

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

Complaint no. : 1731 of 2019
First date of hearing: 14.10.2019
Date of decision : 14.09.2022

Jatinder Aneja
R/O : 2nd floor, E-587, Greater Kailash-II,
New Delhi-110048

Complainant

Versus

1. M/s Parsvnath Hessa Developers Private
Limited
2. M/s Parsvnath Developers Limited
Office: Parsvnath Metro Tower, Near,
Shahdara Metro Station, Shahdara, Delhi
110032

Respondents

CORAM:

Shri K.K. Khandelwal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

**Chairman
Member
Member**

APPEARANCE:

Ms. Shivangi Singh (Advocate)
Sh. Dhruv Gupta (Advocate)

**Counsel for the complainant
Counsels for the Respondents**

ORDER

1. The present complaint dated 18.04.2019 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 and location of the project	"Parsvnath Exotica", sector-53, Gurgaon
2.	Nature of the project	Group Housing
3.	DTCP license no.	69 to 74 of 1996 dated 30.05.1996 valid up to 02.05.2019 (area 33.51 acre) 52 to 57 of 1997 dated 14.11.1997 valid up to 13.11.2019 (area 4.61 acre) 191 of 2007 dated 20.06.2007 valid up to 19.06.2024 (area 53.54 acre) 1079-1080 of 2006 dated 28.08.2006 valid up to 01.09.2019 (area 4.99 acre)
4.	RERA Registered/ not registered	Not registered
5.	Unit no.	B6-12A03PH, Tower B6 [page no. 73 of complaint]
6.	Unit admeasuring area	3390 sq. ft. of super area [page no. 73 of complaint]
7.	Date of booking	13.06.2013 (as alleged by the complainant, page 52 of complaint)
8.	Allotment letter	N/A
9.	Date of builder buyer agreement	23.12.2015 (Page70 of complaint)
10.	Possession clause	10 (a) Construction of the flat is likely to be completed within a period of thirty six (36) months of commencement of construction of the particular Block. In which the flat is located or 24 months from the date of booking of the flat. Whichever is later, with a grace period of six (6) months, on receipt of sanction

		<i>of building plans/revised building plans and approval of all concerned authorities including the Fire Service Deptt.,....."</i>
11.	Date of start of construction	Not Provided
12.	Due date of possession	13.12.2015 (Calculated from the date of booking of the flat) *Note: Date of commencement of construction of the particular block is not given in file. So, due date is calculated from the date of booking of flat as per agreement)
13.	Cancellation of booking letter	N/A
14.	Basic sale price	Rs.3,05,10,000/- [page 73 of complaint]
15.	Total amount paid by the complainant	Rs 1,57,57,576/- [as alleged by the complainant]
16.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That the complainant herein was desirous of purchasing an apartment for his family's residence as his parents had intended to move in to his present apartment. In 2013, the respondent no. 2 made a representation to the complainant that it was developing and constructing residential apartments in its project 'Parsynath Exotica' on Golf Course Road, Gurgaon, Haryana. In pursuance of the representation, the complainant duly signed an expression of interest ("EOI") on 13.06.2013.
- II. That as per terms of the EOI, the complainant was to be allotted an apartment of approximately 4000 square feet, consisting of five-bedroom units, on the 11th floor of tower A-3 (west entry) of the project. The terms and conditions of the EOI are briefly encapsulated below;



- a. The possession of a residential apartment admeasuring 4000 square feet will be offered within a period of 36 months from the date of the application i.e. 13.06.2016.
 - b. The basic price was calculated at the rate of Rs. 13,000/ per square feet, i.e., Rs. 5,20,00,000/-. The complainant would deposit 30% of the basic price as advance payment.
 - c. In the event possession of the apartment is delayed beyond 36 months, simple interest at the rate of 9% per annum shall be paid for the period of delay in offering the possession beyond 36 months.
 - d. In case the respondent no. 2 fails to offer possession within a period of 36 months, the complainant would have the option to withdraw the amount deposited and the respondent no. 2 would refund the amount within, 60 days from the date of application of refund along with 9% interest per annum on the money advanced for the period from the date of deposit till the date of refund.
 - e. All allotment documentation would be done within 18 months.
- III. That in pursuance of this EOI, the complainant made three deposits of Rs. 51,48,000/- vide cheque no. 889298 dated 03.07.2013, cheque no. 993800 dated 05.08.2013, and cheque no. 993801 dated 04.09.2013. Thus, a total of Rs. 1,54,44,000/- was deposited with the respondent no. 2 after TDS of Rs. 1,56,000/- was deducted.
- IV. That in November 2014, 18 months had lapsed from the date of booking and no progress had been made on the construction of the tower in question. Contrary to its obligations in the EOL, the respondent no. 2 had not issued the final allotment documentation to the complainant for the apartment booked by him. The complainant was shocked to learn that only the ground floor of the tower had been constructed by that time, and further construction at the site had been completely suspended. Further it was brought to the complainant's notice that neither had the concerned town planning authorities approved the layout plan for the proposed tower nor did the respondent no. 2 has the requisite licenses or permits to start the construction of the concerned tower. Evidently,

this was a case of fraud and deception by the respondent no. 2 who had induced the complainant to make payments to the tune of Rs. 1.56 Crores despite knowing that it did not have the approval to construct the tower in which an apartment was offered to him. The respondent no. 2 had actively concealed such facts from the complainant, and had thereby breached the fundamental terms of the agreement arrived at between the parties.

- V. That in light of this willful misrepresentation made by the respondent no. 2, on 18.11.2014 a legal notice was served on behalf of the complainant to it seeking refund of the initial deposit paid, along with the interest at the rate of 9% per annum calculated from the date of the deposit. The failure of the respondent no. 2 and its directors to respond to the abovementioned legal notice, the complainant was well within his rights to initiate civil and/or criminal proceedings against it and its directors and promoters. However, on the request and assurances made by the respondent no. 1, the complainant agreed to the allotment of an alternative apartment in the project.
- VI. Consequently, in May 2015, a flat no. B6-12A03 in tower no. B6 of the project would be allocated to the complainant. Although the said apartment was considerably smaller in size, the complainant agreed to the same for a proportionate reduction in the consideration, as purchasing an apartment was his primary objective. At this juncture, the Complainant further sought clarification that the price quoted would be inclusive of all other charges.
- VII. As the complainant had applied for an alternate apartment, he initially wrote a letter to the vice president of the respondent no. 2 seeking cancellation of the original allotment. as per the EOI and refund of the



amount of Rs. 1,56,00,000/-. After some discussion however, it was decided that the said amount would directly be transferred towards the said apartment, and in this regard the complainant once again wrote to the respondent no. 2 on 29.06.2015 in furtherance of his letter dated 18.06.2015 instead seeking a transfer of the deposit amount of Rs. 1,56,00,000/-towards the said apartment. The complainant thereafter further transferred an additional amount of Rs. 1,57,576/- to the respondent no. 1 as the balance payment of the TDS amount to be paid, and had therefore made the complete payment towards the deposit of said apartment.

- VIII. That as per the buyer's agreement, the BSP included all additional charges on account of external development, power back-up, electrification, gas supply, air conditioning for all rooms, and membership fee of the recreational club. However, it was exclusive of the service tax. Thus, out of the Rs. 1.56 crores already paid by the complainant, a sum of Rs. 1,43,34,522.80/- was allocated towards the BSP of the apartment, a sum of Rs. 8,00,000/- was allocated towards the car parking space, and a sum of Rs. 6,23,053.20/- was allocated towards the service tax. The same is also reflected in the receipts issued by the respondent no. 1 in favor of the complainant.
- IX. Since the apartment had been booked on 13.06.2013 vide the EOI, the 24-month period lapsed on 13.06.2015. However, even three and a half years later, there has been no indication that the possession of the said apartment would be handed over to the complainant. It is crucial to note that the computation of the booking period would commence from the date of the EOI since the booking was initially made on 13.06.2013, and the allotment form dated 16.06.2015 was a mere settlement in lieu of the



same. Consequently, on 22.03.2017, the complainant got issued a legal notice to respondent no. 1. However, respondent no. 1 has failed to reply to the same and it is obvious that it is evading its obligations and has no intention of refunding the money due to the complainant or to hand over possession of the said apartment.

- X. That the willful misconduct of respondents from 2013 till date has caused grave and irreparable loss to the complainant. Apart from the pecuniary loss faced by the complainant to the tune of Rs. 1.56 crores, the delay in the project has caused the complainant grave financial loss, compounded with the passage of time, as it appears that there is no progress in the project and construction has been completely suspended by the respondents. While the respondent no. 2 has handed over the possession to owners of some towers of the project, possession has been unfairly deprived to the complainant without providing any explanation for the same.
- XI. Despite the fact that the respondent no. 2 has evaded its obligations in the buyer's agreement, it is refusing to refund the advance money paid by the complainant, which demonstrates its mala fide intent and illegal actions to fraudulently take money from prospective buyers, without even having the requisite permits and approvals from the authorities.
- XII. When it had come to the attention of the complainant that the respondent no. 2 had failed to obtain the requisite approvals and permits for the construction of the tower in question, he requested for refund vide legal notice dated 18.11.2014. Despite this, the respondent no. 2 refused to refund the money of the complainant. Due to the blatant refusal of the respondent no. 2 to refund the money of the complainant, he was constrained to enter into the buyer's agreement dated

23.12.2015, based on the false representation made by the respondents that he would be given possession of the said apartment. However, till date, there is no sign of possession being handed over to the complainant. These actions of the respondents and directors further constitute criminal action, as they have dishonestly misappropriated the money of the complainant based on false misrepresentations, being aware that the construction of the tower under reference was illegal and that they did not have the necessary approvals from appropriate authorities.

- XIII. That in view of the inordinate delay in giving possession of the said apartment to the complainant, he seeks refund of the entire amount paid to the respondents along with interest calculated as per Section 18 of Real Estate (Regulation and Development) Act, 2016 (hereinafter "the Act") read with Rule 15 of the Haryana Rules to the Act, compounded from the date of deposit of the advance money till the date the amount is refunded.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. **Direct the respondents to immediately refund the entire advance amount of Rs. 1,56,00,000/- along with the TDS amount of Rs. 1,57,576/- with the prescribed interest of 10.75% per annum, compounded from the date of receipt of the payments made to the respondent no. 2.**
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 respondents contested the complaint on the following grounds.
- a. That at the outset, it is submitted that the averments made in the complaint under reply may be considered to have been specifically denied and controverted, unless specifically admitted hereinafter.
 - b. That the respondent no.2 Parsvnath Developers Limited is not a necessary party in the present complaint and hence, the complaint is bad for misjoinder of parties. The respondent no.1/ Parsvnath Hessa Developers Private Limited is a special purpose vehicle (SPV) to ensure fast completion and deliver of the project. As such, an agreement has been executed between the respondent no.1 and respondent no.2, a joint venture (JV) company of respondent no.2. Under the terms of the said agreement, development, construction and marketing of built up areas in towers B1, B2, B3, B5, B6 and C4 have been transferred to respondent no.1 company. In this regard, an intimation letter was sent to all the allottees of the project by the respondent no.2 and in the said letter, it was specifically stated that the respondent no.2 shall remain only as a confirming party and all other responsibilities were already transferred to respondent no.1. In view of the above reasons, respondent no. 2 company is not a necessary party in the present case and hence, the name of the respondent no.2 is liable to be deleted from the array of parties.
 - c. That it is submitted that the project construction is already completed. The competent authority has already granted occupancy certificate for the part of the project of 11 (Eleven Towers) and for remaining part (5 Towers), it has been awaiting for getting occupancy certificate from the competent authority.



- d. That respondent company under various collaboration agreements/ development agreements had planned to develop the project land and in pursuance to the same, 18 towers were planned to be developed. It is submitted that out of the said 18 towers, 11 towers were duly developed and completed and the occupancy certificate has already been received with respect to these 11 towers on 21.04.2010, 13.03.2011 and 31.10.2011 respectively. It is further stated that the occupancy certificate with respect to remaining 03 (Three) towers i.e. D4, D5 & D6 has already been applied for on 01.11.2011 for which review was also filed by the respondent on 24.11.2017 and it is pertinent to mention that the part occupancy certificate application with respect to 02 (Two) Towers No. B1 and C4 was also applied on 13.08.2013 before DTCP. Furthermore, it is pertinent to place on the record that the review letter for OC of the above-mentioned 5 Towers (D4, D5, D6, B1 & C4) was again filed on 11.02.2019 before the Competent authority. It is further submitted that appropriate and relevant reports from the Office of DTP; STP; PHE, and external services have been forwarded to Department of Town & Country Planning, (HQ), Chandigarh, Haryana.
- e. The occupancy certificate is not being granted by DTCP for want of beneficiary interest/right in favour of the developer under the policy dated 18th February, 2015. It is pertinent to state that in principal, DTCP has accorded his approval on the transfer of the beneficiary interest in favor of the developer. However, the formal approval is in process.
- f. That respondent company has applied for registration of the part of the said project with respect to tower no. B6 in which the



complainant's apartment is located along-with tower B5 and EWS with Haryana RERA authority wherein the revised declaration date of handing over the possession of the project is stipulated as 31.12.2019 as also confirmed in the RERA registration affidavit cum declaration.

- g. It is pertinent to state that due to pendency of the beneficiary interest in favour of the respondent no.1, the delay is being caused in handing over the possession of the flat of the tower in which the application for the part occupancy certificate has been pending before the competent authority. It is submitted that the respondent no.1 has been pursuing the authority with all its possible efforts to get the formal approval. It is submitted that the respondent no.1 company shall immediately handover the possession of the flat upon receipt of the occupancy certificate from the competent authority. Moreover, the respondent no.1 company has duly complied with all the norms and bye-laws required for obtaining the occupancy certificate with the authority and have developed the project in complete adherence of the building bye laws prevailing in Haryana. The respondent company has been putting its best efforts to get the transfer of the beneficiary interest in its favour for which it has already deposited the required amount for transfer of beneficiary interest in its favour in the month of January, 2019 before the competent authority.
- h. That the prayer for refund of the money cannot be considered in the present case for the following reasons:
- i) Part project has been completed and the respondent is in process of getting the occupation certificate for part tower for which the application for the part occupation certificate has been filed before the competent authority.



- ii) The approval regarding the transfer of beneficial interest & marketing rights were framed on 18.02.2015 being under suspension till 31.01.2017 is pending. Hence, grant of refund of the amount is not justifiable.
 - iii) Refund at this advanced stage of project is not in the interest of the other allottees at large as the same will hamper the completion of the Project.
 - iv) That the interest of the complainant is duly protected in terms of clause no. 10(c) of the flat buyer agreement for the delay in delivering the possession of the flat.
 - v) The respondent company being customer oriented organization has always put its best endeavor to complete the project in time despite all the odds being faced by the respondent company which resulted into the fact that out of 18 towers, 11 towers have been duly delivered to the allottees after obtaining the requisite occupancy certificate and the respondent company has offered the possession of the flat for fit-outs purposes in 6 more towers.
 - vi) That the purpose of implementation of RERA would be defeated as RERA has been enacted in order to smooth function the real estate sector and to regulate the same for its better functioning.
- i. It is pertinent to draw the kind attention of this authority to the mutually agreed clause 10(c) of the flat buyer agreement wherein the delay compensation has been specifically mentioned and agreed by the complainant and hence, contending the date of offering the possession as the contention for refund and payment of interest and compensation is incorrect wherein "time is not the essence of the contract" stands contravened and hence, proviso of section 18 are not applicable in the captioned matter as the respondents have agreed to abide by the obligations made under the flat buyer agreement duly executed between the complainant and the respondent.



- j. That it is submitted that the global recession hit the economy and is continuing particularly in the real estate sector. The global recession largely affected the real estate sector. It is submitted that the construction of project of the respondent is dependent upon the amount of money being received from the bookings made and money received henceforth, in form of instalments by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the time of launch of the project.
- k. That the following various problems which are beyond the control of the respondents seriously affected the construction :
1. *Lack of adequate sources of finance.*
 2. *Shortage of labour.*
 3. *Rising manpower and material costs.*
 4. *Approvals and procedural difficulties.*
 5. *There was extreme shortage of water in the region which affected the construction works.*
 6. *There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln.*
 7. *Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the Respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labours.*
 8. *Recession in economy also resulted in availability of labour and raw materials becoming scarce.*
 9. *There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM).*
 10. *Now due to the Pandemic COVID-19 since the labourers migrated to their respective native places there is acute shortage of labourers which is adversely affecting the construction of the Project.*

All the above problems are beyond the control of the respondent. It may be noted that the respondent had at many occasions orally communicated to the complainant



that the construction activity at the subject project had to be halted for some time due to certain unforeseen circumstances which were completely beyond the control of the respondent.

- i. That it is submitted that the liability of the respondent on account of delay is specified in clause 10(c) of the said agreement and as such the complainant cannot claim reliefs which are beyond the compensation agreed upon by him. In this view of the matter, the complaint is not maintainable in law and is liable to be dismissed in limine. It is a well settled proposition of law that the courts cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract; the responsibility of the court is to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract.
- m. That it is submitted that vide the instant complaint, the complainant has sought for refund of the consideration amount paid by him qua subject apartment along-with interest at 10.75% per annum, compounded from the date of receipt of payments and also another interest @ 10.75% on the amount from the date of deposit till date of refund of the deposited amount. It is stated that the dispute between the parties involves complicated questions of fact and law, which necessarily entails leading of evidence and cross examination. The issues raised by the complainant cannot be addressed before this authority, which follows a summary procedure. In view of the same, the subject matter cannot be adjudicated without going into the facts of case which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of this authority. The complaint is liable to be dismissed on this ground alone.

- n. In view of aforementioned facts, it is submitted that the captioned complaint is frivolous, vague and vexatious in nature. The captioned complaint has been made to injure the interest and reputation of the respondents and therefore, the instant complaint is liable to be dismissed in limine.
7. Copies of all the relevant documents have been filed and placed on 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

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. 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.

11. 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.
12. 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. 2021-2022 (1) RCR (Civil), 357* 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."

13. 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 complainant.

F.1 Direct the respondents to immediately refund the entire advance amount of Rs. 1,56,00,000/- along with the TDS amount of Rs. 1,57,576/- with the prescribed interest of 10.75% per annum, compounded from the date of receipt of the payments made to the respondent no. 2.

14. The complainant duly signed an expression of interest on 13.06.2013. As per terms of the EOI, the complainant was to be allotted a residential apartment of approx. 4000 sq. ft. on the 11th floor of tower A-3 of the project. In pursuance of the EOI, the complainant made three deposits of Rs. 51,48,000/- vide cheque no. 889298 dated 03.07.2013, 993800 dated 05.08.2013 and 993801 dated 04.09.2013. Thus, a total of Rs. 1,54,44,000/- was deposited with respondent no. 2 after TDS of Rs. 1,56,000/- was deducted. In November 2014, 18 months lapsed from the date of booking and no progress was made quo the construction of the tower in question. The respondent no. 2 had not issued the final allotment documentation to the complainant for the apartment booked by him.



15. On 18.11.2014, a legal notice was sent to respondent no. 2 by the complainant seeking refund the initial deposit paid by him, along with interest. To respond to the legal notice, the respondent no. 1 assured the complainant for allotment of an alternative unit in the project. Consequently, in May 2015, a flat no.-12A03 in tower B6 of the project was allotted for a consideration of Rs. 3,13,10,000/- to the complainant. He received a fresh allotment form on 16.06.2015 from respondent no. 1, which was a joint venture company of the respondent no. 2 for a sale consideration 3,13,10,000/-. On 23.12.2015, the complainant and respondents entered into a buyers agreement for the said apartment. As per buyer agreement, the due date of possession was 13.12.2015. However, even three and half year later, there has been no indication that the possession of the said apartment would be handed over to the complainant. On 22.03.2017, the complainant got issued a legal notice to the respondent no. 1 to refund the money paid by him to the respondent. The complainant is entitled to claim the possession of the said apartment. whereas the respondents have not provided any explanation for their failure to give possession of the said apartment to the complainant. The respondent has failed to comply with the obligations under the EOI and the agreement. The complainant also mentioned TDS amount of Rs. 1,57,576/- but there is no certainty as to its payment as to whether he has paid that amount or not.
16. 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 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. The due date of possession as per date of booking as mentioned in the table above is 13.12.2015 and there is delay of 3 years 4 months 5 days on the date of filing of the complaint.

17. 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....."

18. 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



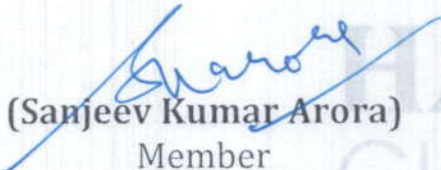
compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.

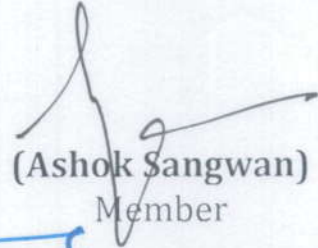
19. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession 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.
20. This is without prejudice to any other remedy available to the allottee including compensation for which he may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
21. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 1,57,57,576/- 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*.

G. Directions of the authority



22. 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):
- The respondent is directed to return the amount received by him i.e., Rs. 1,57,57,576/- 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.
 - 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.
23. Complaint stands disposed of.
24. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2022