

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

Complaint no. : 1257 of 2022
First date of hearing: 15.07.2022
Date of decision : 07.10.2022

Mr. Sandeep Singh Bhatia
S/o Sh. G.S., Bhatia
R/o: - NS- 2111, DLF, Phase- 2, Gurugram

Complainant

Versus

M/s Ramprashtha Developers Private Limited.
Regd. office: Plot No. 114, Sector-44, Gurugram-
122002
Also, at: - C-10, C Block, Market, Vasant Vihar, New
Delhi- 110057

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Member
Member
Member

APPEARANCE:

Sh. Sanjeev Dhingra (Advocate)
Sh. Manoj Kumar (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 28.03.2022 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it



is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	Cannot be ascertained
2.	Project area	105.402 acres
3.	Nature of the project	Plotted colony
4.	DTCP license no. and validity status	Cannot be ascertained
5.	RERA Registered/ not registered	Not registered
6.	Unit no.	Milk Booths
7.	Unit area admeasuring	30 sq. yards.
8.	Date of booking application form	N. A
9.	Allotment letter	N. A
10.	Date of execution of agreement to sell	09.12.2015 (Page no. 11 of the complaint)



11.	Possession Clause	<p>3.1 Execution of conveyance deed: <i>"The parties agree to execute the conveyance deed of the two milk booths sites of sec 37C and 37D on or around 31.12.2017 upon receipt of the respective total sale consideration, as enumerated herein before, whereby the first party shall transfer by way of conveyance/sale the said milk booths, free of all encumbrances, litigations, charges, claims, decree, prior sale etc., in favour of the second party. In the event the failure on the part of the first party to execute and register the conveyance deed on or before the sale date, the second party shall be entitled to the right of specific performance of this deed of agreement to sell and conveyance through of court of law. However, in such case, the first party shall be liable to pay interest to the second party @18% p.a. till the date of actual performance."</i></p>
12.	Due date of possession	31.12.2017 [as per mentioned in the agreement to sell dated 09.12.2015]
13.	Total sale consideration as per agreement for sale dated 09.12.2015 at page no. 12 of the complaint	Rs.25,00,000/- (Rs.12,50,000/- for 1 milk booth each)



14.	Amount paid by the complainant	Rs.4,00,000/- (for both milk booths)
15.	Occupation certificate /Completion certificate	Not yet been obtained
16.	Offer of possession	Not offered
17.	Delay in handing over the possession till date of filing complaint i.e., 28.03.2022	4 years 2 months and 28 days

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That on 09.12.2015, the complainant was approached by the respondent in relation of booking of two "Milk Booths" in the plotted colony measuring of 105.402 acres forming part of Sectors 37C and 37D, Villages Gadauli Kalan, Basai and Gadauli Khurd, District Gurugram, Haryana.
- II. That on 09.12.2015, the complainant entered into an agreement to sell with the respondent, for the total sale consideration price for two milk booths was Rs.21,00,000/- plus Rs. 2,00,000/- separately chargeable as construction cost for each site/booth. This agreement was executed in respect of two milk booths of 30 sq. yard @ 35,000/- per sq. yd. i.e., Rs. 10.5 lacs for each booth in Sectors 37C and 37D. That as per clause 3.1 of the said agreement, respondent was liable to handover the physical possession of the



above said units and for the execution the conveyance deed up to 31.12.2017. The clause 3.1 of the agreement is reproduce as under:

"Execution of Conveyance Deed:

The Parties agree to execute the conveyance deed of the Two Milk Booths sites of sec-37-C and 37-D on or around 31.12.2017 upon receipt of the respective total sale consideration, as enumerated herein before, whereby the First Party shall transfer by way of conveyance/sale the said Milk Booths, free of all encumbrances, litigations, charges, claims decree, prior sales, etc., in favour of the Second Party. In the event the failure on the part of the First Party to execute and register the conveyance deed on or before the sale date, the Second Party shall be entitled to the right of specified performance of this deed of agreement to sell and conveyance through the court of law. However, in such case, the First Party shall be liable to pay interest to the second party @18% p.a. till the date of actual performance."

- III. That the present complaint before this authority arises out of the consistent and persistent non-compliance of the respondent herein with regard to the deadlines as prescribed under the agreement to sell between the parties.
- IV. That, on 31.12.2017 was the due date of handover of physical possession of the said units as per agreement to sell dated 09.12.2015, booked by the complainants in the said plotted colony of respondent.
- V. That on 25.11.2020 & 01.12.2020, the complainant sent the legal notices to the respondent through speed post and also physically submitted the copies of the legal notice on 01.12.2020.
- VI. The total amount of Rs.4,00,000/- as advance out of total sale consideration was paid by the complainant to the respondent at



the time of execution of an agreement to sell dated 09.12.2015. Thereafter, no demand has been raised by the respondent to the complainant till date.

- VII. That complainant many times approached to the respondent physically and telephonically in relation of possession and execution of conveyance deed in relation of two "Milk Booths" in the plotted colony measuring of 105.402 acres forming part of Sectors 37C and 37D, Villages Gadauli Kalan, Basai and Gadauli Khurd, Gurugram, Haryana but no response has been received. Till date, the respondent has not raised any demand and offered the possession of site/milk booth.
- VIII. It is submitted that act of the respondent has caused severe harassment both physically and mentally and it has duped the complainant of his hard-earned money.

C. Relief sought by the complainant:

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

I. Directing the respondent to refund Rs.4,00,000/- along with prescribed rate of interest.

5. 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.



6. The respondent has contested the complaint on the following grounds.
- I. That there is no agreement whether express or implied, oral or written, between the complainant and the respondent to provide any goods or services. The complainant had admittedly nowhere claimed to have purchased any goods or availed any services from the respondent. The complainant had requested the respondent seeking investment in undeveloped agricultural land in the year 2015 in the hope of making speculative gains on the approval of the zoning plans. But since the zoning plans were not approved by the government, the complainant has sought to file this vexatious complaint. The respondent has not agreed to provide service of any kind to the complainant unless, the plans were approved as it was merely a transaction for sale of plot. The complainant has filed the present complaint with malafide intention of abusing the process of this authority for wrongful gains in the form of interest at the cost of the respondent when in reality, the speculative investments has failed to give any return in present harsh real estate market conditions.
 - II. That the complainant has approached the respondent in the year 2015 to invest in undeveloped agricultural land in one of the futuristic projects of the respondent located in Sectors 37C & 37D, Gurugram. The complainant fully being aware of the prospects of the said futuristic project and the fact that the said land was a



mere futuristic project decided to make an investment in the said project for speculative gains. Thereafter, on 09.12.2015, the complainant paid an amount of Rs.4,00,000/- towards booking of the said milk booths.

- III. That the complainant has resorted to filing a complaint solely on the basis of false claims and baseless accusations against the respondent while concealing his own defaults and laches for which he is solely liable. Further, no date of possession has ever been mutually agreed between the parties. That even at the time of booking, it has been clearly stated that definite booths can be earmarked only once the zoning plans are approved by the authority which was within the knowledge of the complainant.
- IV. That the claims for possession are superfluous and *non-est* in view of the fact that the complainant is actually not even entitled to claim possession of the booth as on date. It is submitted that it is only on default in offer/handover of possession that the petitioner's right to claim possession/refund crystalizes.
- V. That no document has been submitted by the complainant in support of the time for possession. Even as per the complainant's own averments, the plot was required to be handed over in three years period i.e., in December 2017. Hence, it is submitted, without admitting to such date of handover of possession cited by the complainant even if the date of possession was to be

construed in December 2017, the period of limitation has come to an end in the month of December 2020.

- VI. There is no obligation on the part of the respondent to allot or handover any milk booth to the complainant since he has failed to provide any evidence of execution of agreement of sale of units in his favour.
- VII. That the complainant has attempted to create a right in his favour by resorting to terminate transactions which have become hopelessly barred by time and after the period of limitation has lapsed, it cannot be revived. Further, the complainant was never interested in fulfilling the necessary formalities towards booking of the said milk booths. Neither the complainant has made any further payment for milk booths as such in Ramprastha City nor did he submitted any application for the same. It is apparent that the complainant never turned up for the completion of the formalities.
- VIII. That without prejudice to the above, it is further submitted that the complainant is not "Consumers" within the meaning of the Consumer Protection Act, 2019 as his sole intention to purchase a plot for purely "commercial use". That the said plot was purchased by the complainant as an investment in a futuristic project, only to reap profits at a later stage when there is increase in the value of land at a future date which was not certain and



fixed and neither there was any agreement with respect to any date in existence of which any date or default on such date could have been reckoned due to delay in handover of possession.

- IX. That the complainant having full knowledge of the uncertainties involved has out of his own will and accord decided to invest in the present futuristic project. That it is submitted that the complainant having purely commercial motives have made investment in a futuristic project and therefore, he cannot be said to be genuine buyers of the said futuristic undecided booths and therefore, the present complaint being not maintainable and must be dismissed in limine.
- X. That the complainant has approached the respondents' office in November/December 2015 and have communicated that he is interested in a project and expressed interest in a *futuristic project*. It is submitted that the complainant was not interested in any of the ready to move in/near completion projects. It is submitted that a futuristic project is one for which the only value that can be determined is that of the underlying land as further amounts such as EDC/IDC charges are unknown and depends upon the demand raised by the statutory authorities. That on the specific request of the complainant, the investment was accepted towards a futuristic project and no commitment was made towards any date of handover or possession since such date was



not foreseeable or known even to them. The respondent had no certain schedule for the handover or possession since there are various hurdles in a futuristic project and hence no amount was received/demanded from the complainant towards development charges, but the complainant was duly informed that such charges shall be payable as and when demands will be made by the Government. The complainant is elite and educated individual who has knowingly taken the commercial risk of investing a project the delivery as well as final price was dependent upon future developments not foreseeable at the time of booking transaction. Now, the complainant is trying to shift the burden on the respondent as the real estate market is facing rough weather.

- XI. That even the sectoral location of the milk booths was not allocated by it. The said milk booths at the date of booking/provisional allotment was nothing more than a futuristic project undertaken to be developed by the respondent after the approval of zoning plans and completion of certain other formalities. A plot in a futuristic project with an undetermined location and delivery date cannot be said to be a plot purchased for residential use by any standards. The complainant therefore only invested in the said milk booths so that the same can be used to derive commercial benefits/gains.



- XII. That therefore the complainant cannot be said to be genuine consumer by any standards; rather the complainant is mere investor in the futuristic project. An investor by any extended interpretation cannot mean to fall within the definition of a "Consumer" under the Consumer Protection Act, 2019. Therefore, the complaint is liable to be dismissed merely on this ground.
- XIII. That the complainant has concealed its own inactions and defaults since the very beginning. The complainant has deliberately concealed the material fact that the complainant is at default due to non-payment of developmental charges, govt charges (EDC & IDC), PLC and interest free maintenance security (IFMS), which has also resulted into delay payment charges/interests.
- XIV. That the complainant primary prayer for handing over the possession of the said milk booths is entirely based on imaginary and concocted facts by him and the contention that the respondent was obliged to hand over possession within any fixed time period from the date of issue of provisional allotment letter is completely false, baseless and without any substantiation; whereas in reality the complainant had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking dated December, 2015 was made by the complainant towards a *future potential project* of the respondent

and hence there was no question of handover of possession within any fixed time period as falsely claimed by the complainant; hence the complaint does not hold any ground on merits as well.

XV. That further, the respondent has applied for the mandatory registration of the project with the RERA authority but however the same is still pending approval on the part of the RERA authority. However, in this background it is submitted that by any bound of imagination the respondent cannot be made liable for the delay which has occurred due to delay in registration of the project under the Act of 2016. It is submitted herein that since there was delay in zonal approval from the DGTCP the same has acted as a causal effect in prolonging and obstructing the registration of the project under the Act for which the respondent is in no way responsible. That the approval and registration is a statutory and governmental process which is way out of power and control of the respondent. This by any matter of fact be counted as a default on the part of them.

XVI. There is no averment in the complaint which can establish that any so-called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of them including passing of an HT line over

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

XVII. The projects in respect of which the respondent has obtained the occupation certificate are described as hereunder: -

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



4.	EWS	534	OC received
5.	Skyz	684	OC to be applied
6.	Rise	322	OC to be applied

7. 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.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

8. 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



9. 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.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
11. 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."

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

F. Findings on the objections raised by the respondent

F. I Objections regarding the complainant being investor.

13. The respondent has taken a stand that the complainant is the investor and not consumer and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of



the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and paid total price of **Rs.4,00,000/-** to the promoter towards purchase of a unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the provisional receipt, it is crystal clear that the complainant is an allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order

dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee is being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant

G.I Direct the respondent to refund Rs.4,00,000/- along with prescribed rate of interest.

14. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) 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)



15. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the prescribed rate of interest. However, the allottee is seeking refund of the amount paid by him with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

16. 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.
17. 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., 07.10.2022 is **8%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10%**.
18. 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;”*

19. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainant is well within his right for seeking refund under section 18(1) of the Act, 2016.
20. The instant matter falls in the category where the promoter has failed to allot a plot in its any of the upcoming project as detailed earlier despite receipt of Rs.4,00,000/-. So, the case falls under section 18(1) of the Act of 2016.
21. 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 3.1 of the agreement executed between the parties on 09.12.2015, the possession of the subject milk booths was to be delivered within stipulated time i.e., by

31.12.2017. Therefore, the due date of handing over possession is 31.12.2017.

22. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and 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 plot 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.
23. The due date of possession as per agreement for sale as mentioned in the table above is 31.12.2017 and there is delay of 4 years 2 months and 28 days on the date of filing of the complaint.
24. 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 allottee 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.....”

25. Further in the judgement of 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. it was observed

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.”

26. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the



project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

27. The authority hereby directs the promoter to return the amount received by him along with interest at the rate of 10% (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*.

H. Directions of the authority

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

- i. The respondent/promoter is directed to refund the amount i.e., Rs.4,00,000/- received by it from the complainant along with interest at the rate of 10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.



- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

29. Complaint stands disposed of.

30. File be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.10.2022

(Vijay Kumar Goyal)

Member



HARERA
GURUGRAM