



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

Date of decision: 10.08.2022

<b>NAME OF THE BUILDER</b>		<b>ANSAL HOUSING LTD.</b>	
<b>PROJECT NAME</b>		<b>ANSAL HUB 83</b>	
<b>S. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>APPEARANCE</b>
1	CR/751/2020	Dax Abraham V/s Ansal Housing Ltd.	Shri. John Mathew Smt. Meena Hooda
2	CR/752/2020	Susan Dax V/s Ansal Housing Ltd.	Shri. John Mathew Smt. Meena Hooda

**CORAM:**

Dr. K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman**  
**Member**

**ORDER**

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



namely, "Ansal Hub 83" (Commercial Colony) being developed by the same respondent/promoter i.e., M/s **Ansal Housing 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:

<b>Project Name and Location</b>	<b>ANSAL HOUSING LTD "ANSAL HUB 83" Sector-83, Gurugram.</b>		
<b>Clause 26</b>	<p><i>"The developer shall offer possession of the unit any time, within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material o supplies, failure of transportation, strike, lockouts, action of labour union, any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any courts/tribunals and/or any other public or competent authority or intervention of statutory authorities, or any other reason(s) beyond the control of the developer. The allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the developer."</i></p> <p style="text-align: right;"><b>(Emphasis supplied)</b></p>		
<b>Occupation certificate: - Not obtained</b>			
<b>Sn.</b>	<b>Complaint No. &amp; Case Title</b>	<b>CR/751/2020</b>	<b>CR/752/2020</b>
		<b>Dax Abraham V/s Ansal Housing Ltd.</b>	<b>Susan Dax V/s Ansal Housing Ltd.</b>





1.	<b>Reply status</b>	Reply received on 17.03.2020	Reply received on 17.03.2020
2.	<b>Unit no.</b>	122 [pg. 25 of complaint]	124 [pg. 25 of complaint]
3.	<b>Date of allotment letter</b>	27.03.2014 [pg. 25 of complaint]	27.03.2014 [pg. 25 of complaint]
4.	<b>Due date of possession</b>	27.03.2017 [Note: Due date calculated from date of allotment letter i.e., 27.03.2014 being later.]	27.03.2017 [Note: Due date calculated from date of allotment letter i.e., 27.03.2014 being later.]
5.	<b>Total Consideration / Total Amount paid by the complainant(s)</b>	BSC: ₹ 33,37,416/- AP: ₹ 22,40,570/-	BSC: ₹ 23,26,575/- AP: ₹ 17,26,606/-
6.	<b>Relief sought</b>	1. Refund the entire amount paid by the complainant along with the interest.	1. Refund the entire amount paid by the complainant along with the interest.

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/751/2020 Dax Abraham V/s Ansal Housing 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/751/2020 Dax Abraham V/s Ansal Housing Ltd.**

S. N.	Particulars	Details
1.	Project name and location	"Ansal Hub-83", Sector-83, Gurugram
2.	Project area	2.46875 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	87 of 2009 dated 30.12.2009 valid up to 29.12.2013
5.	Name of licensee	Mr. Virender Singh & Mrs. Meena Devi c/o Aakash Infrastructure Pvt. Ltd.
6.	RERA registration details	Not registered
7.	Unit no.	122





		[pg. 25 of complaint]
8.	Unit measuring	418 sq. ft. [pg. 25 of complaint]
9.	Date of allotment letter	27.03.2014 [pg. 25 of complaint]
10.	Date of sanction of building plans	11.09.2013
11.	Possession clause	<b>26.</b> <i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material o supplies, failure of transportation, strike, lockouts, action of labour union, any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any courts/tribunals and/or any other public or competent authority or intervention of statutory authorities, or any other reason(s) beyond the control of the developer. The allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the developer."</i> <i>(Emphasis supplied)</i>

		<i>[pg. 32 of complaint]</i>
12.	Due date of possession	27.03.2017 <b>[Note: Due date calculated from date of allotment letter i.e., 27.03.2014 being later.]</b>
13.	Delay in handing over of possession till the date of filing of this complaint i.e., 13.02.2020	2 years 10 months 17 days
14.	Basic sale consideration as per payment plan annexed with allotment letter at page 41 of complaint.	₹ 33,37,416.50/-
15.	Total sale consideration as per customer ledger dated 11.05.2019 on pg. 57 of complaint	₹ 33,63,178.50/-
16.	Total amount paid by the complainant as alleged by complainant	₹ 22,40,570/-
17.	Occupation certificate	Not yet obtained
18.	Offer of possession	Not offered

**B. Facts of the complaint**

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

- a. The complainant is a citizen of India to whom the above-mentioned unit was allotted by the respondent promoter/builder in relation to a real estate project undertaken by them. The complainant is a resident of Delhi at the address given above. The respondent has their registered office at New Delhi at the address given above. The





respondent is a promoter as defined under section- 2 (zk) of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act"). The present complaint deals with the purchase of the unit no. 122, at Ansal Hub Sector-83, Gurguram. That the complainant is an allottee as defined under section 2(d) of the RERA Act. That the unit is a shop as defined under section 2(e) of the RERA Act. That the respondent, to the best of the knowledge of the complainant, has not obtained a completion certificate as defined under section-2(q) or an occupancy certificate as defined under section-2(zf) of the RERA Act.

- b. That in the month of May 2011, the complainant was approached by one Shri. Joginder Singh, from Mahi Realtors (9M045), representing to be the authorised broker of the respondent/developer, regarding the sale of the proposed units that were to be built by the respondent. Thereafter, based on the representations made by the broker/agent of the respondent, the broker took the complainants to a model unit and assured that the construction would be completed within the stipulated time with all the facilities and features as seen by them. Thereafter the complainants decided to apply for the allotment of a unit. In response to the complainant's application dated 07-05-2011, the respondent developer vide letter dated 27-03-2014 allotted a unit, being unit no-122, in the project under the name "Ansal Hub 83" Sector-83, Gurguram, Haryana. The respondent agreed to allot the unit, having an area of 418 sq. ft at the rate of ₹ 6945/- per sq. ft for the basic sale price of Rs. 29,03,010/- and for a total unit basic price, at Rs. 30,48,160/- (Rupees thirty lakhs forty-eight thousand one hundred and sixty only).



- c. The letter of allotment dated 27.03.2014, was annexed with the principal terms and conditions forming part of the letter of allotment. The respondent represented that the project was being developed on a land area comprised and falling in sector-83, Gurgaon-Manesar Urban Master Plan 2021, Haryana, under licence no. 87 of 2009. The terms also detailed the payment plan opted by the complainants, being a stage wise construction linked plan. The complainant made all the payments as per plan without any default. As per these terms, signed by the parties, at clause-26, the respondent developer was required to offer possession of the unit any time within a period of 36 months from the date of execution of allotment letter.
- d. The complainant, on their behalf, fulfilled the terms and conditions stipulated in the letter of allotment and made all the payments as and when demanded by the respondent. On many occasions' demands were raised by the respondent even without completing the stage that was required to be achieved as per the terms of the allotment. The complainant has till date paid a total amount of Rs. 22,40,570/- (twenty-two lakhs forty thousand, five hundred and seventy) to the respondent towards the construction of the unit.
- e. That the respondent, as undertaken in the terms and conditions stipulated in the letter of allotment dated 27-03-2014, was required to deliver possession by March 2017 and have miserably failed to do so till date. It is submitted that the respondent has failed to complete and is unable to give possession of the unit in accordance with the terms of the agreement duly completed by the date specified. In order to ascertain about the stage of completion of the apartment, the





complainant had visited the project site on many occasions and found that the unit was far from complete and was not commensurate with the stage and description for which the demand was being made. Demand/ Call letters were being made without achieving the stage and description for which the demand was being sought even in the year 2016. Thereafter the respondent sought to raise various demands in the year 2017 and 2018 without the stage-wise completion of the shop. The complainant had been regularly making payment as and when call/demand letters were being sent by the respondent. When the complainant visited the project site in October 2018, the unit was only a bare structure and in a raw condition, without any electrical, plumbing or tile work. The complainants had taken some photographs of the incomplete unit during his visit to the project site.

- f. Since the respondent failed to comply with the terms undertaken, the complainant was no longer obligated to make the payments as demanded by the respondent. The complainant vide email letter dated 10.04.2019 informed the respondent that the respondent has failed to complete the construction and hand over possession within the date specified in the allotment letter and therefore sought for the refund of the entire money deposited with interest.
- g. That the project was an ongoing project as on the date of commencement of the Act of 2016, and no completion certificate, as defined under section 2(zf) of the Act, has been issued to or received by the respondent to the best of the complainant's knowledge. It is also submitted that no completion certificate as defined as under section



2(q) of the Act of 2016 has been issued to the respondent by any competent authority.

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

9. The complainant has sought following relief(s)
  - a. Refund the entire amount paid by the complainant along with the interest.
10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

11. The respondent has contested the complaint on the following grounds.
  - a. That the present complaint is not maintainable in law or on facts. The complainant has filed the present complaint seeking refund and interest for alleged delay in delivering possession of the unit/ space booked by the complainant. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of Act, 2016 read with rule 29 of the Rules, 2017 and not by this authority. The present complaint is liable to be dismissed on this ground alone.
  - b. That even otherwise, the complainant has 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 allotment





- of commercial shop/office dated 27.03.2014, as shall be evident from the submissions made in the following paragraphs of the present reply.
- c. That the respondent is a Public Limited Company registered under the Companies Act, 1956 having its registered office at 606, Indraprakash, 21 Barakhamba Road, New Delhi – 110001. The present reply is being filed by the respondent through its duly authorized representative named Mr. Vaibhav Chaudhary whose authority letter is attached herewith. The above said project is related to licence No.87 of 2009 dated 30.12.2009 received from DGTC, Chandigarh over the land measuring 2.46875 Acres details of the same are given in builder buyer agreement, situated in Sector-83, Gurugram, Manesar Urban Development Plan 2021.
- d. That since the Real Estate (Regulation of Development) Act, 2016 and the Haryana Real Estate (Regulation of Development) Rules, 2016 came into force, the respondents have decided and have already been applied for the registration of the project named ANSALS HUB 83 with the Hon'ble Authority.
- e. That the complainants approached the respondent sometime in the year 2011 for the purchase of an independent unit in its upcoming residential project "ANSALS HUB 83" (hereinafter be referred to as the "project") situated in Sector-83, Gurugram. It is submitted that the



complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was being fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same and the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner.

- f. That thereafter the complainant vide application form dated 07.05.2011 applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no. 122, type of unit-shop, sales area 418 sq. ft. in project named ANSALS HUB 83 situated at sector 83, Gurugram. The complainant consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant. The complainant further undertook to be bound by the terms and conditions of the application form.
- g. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently





developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period as given by the respondent to the authority.

- h. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No. 20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, may be harmful to the public at large without admitting any liability. Apart from these from the direction issued by Chairman of EPCA wide letter No EPCA-R/2018/L-91 to MCG Gurugram and MCG Gurugram passed an order dated October 2018 wide which they have directed to stop all the construction activities involving excavation, civil construction (excluding internal finishing/work where no



construction material is used) to remain closed in Delhi and other NCR district from November 1-10-2018 and all the stone crushers, hot mix plants generating dust pollution to remain closed in Delhi and other NCR district from November 1-10-2018 etc. The demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only buy liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana Government.

12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
13. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement ***M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. SLP(Civil) No(s). 3711-3715 OF 2021***, the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.5.2022 in ***CR No. 3688/2021***





*titled Harish Goel Versus Adani M2K Projects LLP* and was observed that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.

14. Keeping in view the judgement of Hon'ble Supreme Court in case titled as *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra)* the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/CRA. Both the parties want to proceed further in the matter accordingly. The Hon'ble Supreme Court in case of *Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019* has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the pleading and submissions made by both the parties during the proceedings.

**E. Jurisdiction of the authority**

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

**E. I Territorial jurisdiction**

16. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate



Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

## **E. II Subject matter jurisdiction**

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

### **Section 11**

.....

(4) The promoter shall-

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

### **Section 34-Functions of the Authority:**

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

18. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
19. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers**





**Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

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

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

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

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



**"Section 18: - Return of amount and compensation**

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

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

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

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

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

*(Emphasis supplied)*

22. Clause 26 of the agreement provides for handing over of possession and is reproduced below:

**"26**

*The developer shall offer possession of the unit any time, **within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later** subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material o supplies, failure of transportation, strike, lockouts, action of labour union, any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any courts/tribunals and/or any other public or competent authority or intervention of statutory authorities, or any other reason(s) beyond the control of the developer. The allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the developer."*

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., 10.08.2022 is **7.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **9.80%**.
27. The definition of term 'interest' as defined under section 2(z) 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 26 of the allotment letter dated 27.03.2014, the possession of the subject apartment was to be delivered within a period of 36 months from the date of sanction of building plan or date of execution of allotment whichever is later. Accordingly, the due date calculated from date of allotment letter i.e., 27.03.2014 i.e., by 27.03.2014.
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 27.03.2017 and there is delay of 2 years 10 months and 17 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., @ 9.8% 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. Directions of the authority**

35. 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 9.80% 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.
36. This decision shall *mutatis mutandis* apply to cases mentioned in para 3 of this order.

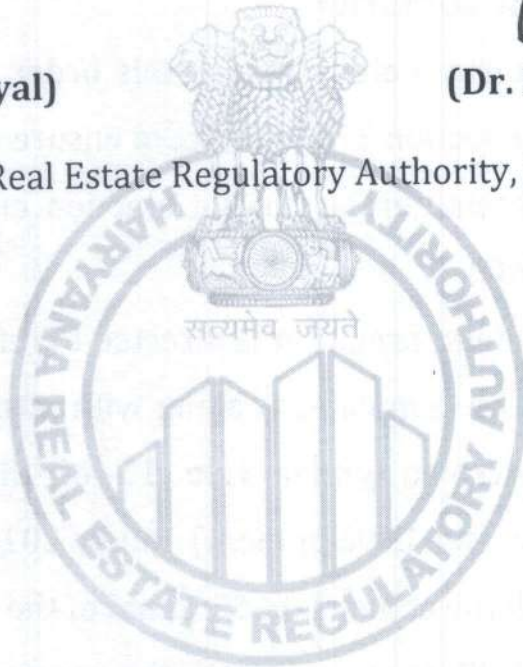


37. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter. There shall be separate decrees in individual cases.
38. Files be consigned to registry.

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

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

Dated: 10.08.2022



**HARERA**  
**GURUGRAM**