided on 01.03.2019 has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the pleading and submissions made by both the parties during the proceedings.

E. Jurisdiction of the authority

15. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

16. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

18. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
19. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under

Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

20. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants

F.1 Refund entire amount paid by the complainant along with the interest

21. In the present complaints, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

22. Clause 18 of the agreement provides for handing over of possession and is reproduced below:

"18(a).

Subject to other terms of this Agreement/Agreement, including but not limited to timely payment of the Total Price, stamp duty and other charges by the Vendee(s), the Company shall endeavour to complete the construction of the Said Apartment within 42 (Forty-two) months from the date of Allotment, which is not the same as date of this Agreement. The Company will offer possession of the Said Apartment to the Vendee(s) as and when the Company receives the occupation certificate from the competent authority(ies). Any delay by the Vendee(s) in taking possession of the Said Apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof."

23. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is

just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

24. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

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., 30.08.2022 is **8.0%**. 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. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 18 of the agreement dated 31.10.2013, the possession of the subject apartment was to be delivered within a period of 42 months from the date allotment which is not the same as date of this agreement. Accordingly, the due date calculated from date of allotment letter i.e., 21.11.2013 i.e., by 21.05.2016.

29. Keeping in view the fact that the allottee/complainant wish to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the

terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.

30. The due date of possession as per agreement for sale as mentioned in the table above is 21.05.2017 and there is delay of 3 years 5 months and 14 days on the date of filing of the complaint.
31. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

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

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

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

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

33. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
34. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
- F.II. Direct the respondent to pay a sum of Rs. 1,00,000/- as cost of litigation**

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

G. Directions of the authority


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

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

- complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.
37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
38. 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.
39. Files be consigned to registry.

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

Dated: 30.08.2022


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

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