



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

Complaint no.:	3524 of 2019
First date of hearing:	17.12.2019
Date of decision:	15.11.2022

1. Gaurav Madan
2. Smita Madan

Both RR/o L-49D, First Floor, Block L, Saket, New Delhi

Complainants

Versus

1. M/s Ansal Properties & Infrastructure Ltd.
Office address: 115 Ansal Bhawan, 16 Kasturba Gandhi Marg, New Delhi-110001
2. M/s Samayak Properties Ltd.
Office address: 111, 1st floor, Antriksh Bhawan, Kasturba Gandhi Marg, New Delhi-110025

Respondents

CORAM:

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Shri Sanjeev Kumar Arora

Member

Member

Member

APPEARANCE:

Shri. Nilotpal Shyam (Advocate)

None

Complainants

Respondents

ORDER

1. The present complaint dated 03.09.2019 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:

Sr. No.	Particulars	Details			
1.	Name of the project	"The Fernhill", Sector 91, Gurugram			
2.	Total area of the project	14.412 acres			
3.	Nature of the project	Group Housing Colony			
4.	DTCP license no.	48 of 2010 valid up to 20.06.2016			
5.	Name of licensee	Aravali Heights Infratech Pvt. Ltd. & ors.			
6.	Registered/not registered				
	S no.	Registration No.	Registration date	Valid up to	Towers
	i.	392 of 2017	22.12.2017	31.12.2019	Tower A, B, C, D, P, EWS 2 & convenient shopping
	ii.	389 of 2017	22.12.2017	31.12.2020	Tower L, M, E, F, G, H, J, K, EWS 1, nursery school (2 nos.), community building, 28 villas



7.	Unit no.	0704-M-0703 [pg. 39 of complaint]
8.	Area of the unit	1618 sq. ft. [pg. 39 of complaint]
9.	Date of execution of buyer's agreement with original allottee	10.07.2013 [pg. 37 of complaint]
10.	Possession clause	5. POSSESSION OF FLAT: - <i>5.1. Subject to Clause 5.2 and further subject to all the buyers/allottees of the flats in the said residential project, making timely payment, the company shall endeavour to complete the development said residential project and the said flat as far as possible within 48(forty eight) months, with an extended period of 6 months, from the date of execution of this agreement or from the date of commencement of construction of the particular tower/block in which the said unit is situated subject to sanction of the building plan whichever is later."</i> <i>(Emphasis supplied)</i> [page 47 of complaint]
11.	Date of start of construction taken from similar complaint	14.08.2014
12.	Due date of possession	14.02.2019 (Note: 48 months from date of start of construction i.e., 14.08.2014 being later + 6 months grace period allowed being unqualified)



13.	Delay in handing over possession till the date of filling of this complaint i.e., 03.09.2019	6 months 20 days		
14.	Basic sale price as per BBA at pg. 62 of complaint	₹ 47,70,850/-		
15.	Total amount paid by the complainant as per customer ledger dated 22.06.2019 at pg. 94 of complaint	₹ 49,50,192.16/-		
16.	Occupation certificate	Not obtained		
17.	Offer of possession	Not offered		

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
- That the respondents are in the business of development of real estate project, represents itself as one of the flagship companies having its corporate office at 115, Ansal Bhawan, 16, K.G Marg, New Delhi-110001 and is competent to defend the instant complaint.
 - That the complainant is a respected citizens of India and respondents through their representative had approached the complainant and represented that the respondents residential project name "The FERNHILL" (hereinafter referred to as "impugned project") will effectively serve the residential purpose of complainant and his family and has best of the amenities.
 - That the respondent no. 2 has claimed that they have acquired rights, title and interests from landowners (Aravali Heights Infratech Ltd. and SRP Builders Ltd.) wherein the said landowners have obtained license from the Director General, Town & Country Planning, Haryana ("DGTCP") for development of the project land into group housing



complex comprising of multi-storied residential apartments in accordance with law. The respondent no. 1 (hereinafter referred to as "respondent company") claimed that they have obtained marketable, construction and development rights with regard to the impugned project from respondent no. 2 wherein the respondent no. 1 was further assigned to realize the sale price from the allottees including complainant in accordance with terms of agreements entered between respondents. Accordingly, all the payments were made by the complainant through respondent company only.

- d. That as the complainants were looking for a good residential property, since the complainants are living with their parents. It is a small accommodation therefore the complainants in order to overcome the problem with regard to dwelling unit decided to book a flat for themselves. Therefore, on persuasion of the respondents, the complainants had shown his willingness to book a flat in the impugned project.
- e. That based on aforementioned representation and enquiries made, the complainant submitted application in May 2011 along with cheque no. 361791 dated 02-12-2011 of Rs 2,66,673/- for allotment of unit no. 0704-M-0703 of "THE FERNHILL" project. Accordingly, allotment letter dated 05.12.2011 was issued for the impugned unit by the respondent company in favour of complainant. The complainant had opted for equal installments construction linked plan.
- f. That the parties (complainant and respondents) entered into agreement i.e., flat buyer's agreement (hereinafter referred as "FBA") dated 10.07.2013 for the sale of said unit no.0704-M- 0703. The



- respondent company in terms of the application of the complainant executed the agreement for sale wherein the complainant agreed to the terms and conditions of the standard form of contract i.e., FBA as set forth under this agreement wherein form FBA made on dotted lines. The said FBA was followed by addendum dated 29.07.2014.
- g. That as per FBA, the respondent company agreed to sell/transfer the flat unit number 0704-M- 0703, with the right to exclusive use of parking space for an amount of Rs. 47,70,850/- (Rupees forty-seven lakh seventy thousand eight hundred and fifty only/-) which includes basic sale price and Rs.2,00,000/- as car parking charges but excludes external development charges and infrastructure development charges, preferential location charges and interest free maintenance security and in addition to, club membership, electricity connection, plus applicable taxes. The complainant had already paid a sum of Rs. 49,50,192/- (Rupees forty-nine lakh fifty thousand one hundred and ninety-two only) on account of part sale consideration, taxes, etc. In respect of the impugned project.
- h. That the possession of flat was proposed to be handed over in accordance with clause 5 of FBA wherein as per clause 5.1 of the FBA, the possession date for the impugned unit 0704 -M- 0703 was agreed to be within 48 months with an extended period of 6 months from the date of commencement of construction.
- i. It is a matter of record that the FBA signed between complainant and respondents is a standard form of agreement which was signed by every other allottees wherein there was no option to the complainant but to sign on the dotted lines on a contract which was framed by the



builder with no room for any negotiation power whatsoever vested with complainant. The said clause 5.1 of fba provides for condition such as due possession date from the commencement of particular tower and which started only on 14th August 2014 in so far as impugned tower relates wherein the complainant made the first payment on 2nd December 2011. The FBA was executed on 10 July 2013, therefore, further the delaying the time period of handing over possession i.e., 4years + 6 months (grace period) from said date is arbitrary and amounts to unfair trade practice. Further, the said clause 5.1 further stipulates that the possession is subject to all the buyers/allottees in the impugned project, the said condition is ex facie arbitrary and unreasonable as the complainant has no control over the timely payments of other allottees who are neither privy to the instant FBA nor holds any interest in impugned unit. Therefore, in view of the binding judgment of Hon'ble Supreme Court, the said clause 5.1 of FBA in so far as its subject delivery of possession of impugned unit to such arbitrary condition and delay it to four years from the date of start of construction.

- j. Without prejudice to the above, the complainant further submits that even assuming clause 5.1 of FBA to be valid, the respondent company failed to handover the possession within stipulated time i.e., by 29th July 2018 or 28 January 2019 wherein extended period is included. Therefore, the complainant has statutory right to withdraw from the impugned project in view of Section 18 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA Act, 2016"). The complainant is willing to withdraw from the project and therefore,



the instant complaint may be treated as demand of refund/intent to withdraw from the impugned project of respondents in accordance with Section 18 of RERA Act, 2016 read with Section 19(4) of the RERA Act, 2016. Further, it has been almost 8 years from the date of first payment made by the complainant to the respondent company with still no clear deadline as to the completion of construction and handing over the possession. The complainant money has been held in ransom for such a prolonged period for no fault of the complainant and the complainant cannot be forced to continue in the impugned project endlessly especially wherein there is no tangible deadline for handing over the possession is in sight. Therefore, the respondents are liable to refund the amount paid by the complainant along with interest at prescribed rate in accordance with the Haryana Real Estate (Regulation and Development) Rules, 2017.

- k. That the FBA further stipulates under clause 5.5 that respondent company, if failed to deliver the possession of the impugned unit within 30 days from the date of intimation of possession by the respondent and subject to the force majeure conditions shall pay compensation @ Rs.10/- per sq. Ft. of the super area per month for the entire period till the date of handing over the possession. The said compensation clause is also in direct conflict with the RERA Act, 2016 and rules made there - under. Therefore, the clause 5.5 of FBA is non est in law as it is discriminatory qua clause 4.5 of FBA and in view of the fact that it is repugnant to the explicit statutory provision also amounts to unfair trade practice hence in violation of Section 23 of Indian Contract Act, 1872. The complainant craves leave of Hon'ble Adjudicating Officer to



produce and rely upon relevant judgments at the time of oral hearing as may be required.

- l. That the respondent company failed to deliver the possession in agreed timeframe for reasons best known to them and the respondent company never bothered to intimate rhymes and reasoning for the delay to the complainant. Therefore, the respondents have the breached the sanctity of the agreement for sell i.e., FBA. At the time of booking the respondent company never ever the project to be divided in phase I and phase II. The respondent company on their will divided the whole project which negatively affect the construction progress of impugned flat. The respondent company intentionally created such confusion in order to avoid delivery of project on time.
- m. That there is unexplained delay in handing over the possession by the respondent company to the complainant without any sign of them meeting the future deadline. Therefore, the complainant has genuine grievance which require the intervention of the Hon'ble Adjudicating Officer in order to do justice with them. The complainants are facing problem as they have taken loan from HDFC Bank for purchasing the said property. The complainants are paying and EMI of Rs. 26,310/- per month and is unable to avail any benefit of Income Tax as the possession of said flat was not provided.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s)
 - a. Refund entire amount paid by the complainant along with the interest.
 - b. Direct the respondent to refund the service tax paid by the complainant.



c. Compensation & cost of litigation.

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 reply has not been filed by the respondent against the complaint. Notice to the promoter/respondent in this complaint was sent through speed post and through e-mail address (customerconnect@ansals.com, sharad.mishra@ansals.com , abhishekagarwal@ansalapi.com & samyakprojects@gmail.com); the delivery report of which shows that delivery was completed. Despite service of notice, the promoter/respondent has failed to file a reply within the stipulated time period. On the last date of the hearing dated 12.09.2022 the respondent was directed to file the reply in two weeks i.e., by 26.09.2022 with a cost of ₹ 5,000/- failing which its defence may be struck off. Since, till today no reply has been submitted therefore, the authority assumes/observes that the respondent has nothing to say in the present matter and accordingly, the authority proceeds with the case without reply and the defence of the respondent stands struck off.
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 interest.

16. In the present complaint, the complainants 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 5 of the agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"clause 5.



5.1. Subject to Clause 5.2 and further subject to all the buyers/allottees of the flats in the said residential project, making timely payment, the company shall endeavour to complete the development said residential project and the said flat as far as possible within 48(forty eight) months, with an extended period of 6 months, from the date of execution of this agreement or from the date of commencement of construction of the particular tower/block in which the said unit is situated subject to sanction of the building plan whichever is later."

18. At the outset, it is relevant to comment on the preset possession clause of the agreement 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 favour 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 agreement and the allottee is left with no option but to sign on the dotted lines.
19. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required



sanctions and approval necessary for commencement of construction, whichever is later. The authority calculated due date of possession from the date of date of commencement of construction i.e., 14.08.014 being later. The period of 48 months expired on 14.08.2018. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.

20. **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.

21. 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.
22. 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., 15.11.2022 is **8.25%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.25%**.

23. 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;"*

24. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 5 of the buyer's agreement executed between the parties on 10.07.2013, the possession of the subject apartment was to be delivered within stipulated time i.e., by August 2018. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 14.02.2019.

25. 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.

26. The due date of possession as per agreement for sale as mentioned in the table above is **14.02.2019** and there is delay of 6 months and 20 days on the date of filing of the complaint.
27. 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 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....."

28. 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."

29. 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 allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the amount of ₹ 49,50,192.16/- paid by the complainants at the prescribed rate of interest i.e., @ 10.25% p.a. (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. Direct the respondent to refund the service tax paid by the complainant

31. The amount of service tax or GST, if not refundable from the concerned taxation authority, the same shall not be included in the refundable amount.

F.III Cost of litigation & compensation

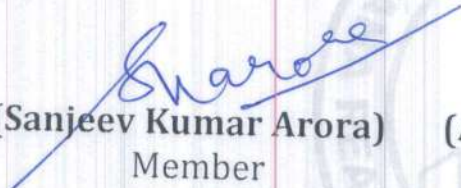
32. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is 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

33. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondents/promoters are directed to refund the entire amount of ₹ 49,50,192.16/- after deducting the amount already paid by the respondent, if any along with interest at the rate of 10.25% 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 paid-up amount along with interest thereon to the complainants, and even 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.
34. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.11.2022