

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

Complaint no. :	3919 of 2021
Date of filing complaint:	30.09.2021
First date of hearing:	02.11.2021
Date of decision :	14.09.2022

Saroj Rathi R/o: Vill & P.O, Daultabad, Gurugram	Complainant
Versus	
1. M/s Mascot Buildcon Pvt. Ltd. 2. M/s Hometown Properties Pvt. Ltd. Registered office at: 294/1 Vishwakarma Colony Mehrauli Badarpur Road, New Delhi - 110044	Respondents

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Sukhbir Yadav (Advocate)	Complainants
Sh. Rahul Bhardwaj (Advocate)	Respondent

ORDER

1. The present complaint 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Oodles Skywalk", Village Sihi, Gurugram
2.	Project area	3.0326 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	08 of 2013 dated 05.03.2013 and valid up to 04.03.2017
5.	Name of licensee	Dharam Singh
6.	RERA Registered/ not registered	294 of 2017 dated 13.10.2017
	RERA Registration valid up to	31.12.2019
7.	Unit no.	F-132, 1st floor [Page 31 of the complaint]
8.	Unit measuring (super area)	279.22 sq. ft. [Page 31 of the complaint]
9.	Date of allotment letter	01.04.2014 [Page 26 of the complaint]
10.	Date of execution of builder buyer agreement	03.03.2015 [Page 29 of the complaint]
11.	Date of start of construction of the project	21.03.2014 On the start of excavation [Page 75 of the reply]
12.	Possession clause	"38. The "Company" will, based on its present plans and

		estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction. If the completion of ..." (Emphasis supplied)
13.	Due date of delivery of possession	03.03.2018 Calculated from the date of agreement i.e.03.03.2015 Grace period of 3 months are disallowed as no substantial evidence/document has been placed on record to corroborate that any such event/circumstances, condition has occurred which may have hampered the construction work.
14.	Payment plan	Construction linked payment plan [Page 69 of the complaint]
15.	Total sale consideration	Rs.27,00,057/- [Page 49 of the reply]
16.	Total amount paid by the complainant	Rs.17,65,160/- [Page 75 of the reply]
17.	Occupation Certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint:

- That the landowner has entered into a collaboration agreement with M/s Hometown Properties Pvt. Ltd. (original developer) and As per the RERA Act, 2016 the respondent no. 2, Hometown Properties Pvt. Ltd. (original developer) has got registered himself

as the developer in this project and respondent no. 2 assigned the development rights in favour of respondent no. 1 vide agreement dated 09.07.2014 duly registered at the office of Sub Registrar, Manesar vide document no. 883 dated 11.07.2014.

4. That believing on representation and assurance of respondent no.1, the complainant booked a commercial unit/shop bearing no. F-128 on 1st floor in block - f for size admeasuring 396 sq. ft. and paid a booking amount of Rs.4,00,000/- vide cheque no. 313956 drawn on Gurgaon Gramin Bank dated 26.04.2013. The unit was purchased under the instalment payment plan for a sale consideration of Rs. 27,00,057/- (279.220 sq. ft.).
5. That on 01.04.2014, respondent no. 1 issued an allotment letter in favour of Saroj Rathi, conforming to the allotment of unit/shop no. F- 132, 1st floor, block - F for size admeasuring 279.220 sq. ft. in the project "Oodles Skywalk" situated at sector - 83, Gurugram. It is pertinent to mention here that initially, the complainant booked unit/shop no. f-128 but thereafter on the request of respondent no. 1 swapped the unit from F - 128 to F - 132.
6. That after a long follow-up of 24 months, on 03.03.2015, a pre-printed, unilateral, one-sided, arbitrary ex-facie builder buyer's agreement/buyer's agreement was executed inter-se the respondent no. 1/ promoter and the complainant/allottee. This agreement has a plethora of clauses and according to clause No. 38, the builder/respondent has to give possession of the Unit within 36 months of the start of construction or execution of this agreement whichever is later. That the construction was commenced on 11.06.2013 (start of excavation), therefore the due

date of possession was 11.09.2016 (with 3 months grace period). It is pertinent to mention here that respondent no.1 knowingly delayed the execution of BBA despite repeated reminders made by the complainant only to extend the possession date of the unit/shop.

7. That as per the statement of account dated 21.04.2017, issued by respondent No. 1, the complainant has paid Rs. 15,20,160/- that thereafter the complainant made a payment of Rs 1,50,000/- vide cheque No 398068 drawn on Sarva Haryana Gramin Bank dated 21.04.2017 and payment receipt for the same was issued by respondent No. 1 and again on 24.07.2107, the complainant made a payment of 95,000/- vide cheque No 740417 drawn on Punjab National bank dated 24.07.2017 which comes to a total of Rs. 17,65,160/- i.e. more than 65% of total sale consideration. It is pertinent to mention here that respondent no.1 has not issued the payment receipt for the payment of Rs. 95,000/- and not issued the latest statement of accounts.
8. That when respondent no. 1 failed to complete the project in due course of time as given in BBA the complainant raised her concerns and asked for the refund of the paid amount, but the respondent did not pay any heed to the just and reasonable demand of the complainant.

C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the paid money along with interest under sections 11(4), 12, 18 & 19(4) of the RERA Act, 2016 and the HARERA rules and regulations thereunder.
- ii. Direct the respondent to refrain from giving effect to unfair clauses unilaterally incorporated in the Builder Buyer Agreement.
- iii. Direct the respondent to pay compensation of Rs. 10,00,000/- for causing mental agony and Rs. 1,00,000/- legal fees.

D. Reply by respondent:

10. That thereafter the complainant vide an application form applied to the respondent no.1 for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted initially the unit bearing no. F-128, located on the first floor, in the project vide application form. It is pertinent to note that subsequent to the application form there was change in the numbering of the unit in the project having the location of the units same as well as the maintaining the area of the unit same of the complainant. Thereafter, the respondents intimated dated 01.04.2014 to the complainant in regard to the change in the unit number keeping the same location of the unit, to which the complainant in the affirmative accepted the change in the unit number. Therefore, by virtue of the change in the unit number, the complainant was issued an allotment letter dated 01.04.2014, wherein the complainant was allotted the unit number bearing F-132, first floor with the same area, making no modification and alteration to the unit.

11. That, the Complainant consciously and willfully opted for a Installment payment plan for remittance of the sale consideration for the unit in question and further represented to the Respondent No.1 that she shall remit every installment on time as per the payment schedule.
12. After the signing of the pre-printed application form, both the parties fulfilled certain documentation and procedures and after fulfilling the same, the allotment letter dated 01.04.2014 was issued in favour of the complainant allotting retail space/shop bearing no. F-132' on first floor, admeasuring 279.220 sq. ft. Thereafter, on 03.03.2015, the space buyer agreement was executed between the parties which contained the final understandings between the parties stipulating all the rights and obligations.
13. That the Complainant has no cause of action to file the present complaint as the present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the SBA dated 03.03.2015 of the respondent no.1 as well as the complainant. It is further submitted that the complainant is an investor and has booked the unit in question to yield gainful returns by selling the same in the open market, however, due to the ongoing slump in the real estate market, the complainant has filed the present purported complaint to wriggle out of the agreement.
14. It is pertinent to note that the construction of the project was stopped on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person,

private or government authority. It is submitted that vide order dated 10.11.2016 NGT placed sudden ban on the entry of diesel trucks more than ten years old and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondent.

15. That the possession of the unit as per clause 38 of the SBA was to be handed over within 36 months (plus the grace period of 3 months) from the date of the execution of the SBA and not from the date of start of the excavations i.e. 11.06.2013 stated by the Complainant who is trying to confuse this Hon'ble Authority with his false, frivolous and moonshine contentions. The date of completion of the project shall be constituted and calculated from the date of execution of the SBA and not from the signing of the date of start of excavation. As per the Space Buyer Agreement that was executed between the parties dated 03.03.2015, therefore, the date of the completion of the project shall be calculated from 03.03.2015 which comes out to be 03.03.2018 and not somewhere in 2016 which the Complainant has stated in the complaint. In addition to this, the date of possession as per the SBA further increased to grace months of 3 months, which comes out to be 03.06.2018. The date of the completion of the project was further pushed due to the force majeure conditions i.e. due to the NGT orders and the lockdown imposed because of the worldwide Covid-19 pandemic, by which the construction work all over the

NCR region came to halt. That DTCP, Haryana vide its notification no. 27 of 2021 dated 25.06.2021, gave a relaxation of 6 months to all the builders in view of the hurdles faced by them due to Covid-19. Further to be noted that the country again faced 2nd wave of Covid-19 because of which again a partial lockdown was imposed for a period of two (2) months by the state government which again led to the postponement in the completion of the project. In view of all the above submissions, it is pertinent to mention that the Respondent No. 1 is on time to complete the said project and is almost on the verge of completion with fit-outs and the finishing of the project in due. The relevant clause stipulating the date of possession shall be calculated from signing of the SBA is being reproduced herein-below for the reference:

"38. The "Company" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months (refer cl.37 above) of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction. If the completion of ..."

16. That it was not only on account of following reasons which led to the push in the proposed possession of the project but because of other several factors also as stated below for delay in the project:
- a. Time and again various orders passed by the NGT staying the construction.
 - b. The sudden surge requirement of labour and then sudden removal has created a vacuum for labour in the NCR region. That the projects of not only the respondent but also of all the

other developers have been suffering due to such shortage of labour and has resulted in delays in the project's beyond the control of any of the developers.

- c. Moreover, due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharal Nehru National Urban Renewal Mission, there was also more employment available for labours at their hometown despite the fact that the NCR region was itself facing a huge demand for labour to complete the projects.
- d. Even today in current scenario where innumerable projects are under construction all the developers in the NCR region are suffering from the after-effects of labour shortage on which the whole construction industry so largely depends and on which the respondent have no control whatsoever.
- e. Shortage of bricks in region has been continuing ever since and the Respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.
- f. In addition, the current Govt. has on 08.11.2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labourers not accepting demonetized currency after demonetization.
- g. In July 2017, the Govt. of India further introduced a new regime of taxation under the Goods and Service Tax which

further created chaos and confusion owing to lack of clarity in its implementation. Ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.

- h. That it is further submitted that there was a delay in the project also on account of violations of the terms of the agreement by several allottees and because of the recession in the market most the allottees have defaulted in making timely payments and this accounted to shortage of money for the project which in turn also delayed the project.
- i. Then the developers were struck hard by the two consecutive waves of the covid-19, because of which the construction work completely came to halt. Furthermore, there was shortage of labour as well as the capital flow in the market due to the sudden lockdown imposed by the government.
- j. Lately, the work has been severely impacted by the ongoing farmers protest in the NCR as the farmers protest has caused huge blockade on the highway due to which ingress and egress of the commercial vehicles carrying the raw materials has been extremely difficult, thereby bringing the situation

not in the control of the developers and thus constitutes a part of the force majeure.

17. It is submitted that several allottees, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. That despite there being a number of defaulters in the project, the Respondent No.1 itself infused huge amount of funds into the project and is diligently developing the project in question.
18. It is further pertinent to mention that the project at present date has been completed up to 95% (only fit outs and finishing of the project is due) and therefore, it will be difficult for the respondent no.1 to refund the money at this stage. Furthermore, almost 90-95% of the firefighting, plumbing, electrical, AC ducting work has been done and the internal finishing work is going on and within few months, the possession would be given to the complainant. It is further to mention that, the respondent vide letter dated 30.05.2019 sent a demand letter for clearing the outstanding dues amounting to Rs 9,76,993/- which till date is still not paid by the complainant despite the fact that the project is 95% ready.
19. 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:

20. The plea 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

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

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)(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.

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

F. Findings on the objections raised by the respondent:

F.I. Objection regarding entitlement of DPC on ground of complainant being investors.

21. The respondent is contending that the complainants have invested in the unit in question for commercial gains, i.e. to earn income by way of rent and/ resale of the property at an appreciated value and to earn premium thereon. Since the investment has been made for commercial purpose therefore the complainants are not consumers but are investors, therefore, they are 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 consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, 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 it 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 buyer and paid total price of **Rs. 17,65,160/-** to the promoter towards purchase of an apartment 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;"

22. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainant is an allottee(s) as the subject unit was allotted to her 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 being an investor is not entitled to protection of this Act also stands rejected.

F. II. Objection regarding the respondent is reiterating that the project is being delayed because of force majeure circumstances and contending to invoke the force majeure clause.

23. From the bare reading of the possession clause of the buyer developer agreement, it becomes very clear that the possession of the apartment was to be delivered by **March 2018**. The respondent in its contention pleaded the force majeure clause on the ground of Covid- 19, NGT orders, demonetisation, farmers protest etc. The High Court of Delhi in case no. *O.M.P (I) (COMM.) No. 88/2020 & I.As. 3696-3697/2020 title as M/S HALLIBURTON OFFSHORE SERVICES INC VS VEDANTA LIMITED & ANR. 29.05.2020* held that The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself. Now this means that the respondent/promoter has to complete the construction of the apartment/building by December 2019. It is clearly mentioned by the respondent/promoter for the same project, in complaint no. 2916 of 2020 (on page no. 28 of the reply) that only 42% of the physical progress has been completed in the project. The respondent/promoter has not given any reasonable explanation as to why the construction of the project is being delayed and why

the possession has not been offered to the complainant/allottee by the promised/committed time. The lockdown due to pandemic in the country began on 25.03.2020. So, the contention of the respondent/promoter to invoke the force majeure clause is to be rejected as it is a well settled law that *"No one can take benefit out of his own wrongs"*. Moreover, there is nothing on record to show that the project is near completion, or the developer applied for obtaining occupation certificate. Rather, it is evident from its submissions that the project is completed upto 42% and it may take some more time to get occupation certificate. Thus, in such a situation, the plea with regard to force majeure on ground of Covid- 19 is not sustainable.

F. III. Objection regarding Timely payments:

24. The respondent has alleged that the complainants having breached the terms and conditions of the agreement and contract by defaulting in making timely payments. Further the above-mentioned contention is supported by the builder buyer agreement executed between both the parties. Clause 24 provides that timely payments of the installments and other charges as stated in the schedule of payment is essence of the agreement.

But the respondent cannot take advantage of this objection of timely payments being himself at wrong firstly by still not obtaining the occupation certificate and offering the possession of the unit despite being delay of more than 3 years and the complainants have already paid more than 60% of the total sale consideration till date. Therefore, the respondent itself failed to complete its contractual and statutory obligations. Moreover,

there is no document on file to support the contentions of the respondent regarding delay in timely payments.

G. Findings regarding relief sought by the complainant:

G.1 Direct the respondent to refund the paid money alongwith prescribed interest from the date of payment till date of refund as per RERA Act of 2016.

The complainant was allotted the subject unit by the respondent for a total sale consideration of Rs. 27,00,057/- as per payment plan at page no. 69 of the complaint. A buyer's agreement dated 03.03.2015 was executed between the parties. The due date of possession of the subject unit was calculated as per clause 38 where the possession has to be handover **within 36 months from the date of execution of this agreement or from the start of construction whichever is later** and which comes out to be 03.03.2018 as the authority has decided the date of construction as 21.03.2014 (Page 75 of the reply). After signing of buyer's agreement, the complainant started depositing various amounts against the allotted unit and paid a sum of Rs. 17,65,160/- as is evident from the page no. 75 of the reply. It is the case of complainant that since the construction of project was not as per schedule of payment, so they stopped making remaining amount due to the respondent and which ultimately led to their withdrawal from the project.

25. 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 agreement for sale as mentioned in the table above is 03.03.2018 and there is delay of more than 3 years on the date of filing of the complaint.

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.....”

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 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 the unit with interest at such rate as may be prescribed.

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.

The authority hereby directs the promoters to return the amount received by him i.e., Rs.17,65,160/- 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.2. Compensation/legal fees:

27. The complainant is claiming compensation under the present relief. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainant may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

H. Directions of the authority:

28. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act of 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

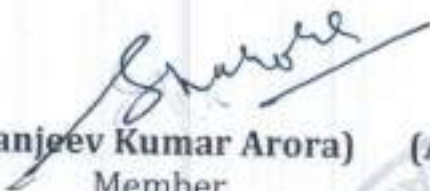
- i. The respondent /promoters are directed to refund the amount i.e. **17,65,160/-** received by ~~it~~^{them} from the complainant along with interest at the rate of 10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date

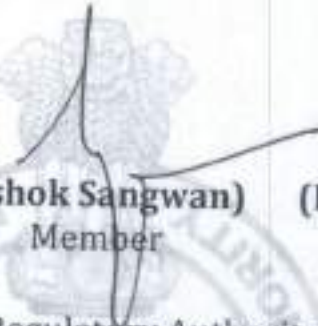
of each payment till the actual date of refund of the deposited amount.

- ii. A period of 90 days is given to the respondents 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.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2022