

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

Date of decision: 10.08.2022

NAME OF THE BUILDER		ANSAL HOUSING LTD.	
PROJECT NAME		ANSAL HIGHLAND PARK	
S. No.	Case No.	Case title	APPEARANCE
1	CR/2007/2018	Varun Jain & Sangeet Jain V/s Ansal Housing Ltd.	Shri Sushil Yadav Smt. Meena Hooda
2	CR/5950/2019	Dax Abraham V/s Ansal Housing Ltd.	Shri John Mathew Smt. Meena Hooda
3	CR/753/2020	Dr. Sandhu Sapru V/s Ansal Housing Ltd. & Identity Buildtech Pvt. 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 all the 3 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 Highland Park" (group housing colony) being developed by the same respondent/promoter i.e., M/s Ansal Housing Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.
3. The details of the complaints, reply 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	ANSAL HOUSING LTD "ANSAL HIGHLAND PARK" Sector-103, Gurugram.		
Possession Clause: - 31	<p><i>"The developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit."</i></p> <p style="text-align: right;">(Emphasis supplied)</p>		
Occupation certificate: - Not obtained			
Note: Grace period is allowed being unqualified & included while computing due date of possession.			
Complaint No., Case Title, and Date of filing of complaint	CR/2007/2018 Varun Jain & Sangeet Jain V/s Ansal Housing Ltd.	CR/5950/2019 Dax Abraham V/s Ansal Housing Ltd.	CR/753/2020 Dr. Sandhu Sapru V/s Ansal Housing Ltd. & Identity Buildtech Pvt. Ltd.

Reply status	Reply received on 31.12.2018	Reply received on 12.02.2020	Reply received on 17.03.2020
Unit No.	INVES-1403 [pg. 18 of complaint]	OBAAN-0901 [pg. 35 of complaint]	OBAAN-0305 [pg. 30 of complaint]
Date of apartment buyer agreement	03.06.2013 [pg. 15 of complaint]	20.09.2013 [pg. 32 of complaint]	25.06.2013 [pg. 27 of complaint]
Date of transfer of unit in name of complainant	NA	05.05.2014 [pg. 56 of complaint]	16.10.2013 [pg. 48 of complaint]
Due date of possession	03.12.2017 (Note: 48 months from date of agreement i.e., 03.06.2013 being later+ 6 months grace period allowed being unqualified)	20.03.2018 (Note: 48 months from date of agreement i.e., 20.09.2013 being later+ 6 months grace period allowed being unqualified)	16.04.2017 (Note: 48 months from date of agreement i.e., 16.10.2013 being later+ 6 months grace period allowed being unqualified)
Total Consideration / Total Amount paid by the complainant(s)	BSC: ₹ 88,77,850/- AP: ₹ 76,93,723/-	BSC: ₹ 57,78,025/- AP: ₹ 70,68,143/-	BSC: ₹ 53,77,202.12/- AP: ₹ 53,99,322/-
Relief Sought	1. Refund the entire amount along with interest	1. Refund the entire amount along with interest	1. Refund the entire amount along with interest

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over

the possession by the due date, seeking award of refund the entire amount along with interest and compensation.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/2007/2018 Varun Jain & Sangeeta Jain 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/2007/2018 Varun Jain & Sangeeta Jain V/s Ansal Housing Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Highland Park", Sector 103, Gurugram.
2.	Total area of the project	11.70 acres
3.	Nature of the project	Group housing project

4.	DTCP license no.	32 of 2012 dated 12.04.2012 valid up to 11.04.2025
5.	Name of licensee	M/s Identity Buildtech Pvt. Ltd. M/s Agro Gold Chemicals India LLP
6.	Registered/not registered	Registered Vide registration no. 16 of 2019 dated 01.04.2019 valid up to 30.11.2021
7.	Unit no.	INVES-1403 [pg. 18 of complaint]
8.	Area of the unit	1762 sq. ft. [pg. 18 of complaint]
9.	Date of execution of buyer's agreement	03.06.2013 [pg. 15 of complaint]
10.	Possession clause	Clause 31. 31. The developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit. (Emphasis supplied) [pg. 24 of complaint]



11.	Date of start of construction as per customer ledger dated 18.07.2016	18.05.2013 [pg. 40 of complaint]
12.	Due date of possession	03.12.2017 (Note: 48 months from date of agreement i.e., 03.06.2013 being later+ 6 months grace period allowed being unqualified)
13.	Delay in handing over possession till the date of filing of this complaint i.e., 26.11.2018	11 months 23 days
14.	Basic sale consideration as per payment plan annexed with BBA at page 18 of complaint.	₹ 88,77,850/-
15.	Total sale consideration as per customer ledger dated 18.07.2016 on pg. 37 of complaint	₹ 96,18,886/-
16.	Total amount paid by the complainant as per customer ledger dated 18.07.2016 on pg. 39 of complaint	₹ 76,93,723/-
17.	Offer of possession	Not offered
18.	Occupation certificate	Not yet obtained

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- That the respondent gave advertisement in various leading newspapers about their forthcoming project named **Ansals Highland Park, Sector -103 Gurgaon** promising various advantages, like world

class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements Mr. Varun Jain & Sangeeta Jain, booked an apartment/flat admeasuring 1762 sq. ft. in aforesaid project of the respondent for total sale consideration is **Rs. 96,18,886/-** which includes BSP, car parking, IFMS, Club Membership, PLC etc. The complainants made payment of **Rs.77,93,723/-** to the respondent vide different cheques on different dates.

- b. That as per flat buyers' agreement the respondent had allotted a unit no. 1203 in tower Perth admeasuring 1762.00 Sq. Ft. in **Ansal Highland Park Sector -103 Gurgaon** to the complainants. That as per para-no.31 of the builder buyer agreement, the respondent had agreed to deliver the possession of the flat within 48 months from the date of signing of the flat buyer's agreement dated 03.06.2013.
- c. That complainant regularly visited the site but was surprised to see that construction work was very slow in progress and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the Project without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainants. That despite receiving the payment as demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted flat to the complainant within stipulated period.



- d. That it could be seen that the construction of the project in which the complainant flat was booked with a promise by the respondent to deliver the flat by 03.12.2017 but was not completed within time for the reasons best known to the respondent, which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.
- e. The complainant visited the site but are shocked to see that construction was going on very slow speed then the complainant contacted the respondents through mails and personal visit, about the project but the respondent did not gave any satisfactory answer and complainant had paid **Rs.77,93,723/-** by then as and when demanded by the respondent but the construction was going on at a very slow speed and even the respondent did not know that when they will able to deliver the project.
- f. That due to this omission on the part of the respondent the complainant has been suffering from disruption, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the flat on time or refund the money. That as per clause 37 of the flat buyer agreement dated 03.06.2013 it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @ **Rs.5/- per sq.ft. per month of the super area of the apartment/flat.** It is, however, pertinent to mention here this is unjust and the respondent has exploited the complainant by neither providing the possession of the flat even after a delay nor refunded the amount paid by the complainant. The respondent cannot escape the liability merely by

mentioning a clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyers' agreement and usurp such a huge amount of the complainant.

- g. That on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainants @24% per annum to be compounded from the date of amount paid.
- h. That the complainants have requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent to refund the amount along with interest @ 24% per annum on the amount deposited by the complainant but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount and wrongfully gain himself and caused wrongful loss to the complainant.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)
 - a. Direct the respondent to refund the amount paid along with prescribed rate of interest per annum on compounded rate from the date of booking from the flat in question.
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 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.32 of 2012 received from DGTC, Chandigarh over the land measuring 11.7 Acres details of the same are given in builder buyer agreement, situated within the revenue estate of Village Nawada Fatehpur, Gurugram, which falls within the area of Sector-103, Gurugram, Manesar Urban Development Plan.
- b. That the relief sought in the complaint by the complainant is based on false and frivolous grounds and he is not entitled to any discretionary relief from this authority as the person not coming with clean hands may be thrown out without going into the merits of the case. However, the true facts of the case are that the land of the project is owned by the respondent through its subsidiary M/s Identity Buildtech Pvt. Ltd., & M/s Agro Gold Chemical Ltd. having its registered office at B-1/1345, Vasant Kunj, New Delhi-110070.
- c. That, it is submitted that the complaint is not maintainable or tenable under the eyes of law, as the complainant have not approached the hon'ble authority with clean hands and have not disclosed the true and



material facts relates to this case of complaint. The complainant, thus, have approached the hon'ble authority with unclean hands and have suppressed and concealed the material facts and proceedings which has direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as ***S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page-1*** in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the Hon'ble adjudicating officer and subsequently the same view was taken by even Hon'ble National Commission in case titled as ***Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012 decided on 25.09.2013.***

- d. 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, maybe harmful to the public at large without admitting any liability. Apart from these 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 by liquid cash. The sudden restriction on withdrawals led the respondent to be unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of agreement as well as in compliance of other local bodies of Haryana Government.

- e. That it is also a conceded and admitted fact that the project related to the present complaint has not yet been registered under this Act and as such the authority lacks jurisdiction to entertain the present complaint.
- f. That the respondent reserves its right to file additional reply and documents, if required, assisting the Hon'ble Authority in deciding the present complaint at the later stage.
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) i
n accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) d
ue 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 31 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"31.

The developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit."

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. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The authority calculated due date of possession from the date of date of execution of agreement i.e., 03.06.2013 being later. The period of 48 months expired on 03.06.2017. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.
25. **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.
26. 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.

27. 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%**.
28. 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;"*

29. 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 31 of the agreement executed between the parties on 03.06.2013, the possession of the subject apartment was to be delivered within stipulated time i.e., by June 2017. As



far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 03.12.2017.

30. 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.
31. The due date of possession as per agreement for sale as mentioned in the table above is 03.12.2017 and there is delay of 11 months and 23 days on the date of filing of the complaint.
32. 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....."

33. 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."

34. 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.
35. 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., @ 9.80% 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

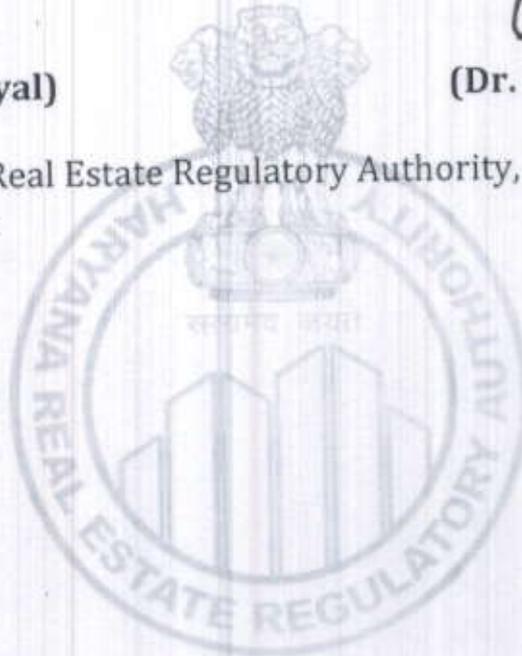
36. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent/promoter is directed to refund the amount received by it from the complainant along with interest at the rate of 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.
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.

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

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

Dated: 10.08.2022



HARERA
GURUGRAM

