

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

Complaint no.:	1585 of 2021
First date of hearing:	04.05.2021
Date of decision:	15.12.2022

Meeta Gupta  
R/o S-225, 2<sup>ND</sup> Floor, Greater Kailash 2, New Delhi-  
110048

**Complainant**

Versus

1. M/s Agrante Developers Pvt. Ltd.
  2. M/s Agrante Realty Ltd.
- Office address:** DTJ 704, 7<sup>th</sup> floor, DLF Tower-B,  
Jasola, New Delhi-110025

**Respondents**

**CORAM:**

Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**

**APPEARANCE:**

Shri. Abhishek Yadav (Advocate)  
Shri. Tarun Biswas (Authorised Representative)

**Complainant**  
**Respondents**

**ORDER**

1. The present complaint dated 19.03.2021 has been filed by the complainants/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 as provided 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. Project and unit related details**

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

S. N.	Particulars	Details
1.	Name of the project	"Beethoven's 8", Sector- 107, Gurgaon
2.	Nature of project	Group housing complex
3.	RERA registered/not registered	Not Registered
4.	DTPC License no.	23 of 2012 dated 23.03.2012
	Validity status	Not available on record
	Name of licensee	Narendra Kumar Gupta & others
	Licensed area	18.0625 acres
5.	Unit no.	Symphony/B/2801 [pg. 17 of complaint]
6.	Unit area admeasuring	1702 sq. ft. [pg. 18 of complaint]
7.	Allotment letter	21.12.2013



		[pg. 40 of complaint]
8.	Date of builder buyer agreement	21.12.2013 [pg. 16 of complaint]
9.	Total sale consideration	₹ 1,03,15,870/- [pg. 25 of complaint]
10.	Amount paid by the complainant as alleged by the complainants	₹ 35,37,011/-
11.	Possession clause	<b>Clause 19(a)</b> <i>Subject to other terms of this Agreement/Agreement, including but not limited to timely payment of the Total Price, stamp duty and other charges by the Vendee(s), the Company shall endeavor to complete the construction of the Said Apartment within 42 (Forty-two) months from the date of Allotment, which is not the same as date of this Agreement. The Company will offer possession of the Said Apartment to the Vendee(s) as and when the Company receives the occupation certificate from the competent authority(ies). Any delay by the Vendee(s) in taking possession of the Said Apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof.</i> <i>(Emphasis supplied)</i> [pg. 32 of complaint]
12.	Due date of possession	21.06.2017 [Due date calculated from date of allotment i.e., 21.12.2013]
13.	Delay in handing over possession till the date of	3 years 8 months

	filing of this complaint i.e., 19.03.2021	
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint: -
- That the present complaint is being filed by the complainants against the respondent company who failed to timely handover possession of the flat in question as per clause 4(k) and 19(a) of the agreement dated 21.12.2013 executed between the parties.
  - That the complainant is a law-abiding citizen. The complainant and her husband Mr. Rajesh Gupta, having the need for residence, were desirous of buying an apartment for themselves and therefore applied for an apartment in a project namely "Beethovens 8" at Sector-107, Gurgaon being developed by the respondent.
  - That the respondent no.1 M/s Agrante Developers Private Limited formerly known as M/s RMS Estates Private Limited is a company incorporated on 29.08.2006 under the Companies Act, 1956 and respondent no.2 M/s Agrante Realty Limited is a public company incorporated on 26.02.2013 both are sister concerns and owned and administered by same individuals. The respondents are having their registered office at: DTJ 704, 7th Floor DLF Towers-B, Jasola, New Delhi, Central Delhi, Delhi-110025.
  - That the respondent companies are involved in real estate activities with own or leased property which includes buying, selling, renting and operating of self-owned or leased real estate such as apartment

- building and dwellings, non-residential buildings, developing and subdividing real estate into lots etc.
- e. That as the respondent no.1 was developing a project namely "Beethovens 8" at Sector-107, Gurgaon, the complainant herein made an application for the allotment of flat and also paid a fee of Rs.18,60,762/- amounting to approximately 21% of the aggregate sale consideration including taxes vide cheque no. 852381 & 001451 dated 11.06.2013 & 05.10.2013 respectively, the receipt of the payment has been acknowledged by the respondent under clause 3(f) of the agreement to sale dated 21.12.2013.
- f. That the complainant even after paying the application fee vide cheque no. 852381 & 001451 dated 11.06.2013 & 05.10.2013 and after much follow-up and persuasion had to wait till 21.12.2013 to execute agreement to sale and to receive the letter of allotment both dated 21.12.2013. That vide letter of allotment, the complainant was informed that apartment no. Symphony/B/2801 having a super area of approx. 1702 Sq. Ft has been allotted to the complainant in the project "Beethovens 8" at Gurgaon.
- g. That the respondent with mala fide intention and to defraud the complainant sent her an undated letter to inform her of the commencement of construction, which itself show that respondent had a mala-fide intentions from the inception of the project to defraud the genuine home buyers and usurp their hard-earned money.
- h. That after making the application fee payment, the complainant was requested to make another payment of Rs.7,86,954/- which was duly

- paid vide cheque no. 060313 dated 20.01.2014 and the same was duly acknowledged by the respondent no.2 vide receipt dated 28.01.2014.
- i. The respondents again vide their demand letter dated 13.09.2016 requested the complainant to make another payment of Rs.8,89,295/-. The complainant once again obliging the request of the respondent paid Rs. 8,89,295/- vide cheque no. 444323 dated 22.12.2016 and the same was duly acknowledged by the respondent vide receipt dated 22.12.2016.
  - j. That after making the aforesaid payments, the complainant wrote a letter dated 28.02.2017 to the respondent drawing attention to the error in agreement to sale where the amount of Rs. 1,03,15,870/- was misquoted as Rs.1,31,00,870/- and also sought clarification about the calculation as to how basic price of Rs.85,10,000/- translate to aggregate sale price of Rs.1,03,15,870/- and also drew attention to clause 4(k) of the agreement to sale which speaks about the completion of the project within 42 months and enquired as to how the respondent will compensate her as the project will not be completed within the stipulated period.
  - k. That the respondent neither replied to the said enquiry made by the complainant nor intimated the complainant about the progress of construction or payment of further instalment and sent a letter dated 07.10.2017 informing that the construction will be completed by end of 2019 only. It is pertinent to mention here that the same exceeds the stipulated period of 42 months of handing over the possession but after the said letter no updates were received by the complainant.

- l. That having received no updates for nearly two years and facing mental agony and harassment due to the acts and conduct of the respondents and having left with no remedy, the complainant through her counsel sent a legal notice dated 30.09.2019 wherein the complainant sought a refund of Rs.35,37,011/- along with interest @ 18% per annum from the date of payment to the date of refund, to which the respondents did not send any reply. It is pertinent to mention here that the even till date, the project is far away from its completion.
  - m. That the complainant was made to suffer at the hands of the respondents considering the fact that the complainant has been issued the allotment letter on 21.12.2013 and till date even after seven years i.e., on 09.03.2021 the project is far away from its completion and the respondents are enjoying the benefits of the hard-earned money of the complainant as well as other innocent home buyers.
  - n. That in view of delay in construction and failure to deliver the property within the stipulated period of 42 months, the complainant is entitled to withdraw and accordingly is withdrawing from the allotment and further seeks the refund of an amount of Rs.35,37,011/- along with interest and compensation as per Section 18 of the Real Estate (Regulation and Development) Act, 2016.
- C. Relief sought by the complainant: -**
4. The complainant has sought following relief(s)
    - a. Direct the respondent to refund the entire amount paid by the respondent along with interest.
    - b. Compensation & legal cost.

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 respondents**

6. The respondents have contended the complaint on the following grounds:
- a. That the present complaint has been apparently filed seeking relief of refund and compensation. The complaint has been filed under the provisions Haryana Real Estate (Regulation and Development) Rules, 2017 hereinafter referred to as ("2017 Rules"). The complaint is in form "CAO" as per rule 29 of the 2017 Rules. It is pertinent to mention that as per notification no. 156-2019/Ext dated 12.09.2019 issued by the State of Haryana ("appropriate government") made applicable the amended 2017 Rules hereinafter referred to as the ("amended rules"). That as per the amended rules in particular amended rule 29 it provides that any complaint filed with allegations of violation of section 12, 14, 18 and 19 of The Real Estate Regulatory Authority Act, 2016, hereinafter referred as ("RERA") will have to established by the Authority in an inquiry under section 35 of the RERA. The Hon'ble Punjab and Haryana High Court in C.W.P. 38144/2020 vide its judgement dated 16.10.2020 have upheld the validity of the amended rules. However, the operation of the said judgement has been stayed by the Hon'ble Supreme Court in an S.L.P (C) 13005/2020 titled as "Sana Realtors Pvt Ltd Vs Union of India" preferred by Sana Realtors



- Pvt Ltd. It would be pertinent to mention that the said S.L.P (C) 13005/2020 is pending disposal and is most likely to be finally decided in couple of months. Therefore, the issue as to whether complaints pertaining to refund and compensation would lie before the Hon'ble Authority in form "CRA" first where an inquiry under section 35 would first be initiated to establish the allegations of the complaint or it would lie directly before the Ld. Adjudicating Officer ("Ld. A.O") is sub-judice and thus the present proceedings should be stayed sine-die the disposal of the said S.L.P by the Hon'ble Supreme Court. The said petition is now being heard expeditiously and is likely to decide shortly. This would be the most efficacious step in order to prevent wastage of time/repetitions of pleadings. Therefore, respondent without prejudice to any of its rights craves the leave of the Ld. A. O to refer the complaint to mediation for the time being so as to enable the parties to reach an amicable settlement.
- b. It is submitted that every petition/complaint/application in law is required to be supported by an affidavit or affidavits of persons having personal knowledge. It is pertinent to mention that the complainant has not verified or affirmed the facts as mentioned on personal knowledge as required categorically in form "CAO" and further there is no supporting affidavit from any person having personal knowledge of the material facts as alleged in the present complaint. It would not be out of place to mention that the complaint filed by the complainant,

without any supporting affidavit affirmed on personal knowledge, do not disclose any ground at all to fulfil the requirement of the relevant sections of the Real Estate Regulatory Authority Act, 2016 under which the said complaint is filed. It is submitted that the aforesaid defects, according to well-settled law, are fatal and cannot be cured and this hon'ble Tribunal should not have entertained or admitted the said complaint prima facie. In view of the aforesaid, it is apposite to state that this Hon'ble Tribunal shall not proceed with the complaint which is not supported by an affidavit and verified in accordance with the provisions of law. The respondent further submits that the supporting affidavit shall be filed at the time of the initiation of the proceedings, i.e., at the time of the filing of the complaint. In the event the complainant fails to do so, then the complaint is liable to be dismissed. At any rate, the complainant by reason of this default having lost the right to lead any further evidence, the complaint must, therefore, be dismissed on merits without calling upon the respondent to file any reply.

- c. That it is pertinent to mention here that delayed possession hurts and damages the respondent more than it does the complainant. It is submitted that any additional one-year delay increases the cost of project by 20%. It is further submitted that the respondent has not demanded or is in receipt of more than 40% of the total sale consideration of the proposed apartment from any allottee and is



- undertaking the cost of construction from its own pocket. The respondent is taking all measures to complete the project with procuring necessary approvals from the competent authority.
- d. That the Symphony tower J at the final stages of its construction. It is of utmost importance to mention that the respondent has incurred and utilised his own funds and loans towards construction of the project and if the complaints pertaining to refunds are entertained at this stage it would jeopardize the fate of the project which would consequently hamper the valuable rights of the other allottees of project. The respondent is willing to adjust for the interest components as computed for delay in offering possession towards the balance sale consideration of the complainant as the respondent will offer possession in symphony tower to the complainant.
- e. The statement of objects, reasons and preamble of the Act makes it manifestly clear that it is not only the interest of the consumers of the real estate sector which the Act seeks to protect and safeguard but also the promotion of the real estate with a view to ensure sale of plot, apartment etc. Therefore, this Hon'ble Authority should consider the said objective especially in light of preceding paragraphs. The Hon'ble Authority is empowered not only to monitor the projects but also to ensure their timely completion where projects are held up or stopped and to take steps so the same are completed in time and in the interest of the allottees who are awaiting possessions of the units in the project.

- f. **FORCE MAJEURE CIRCUMSTANCES:** That M/s RMS Estate Pvt Ltd (now known as "Agrante Developers Pvt Ltd") was granted development license from Director Town and Country Planning, Haryana ("DTCP") for development of land spread over a total area of 18.0625 acre of land on which the present project is being developed. The said license was granted on 27.03.2012 and was valid for 4 years.
- g. That subsequent to grant of the above license the Promoter had executed a development/collaboration agreement dated 23.05.2013 with M/s Sarvaram Infrastructure Pvt Ltd ("Collaborator"). An area admeasuring 10,218 acres out of the aforesaid total land was handed to the collaborator with absolute and exclusive rights for the purposes of developing the same. It is pertinent to mention here that M/s Sarvaram Infrastructure Pvt Ltd himself or through his nominee had proposed to build a separate project namely "ELACASSA" on that parcel of land with which the promoter has no association whatsoever. Thus, resultantly there were two projects being developed under the same license by two distinct colonizers with rights and liabilities strictly framed under the said collaboration agreement. It would not be out of place to mention here that such agreements were in common practice then.
- h. The development/collaboration agreement dated 23.05.2013 stipulated strict liability on M/s Sarvaram Infrastructure Pvt Ltd or his appointed nominee to be in compliance of all statutory compliances,

bye-laws applicable as per HUDA, DTCP etc as applicable for his parcel of land. M/s Sarvaram Infrastructure Pvt Ltd was further under the obligation to remit all the dues accrued towards governmental authorities arising under the agreement for the portion of land with the collaborator under the agreement.

- i. That M/s Sarvaram Infrastructure Pvt Ltd however, started defaulting in his compliance of statutory duties and contractual obligations. The promoter had on several occasions issued written requests and even served legal notices to M/s Sarvaram Infrastructure Pvt Ltd to rectify the said defaults inter-alia payment of EDC and IDC charges. The promoter had taken every step to ensure compliance of statutory obligations as non-compliance by M/s Sarvaram Infrastructure Pvt Ltd would directly prejudice the promoter's project completion having the common license. It is submitted that the license for the land lapsed due to non-renewal, and it cannot be renewed until outstanding EDC & IDC charges along with penalty is not cleared for the total land jointly by the promoter and M/s Sarvaram Infrastructure Pvt Ltd in proportion to their respective projects. Needless to mention here that the promoter is ready and willing to pay its share of EDC and IDC charges for the purposes of renewal of license.
- j. That the bona-fide of the promoter can be further gathered by the fact that the promoter is running post to pillar and has filed a representation before financial commissioner (Haryana) seeking a

bifurcation of the license in two parts for two projects respectively and pursuing the same sincerely. It is pertinent to mention that only after renewal of license the promoter will be competent to obtain RERA registration. The promoter has undertaken every possible measure in his armour to salvage the project and complete the same. The process for bifurcation of license is still under consideration.

- k. It is submitted that the promoter has filed for HARERA registration vide order letter dated 09.08.2018 of its project on the said land which was to be with the applicant as per the agreement. The fate of the application is dubious and is still pending as the aforesaid license has lapsed and not existing anymore as on date and further, EDC and IDC charges are unpaid which were to be paid by the M/s Sarvarm Infrastructure Pvt Ltd. It is pertinent to mention here that the directors of the Sarvarm Infrastructure Pvt Ltd are lodged in jail presently. The promoter is crippled in the sense that he is unable to correspond with them which could perhaps lead to any fruitful results. Moreover, insolvency proceedings are pending against them before Hon'ble National Company Law Tribunal.
- l. It is submitted that due to non-registration with HARERA the promoter is unable to sell its proposed units in its project. More particularly the applicant is crippled financially as no demand can be raised by the from its existing members. It is to be kindly considered by this Hon'ble Court that the promoter has accordingly not raised a single demand from its

members and has not collected more than 40% of total sale consideration of a unit from any of its members. On the contrary the promoter has undertaken the tedious task of completing the construction of the project from its own finances and loans so as to offer possession and is also remitting the interests on subvention scheme on behalf of customers so as to protect them from further loss. The overall conduct of the promoter plays a vital part in deciding the complaint such as the present one. The promoter is faced with peculiar circumstances which would require mutual cooperation of its members.

- m. That, it would be of high importance to mention one similar complaint filed with this Hon'ble Authority wherein similar issues were being adjudicated. The Hon'ble Authority under HARERA had the opportunity to deal with similar complex issues faced by developers in respect of the licensed land wherein the original licensee had further subdivided the land for development purposes on the basis of collaboration agreements. This Hon'ble Authority in complaint no. 826/2018, 1402/2018, 1343/2018, 1344/2018 had passed common orders. The issues in these complaints were similar to the applicant's issues. In this case also the original licensee Triveni Ferrous Infrastructure Pvt Ltd a joint venture comprising of two groups Seth and Mittal Group who had subsequently divided/assigned development/marketing rights into five separate lands holding to be

developed separately pursuant to which similar issues arose which are being faced by the applicant. This Hon'ble Authority in that complaint had passed its conclusions and recommendations more particularly the recommendation to Town and Country Planning Department, Haryana stressing the grave importance that DTCP must divide license in five parts (as there were five assignee developers) and determine liabilities of each party individually and separately (liability on account of overdue License fee, EDC, IDC penal interest and other charges). Once the license is bifurcated separate RERA registration would be permissible besides this Hon'ble Authority had also pertinently recommended that DTCP should defer recovery of their overdue EDC so as to leave some cash flow in the hands of the developers for investing in the project. Therefore, the promoter prays with folded hands to refer the present matter to the Hon'ble Authority in light of the aforementioned case law as cited so that similar recommendations can be issued on behalf of the promoter to Town and Country Planning Department, Haryana. It is submitted that such recommendations would be in par with the statutory duty of the Hon'ble Authority in section 32 of the Act which states the functions of the Hon'ble Authority for promotion of the real estate sector.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be



decided on the basis of these undisputed documents and submission made by the parties.

8. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. SLP(Civil) No(s). 3711-3715 OF 2021*, the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.5.2022 in *CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP* and was observed that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.
9. Keeping in view the judgement of Hon'ble Supreme Court in case titled as *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra)* the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/CRA. Both the parties want to proceed further in the matter accordingly. The Hon'ble Supreme Court in case of *Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019* has ruled that procedures are hand made

in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the pleading and submissions made by both the parties during the proceedings.

**E. Jurisdiction of the authority**

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

**E. I Territorial jurisdiction**

11. 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**

12. 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.*

13. 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.
14. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14,*

*18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

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

**F. Findings on the relief sought by the complainants**

**F.I Direct the respondent to refund the entire amount paid by the complainant along with the interest.**

16. In the present complaint, the complainant intend to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, -*

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

*(Emphasis supplied)*

17. Clause 19(a) of the agreement provides for handing over of possession and is reproduced below:

***"19(a).***

*Subject to other terms of this Agreement/Agreement, including but not limited to timely payment of the Total Price, stamp duty and other charges by the Vendee(s), the Company shall endeavor to complete the construction of the Said Apartment **within 42 (Forty-two) months from the date of allotment, which is not the same as date of this agreement.** The Company will offer possession of the Said Apartment to the Vendee(s) as and when the Company receives the occupation certificate from the competent authority(ies). Any delay by the Vendee(s) in taking possession of the Said Apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof."*

18. At the outset, it is relevant to comment on the preset possession clause of the application form wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such

mischievous clause in the application form and the allottee is left with no option but to sign on the dotted lines.

19. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

20. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 15.12.2022 is 8.35%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.35%.
22. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the



promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

23. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The due date of possession has been calculated as per clause 19(a) of the agreement, the possession of the subject apartment was to be delivered within a period of 42 months from the date allotment, which is not the same as date of this agreement. Accordingly, the due date calculated from date of allotment i.e., 21.12.2013.
24. Keeping in view the fact that the allottee/complainant wish to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016. The due date of possession as per application form as mentioned in the table



above is 21.06.2017 and there is delay of 3 years 8 months on the date of filing of the complaint.

25. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

*"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

26. Further, the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. observed as under: -

*"25. The unqualified right of the allottee to seek refund referred under section 18(1)(a) and section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*



27. 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 promoters have 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 the allottees 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.
28. 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.
29. The authority hereby directs the promoter to return the amount received by him i.e., ₹ 35,37,011/- after deducting the amount already paid by the respondent, if any along with interest at the rate of 10.35% (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*.

**F.II Cost of litigation & compensation**

30. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil

appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

**G. Directions of the authority**


31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondents/promoters are directed to refund the entire amount of ₹ 35,37,011/- after deducting the amount already paid by the respondent, if any along with interest at the rate of 10.35% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the 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.
  - iii. The respondents/builders are directed not to create third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject

unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.

32. File be consigned to registry.



**(Ashok Sangwan)**  
Member



**(Sanjeev Kumar Arora)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.12.2022



**HARERA**  
**GURUGRAM**