



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

Complaint no. : 555 of 2019  
First date of hearing: 18.04.2019  
Date of decision : 14.09.2022

1. Rajesh Sharma  
2. Seema Sharma  
R/o : 1<sup>st</sup> floor, A618, Sushant Lok Phase I,  
Chakarpur, Gurugram-122002

**Complainants**

Versus

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

**Respondent**

**CORAM:**

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

**Chairman  
Member  
Member**

**APPEARANCE:**

Mr. Rajesh Sharma  
Sh. Dhruv Gupta (Advocate)

**Complainant in person  
Counsels for the Respondent**

**ORDER**

1. The present complaint dated 12.02.2019 has been filed by the complainants/allottees 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 complainants, 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.   | Project area                     | 11.092 acres  |
| 4.   | DTCP license no.                 | 69 to 74 of 1996 dated 30.05.1996 valid up to 02.05.2019 (area 33.51 acre)<br>52 to 57 of 1997 dated 14.11.1997 valid up to 13.11.2019 (area 4.61 acre)<br>191 of 2007 dated 20.06.2007 valid up to 19.06.2024 (area 53.54 acre)  |
| 5.   | RERA Registered/<br>registered   | not <b>Not registered</b>   |
| 7.   | Unit no.                         | B5-1203PH, 12 <sup>th</sup> floor, Tower B5<br>[page no. 14 of complaint]   |
| 8.   | Unit admeasuring area            | 6805 sq. ft. of super area<br>[page no. 14 of complaint]  |
| 9.   | Allotment letter                 | N/A   |
| 10.  | Date of booking                  | 14.02.2012 (as alleged by the complainant, page 2 of complaint)   |
| 11.  | Date of builder buyer agreement  | 23.07.2012<br>[page 11 of complaint]  |
| 12.  | Subsequent allottee              | 13.06.2012 (annexure P1)  |
| 12.  | Possession clause                | <b>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 of building plans/revised building plans and approval of all concerned authorities including the Fire</b> |



|     |                                      | <i>Service Deptt....."</i>   |
|-----|--------------------------------------|--|
| 13. | Due date of possession               | 14.08.2014 (Calculated from the date of booking of the flat)<br><b>*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)</b> |
| 14. | Basic Price                          | Rs 5,78,76,525/-<br>[page 14 of complaint]   |
| 15. | Total amount paid by the complainant | Rs 5,76,71,517/-<br>[as per customer page 33 of complaint]   |
| 16. | Occupation certificate               | Not obtained   |
| 17. | Offer for fit outs                   | 14.07.2018 (annexure R2 of reply)  |

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:

- I. That the original buyer of the flat i.e. flat no. B5-1203 PH was Mr. Parveen Gupta. Mr Parveen Gupta thereafter sold it to the complainants vide an agreement or through change of right of purchased unit under project named "Exotica" situated at Golf Course Road, Sector 53, Gurugram, Haryana. In pursuance of the agreement to sell, the change or right of flat was intimated by the original buyer to the respondent herein and the same was admitted/authorized by the respondent by letter dated 13.06.2012, vide which all claim/right/interest in the property and the right of purchase were transferred to the complainants.
- II. That the aforesaid flat buyer agreement was executed at New Delhi on 23.07.2012 between the complainants and the respondent. The earnest money of the basic sale price was paid to the respondent even before the execution of the apartment buyer agreement.



- III. That the respondent company failed to develop and complete the project in accordance with the sanction plans and specifications as approved by the competent authorities and it is on account of such defects that the project is facing delays.
- IV. That the respondent company has not maintained a separate account for the funds collected from the allottees of the project. The cheques/drafts have been asked to be issued in favour of "Parsavnath exotica", a common pool from which the funds have been diverted to make payments for construction of commercial sites and the project in which the allottees i.e. the complainants herein have invested and have suffered on account of non-availability of funds.
- V. That the complainants have taken housing loan from the State Bank of India to pay the demands of respondent in the project. Furthermore, according to clause 10 (a) the above-mentioned agreement, the complainants have to be delivered physical possession of the flat/unit by the respondent within a period of 24 months form the signing of the agreement and a grace period of 6 months was also mentioned by the developer/respondent in para 10(a) of flat buyer agreement.
- VI. That in accordance with the flat buyer's agreement, the total payable sale consideration including other charges raised by Developer was Rs.5,78,76,525/- and the complainants made a payment of Rs.5,76,71,517/- and Rs. 33,68,475/- in cash to the respondent in due course of possession with regard to the same.
- VII. That from 14.02.2012 to 13.06.2012, the original buyer issued three cheques amounting to Rs. 14,62,344/-, Rs. 46,56,134/-, & Rs. 39,064/- in favour of the respondent under the agreement towards the basic sale price and part payment including but not limited to booking amount of



the flat/unit. Furthermore, from 17.08.2012 to 30.04.2014, the complainants made payment of Rs. 5,12,13,975/- as per each and every demand raised by the respondent.

- VIII. Moreover, this aspect was further highlighted by the respondent by a written clause no. 10 (a) in the flat buyer's agreement which stated that it had to deliver the physical possession of the flat unit to the complainants within a period of 24 months from the signing of the agreement and a grace period of 6 months was also taken over and above the period of 24 months as mentioned above in offering the possession of the unit.
- IX. That it is furthermore pertinent to mention here that as per clause no. 10(a) of the flat buyer's agreement between the parties, the project was supposed to be completed in December 2015 and possession of the same ought to have been handed over to the complainants, completed in all respects, by that possession since "Possession was essence" of the said agreement entered into between the complainants and the respondent. It is brought to the kind attention of this authority, that while the respondent reserved very high penalties of @ 24% p.a. upon the buyer/complainants for delayed payment of even a few days, it safeguarded itself from the similar liabilities by various clauses. As clause 10(c) entitles the developer/respondent for reasonable extension in the delivery of the possession of the apartment and rather cleverly, the developer/respondent had specifically accepted a meager liability to pay Rs.10/- per sq. ft per month on super area for the delay in the offering of possession on the flat beyond 48 months.
- X. That as per the agreement, the respondent had to deliver the physical possession of the apartment to the applicant/petitioner within 24



months of the signing of the agreement which comes out to be in July 2014 which could have been extended by 6 months due to force majeure conditions which comes out to be January 2015. But till date, the respondent has not given physical possession of the flat. Thereafter, a show cause notice was issued by complainants. Moreover, in near future, it does not look likely that the respondent would be able to handover the physical possession of the flat/unit to the complainants. Thereafter a notice was again issued by complainants to respondent and demanded the entire sale consideration.

- XI. Through this complaint, the complainants wish that the principle amount deposited by them with the respondent in lieu of the agreement to be returned back along with a compensation of 24% p.a. in lieu of non-delivery of the possession of the flat unit. Besides, an amount of Rs. 1,00,00,000/- as compensation towards the mental and physical harassment caused by the respondent.

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

4. The complainants have sought following relief(s).

I. **Direct the respondent to return the amount of Rs. 6,10,39,992/- along with interest @24% p.a. compounded quarterly to the complainants being the consideration paid by the complainants for the flat/unit.**

II. **Direct the respondent to pay a sum of Rs. 1,00,00,000/- towards the damages for the physical and mental torture and Rs. 2,00,000/- towards the cost of litigation to the complainants.**

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.
- 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 it is submitted that the present complaint is not maintainable in view of the facts that the complainants have sought various vague and unusual prayers.
  - c. That it is submitted that the project construction is already completed. The competent authority has already been 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. It is worthwhile 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. The 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 18<sup>th</sup> 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. B5 in which the complainant's apartment is located along-with tower B6 and EWS with authority. It is also submitted that tower B5 has been completed as per applicable building bye laws and prevailing norms & the respondent has been putting its best efforts to complete the remaining final finishing work, if any, in this tower as earliest.
- g. That tower no. B5, in which the flat of the complainants is located, almost stands completed and the respondent has offered the same to them for carrying out the fit-out work in the flat. It is pertinent to state that the complainants have also been offered the possession of the fit-outs along-with the FSA reflecting the delay compensation from the period Sep. 2014 to December 2017 for 40 months amounting Rs. 27,22,000/- vide letter no. PHDPL/ExoticajB5-1203PH/11 dated 14.07.2018. Further, a special rebate Rs. 25,00,000 J- on account of final finishing cost of unit which is optional in nature has also been provided and is being reflected in FSA dated 14.07.2018. It is further





- pertinent to state that all the basic facilities and amenities like electricity, water, club and swimming pool are duly available at the project site which are duly adequate with respect to the current occupancy at the project site.
- h. That it is submitted that the respondent company is in the process to apply for part occupancy certificate for the tower B5 in which the complainants flat is located. It is respectfully submitted that the respondent company shall immediately handover the possession of the flat upon receipt of the part occupancy certificate from the competent authority.
- i. That being aggrieved by the order dated 19.04.2018 passed by the NCDRC in consumer complaint no. 127 of 2017 titled as "Malika Raghavan-Versus-Parsvnath Developers Limited", Parsvnath Developers Limited challenged the same before the hon'ble supreme court of India vide civil appeal bearing diary no. 13163 of 2019 titled as "Parsvnath Developers Limited versus Malika Raghavan". Vide order dated 03.05.2019, the hon'ble supreme court of India was pleased to stay the operation of order dated 19.04.2018 passed by the hon'ble National Commission in the Malika Raghavan case. Subsequently, vide order dated 16.01.2020, the hon'ble supreme court of India was pleased to admit the civil appeal and the order dated 19.04.2018 passed by hon'ble national commission was stayed.
- j. It is submitted that during the hearing held on 12.02.2021, the said civil appeal was de-tagged from the bunch of the similar appeals and listed for hearing. The hon'ble supreme court of India in other bunch matters with respect to the same project has directed the respondent and Parsvnath Developers Limited to pay the contractual amount to



- the allottees within a period of 1 month and listed the matter for hearing on the issue whether the compensation awarded by the hon'ble national commission is justified or not?
- k. That it is submitted that the hon'ble supreme court while passing the order dated 12.02.2021 had posted the matters on 11.05.2021 in pursuance to the time granted for completing the construction of the units vide order dated 04.0a.2021 in cont. petition no. contempt petition no. 642 of 2020 in civil appeal no. 6664 of 2019 titled as "Rohit Agarwal-Versus-Pradeep Jain & Ors".
- l. Since, the respondent was not able to complete the construction of the Unit within the time period granted by the hon'ble supreme court of India in terms of the Order dated 04 .01.2021 passed in the said contempt petition, respondent filed an extension application in the contempt petition seeking further 3 months' time to complete the construction.
- m. That the prayer for refund of the money cannot be considered in the present case for the following reasons:
- Part project has been completed and the respondent is in process of applying the part occupation certificate for tower B5.
  - 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.
  - 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.
  - 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.
  - 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.

- n. 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 complainants. So, 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 respondent has agreed to abide by the obligations made under the flat buyer agreement duly executed between the parties.
- o. It is submitted that, the complainants have sought for refund of the consideration amount paid by them qua subject apartment along-with interest at 24% per annum, together with Rs. 1,00,00,000/- towards compensation and Rs.2,00,000/- towards litigation expenses. It is stated that the dispute between the parties involves complicated questions of facts and law and which necessarily entails leading of evidence and cross examination. The issues raised by the complainants cannot be addressed before this hon'ble authority, which follows a summary procedure. In view of the same, the subject matter cannot be adjudicated without going into the facts of case. Thus, the complaint is liable to be dismissed on this ground alone.
- p. 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.

q. That the following various problems which are beyond the control of the respondent 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.*



- r. 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 beyond the compensation agreed upon by them. 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.
- s. That it is respectfully submitted that the basic selling price (BSP) of the said flat was agreed by the original applicant as Rs. 5,78,76,525/- after deducting Rs. 33,68,475/- as a special discount. It is vehemently denied that the complainants had made complete payments totalling to an amount Rs. 6,10,39,992/-. Further, it is submitted that the Rs. 5,76,71,517/- has been deposited by the complainants to respondent company till date. It is also submitted that cheque no. 041104 dated 14.06.2013 Rs. 51,00,000/- was also dishonoured.
- t. In view of aforementioned facts, it is submitted that the complaint is frivolous, vague and vexatious in nature. The complaint has been made to injure the interest and reputation of the respondent 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. I Direct the respondent to return the amount of Rs. 6,10,39,992/- along with interest @24% p.a. compounded quarterly to the complainants being the consideration paid by the complainants for the flat/unit.**

14. The original allottee Sh. Parveen Gupta booked a flat/pent house bearing no.: B5 1203PH in the project on 14.02.2012. As per the agreement, dated 23.07.2012, the basic price of the flat/penthouse was Rs.5,78,76,525 excluding other charges. The said flat/penthouse had to be completed within 24 months from the date of booking (with a grace period of 6 months) i.e., 14.08.2014. The complainants have paid all installments on various dates upon installments call demands aggregating to Rs. 6,10,41,992/-. At near the promised possession date from 25.08.2014 to 30.11.2014 at various points the complainants reminded the builder to hand over the possession but it was all in vain. No satisfactory reply ever received from the builder. On 01.12.2014, the builder while acknowledging the mail about handover of the possession, responded that it was planning to re-start operations by the end of the month without giving any possession frame within which the building would be completed. On 21.03.2015, the complainants issued show-cause notice as to why they should not terminate the agreement. The builder failed to acknowledge or reply to said notice. Aggrieved by the act the builder on 29.04.2015, the complainants issued a winding up notice at the registered office of the respondent. But the admitted due have not been paid. Thereafter, the authority vide order dated 18.04.2019, a team of engineer executives of the authority was appointed as local commissioner to visit the site and submit a report about the quantum of progress at the site. As per report of local commission, it was stated in the report that the work progress in tower B5 was approximately done up to 60%-65% only as on 27.05.2019.



15. Keeping in view the fact that the allottee/complainants wish 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 **14.08.2014** and there is delay of 4 years 5 months 29 days on the date of filing of the complaint.
16. 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....."*

17. Further in the judgements 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.*

18. 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 allottees, as they wish 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.
19. This is without prejudice to any other remedy available to the allottee including compensation for which allottee 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.
20. The authority hereby directs the promoter to return the amount to the complainant i.e., Rs. 5,76,71,517/-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*.

**II. Direct the respondent to pay a sum of Rs. 1,00,00,000/- towards the damages for the physical and mental torture and Rs. 2,00,000/- towards the cost of litigation to the complainants.**

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

**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):
- Directs the respondent to return the amount to the complainant i.e., Rs. 5,76,71,517/-with interest at the rate of 10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on



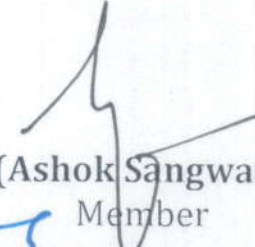
date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.

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.

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