

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

Complaint no.:	1612 of 2018
First date of hearing:	14.02.2019
Date of decision:	23.11.2022

Arun Kumar Singh  
R/o D-92, Seema Apartments, Plot-7, Sector 11, Dwarka,  
New Delhi

**Complainant**

Versus

Ansal Housing & Construction Ltd.  
**Office address:** 110, Indraprakash, 21, Barkhamba  
Road, New Delhi- 110001.

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**  
**Member**

**APPEARANCE:**

Shri. Anuj Chauhan (advocate)  
Smt. Meena Hooda (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint dated 28.11.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions 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. Unit and project related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Highland Park", Sector 103, Gurugram.
2.	Total area of the project	11.70 acres
3.	Nature of the project	Group housing project
4.	DTCP license no.	32 of 2012 dated 12.04.2012 valid up to 11.04.2020
5.	Name of licensee	M/s Identity Buildtech Pvt. Ltd. M/s Agro Gold Chemicals India LLP
6.	Registered/not registered	Registered Vide registration no. 16 of 2019 dated 01.04.2019 valid up to 30.11.2021
7.	Allotment letter	15.02.2014 [annexure C/4, pg. 34 of CAO]
8.	Unit no.	GLSGW-0504 [annexure C/4, pg. 34 of CAO]
9.	Area of the unit	1940 sq. ft. [annexure C/4, pg. 34 of CAO]
10.	Date of execution of buyer's agreement	22.03.2013 [annexure C/3, pg. 14 of CAO]
11.	Possession clause	<b>Clause 31.</b> <b>31. The developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 months from the date of</b>

		<p><i>obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit.</i></p> <p><i>(Emphasis supplied)</i></p> <p>[annexure C/3, pg. 23 of CAO]</p>
12.	Date of sanction of building plan	16.04.2013
13.	Due date of possession	16.10.2017 (Note: 48 months from date of approval of building plan i.e., 16.04.2013 being later + 6 months grace period allowed being unqualified)
14.	Delay in handing over possession till the date of this order i.e., 24.05.2022	4 years 7 months 8 days
15.	Basic sale consideration as per BBA dated 22.03.2013 at page 17 of CAO.	₹ 91,73,833.20/-
16.	Total amount paid by the complainant as alleged by the complainant at page 35 of CAO.	₹ 86,57,493.18/-
17.	Offer of possession	Not offered
18.	Occupation Certificate	Not obtained.

**B. Facts of the complaint**

3. The complainant has pleaded the complaint on the following facts:

- a. That the present complaint is being preferred by Mr. Arun Kumar Singh [hereinafter referred to as the "**complainant**"] under Section 31 of the Real Estate (Regulation and Development) Act, 2016 for seeking directions and relief against the errant actions of the Ansal Housing & Construction Ltd. [hereinafter referred to as the



“respondent”] who despite assuring the possession of the unit purchased by the complainant by 2017 failed to deliver the same and thereby committed the breach of the apartment buyers agreement dated 22.03.2013 and the provisions stated under the Real Estate (Regulation and Development) Act, 2016.

- b. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this Hon'ble Authority as the unit which is the subject matter of the present complaint is situated in Sector-103, Gurugram, Haryana and thus within the jurisdiction of this Hon'ble Authority. Hence, this Hon'ble Authority has the power to try and adjudicate upon the instant complaint.
- c. That the complainant under the misrepresentations and fake claims made by the respondent with respect to his market reputation, the success of his projects and his project Ansal's Highland Park, booked a unit being unit no.GLSGW-504, Glasgow Tower, measuring 1940 sq. ft. in Ansal's Highland Park situated at Sector 103, Gurugram, Haryana [hereinafter referred to as the “unit”] for a total plot sale price consideration of Rs.99,47,233.20/- [Rupees ninety nine lakhs forty seven thousand two hundred thirty three and twenty paise only].
- d. That for the purposes of the purchase of the said unit, the complainant executed an application for provisional booking/allotment of the residential apartment on 01.06.2012 and paid a booking amount of Rs.7,00,000/- [Rupees seven lakhs only]. That thereafter in furtherance of the purchase of the unit, the complainant executed apartment buyers' agreement with the respondent on dated 22.03.2013. That the complainants again paid



a lump sum amount of Rs.13,17,874.98/- [Rupees thirteen lakhs seventeen thousand eight hundred seventy-four and ninety-eight paisa only] towards the payment of the unit purchased, which was also acknowledged by the respondent.

- e. That as per the **clause 31** of the apartment buyer's agreement dated 22.03.2013, the respondent had assured the complainant to deliver the possession of the unit within 54 months, including the grace period of 6 months, from the date of the execution of the apartment buyer's agreement i.e., by 22.09.2017. That further it was agreed in clause 37 of the apartment buyer's agreement dated 22.03.2017 that in the event of delay in the delivery of possession on the part of the respondent, then the respondent will be liable to pay penalty @ Rs.5/- per square feet per month on super area.
- f. That after the apartment buyer agreement dated 22.03.2013 was entered into, the respondent issued allotment letter dated 15.02.2014 in the name of the complainant with respect to the unit purchased by him, thereby confirming the allotment of the unit purchased. That as per the agreement the complainant in discharge of his financial obligations towards the respondent has made timely payments to the tune of **Rs.86,57,493.18/-** [Rupees eighty-six lakhs fifty-seven thousand four hundred ninety-three and eighteen paisa only] till date, which amounts to **87%** of the total sale price consideration. That all the payments made by the complainant were duly acknowledged by the respondent vide acknowledgment receipts. That the remaining balance amount was to be paid at the time when the possession of the unit was to be handed over by the respondent.



- g. That however to the utter dismay of the complainant, the respondent failed to deliver the possession of the apartment by the due date as proposed in the apartment buyer agreement dated 22.03.2013 i.e., **22.09.2017**. That the respondent owing to his dishonest intentions even after taking timely payments against the unit purchased has failed to deliver the possession of the unit, thereby infringing the rights of the innocent complainant who has spent his hard-earned life savings in the purchase of the said unit.
- h. That keeping in view the inability of the respondent in developing the project and in the light of the half-hearted promises made by the respondent, the chances of getting physical possession of the apartment as per the agreement in near future seems bleak and that the same is evident of the irresponsible and desultory attitude of the and conduct of the respondent, consequently injuring the interest of the buyers including the complainant who has spent his entire hard earned savings in the purchase of the unit and now stands at a crossroad to nowhere.
- i. That further irony lies in the fact that for the purposes for which the installments are being paid by the complainant, the same finds no existence anywhere in the project of the respondent since the construction has been abandoned by the respondent.

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

4. The complainant has sought following reliefs:
- Refund the entire amount paid by the complainant along with the interest.
  - Compensation of ₹ 10,00,000/- for damages caused to the complainant and cost of litigation of an amount of ₹ 1,00,000/-.



5. On the date of hearing, the authority explained to the respondents/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds:
- That the respondent is a public limited company registered under the Companies Act, 1956, having its registered office at 606, Indraprakash, 21 Barakhamba Road, New Delhi-110001. The present reply is being filed by the respondent through its duly authorized representative named Shri. Aalam Zameer, manager(legal).
  - That the project namely 'Ansal Highland Park', is being developed by the M/s Ansal Housing & Construction Ltd under license no. 32 of 2012 received from DGTCP, Haryana on a land area of about 93 Kanal 12 Marla i.e., 11.7 acres comprised in rectangle no. 3, Killa no. 17/2/1(4K-15M, Killa no. 6 (7K-4M), Killa no. 7(8K), Killa no. 8/2(7K), Killa no. 9/1(6K-8M), Killa no. 13(8K), Killa no. 14(8K), Killa no. 15(7K-12M), Killa no. 18/2(6K-12M), Killa no. 22/2(5M), Killa no. 22/3(4K), Killa no. 23/1/1(8M), Killa no. 23/1/2(3K-8M), Killa no. 27(8M), Killa no.29(8M), falling in the village Tikampur, Gurgaon Haryana presently part of residential Sector-103 of the Gurgaon Manesar Development Plan 2021.
  - That the land of the project is owned by respondent wholly owned subsidiary M/s Identity Buildtech Pvt. Ltd. (Identity) and M/s Agro Gold Chemicals Pvt. Ltd. (AGCPL) having its registered office at B-1/1345, Vasant Kunj, New Delhi - 110017.



- d. That, the complaint filed by the complainant is highly misplaced, misconceived and is not at all maintainable before this Hon'ble Authority under the facts and circumstances as aforesaid.
- e. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant perfectly within time had there been no force majeure circumstances beyond the control of the respondent. However, there were several reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP no. 20032/2008 whereby ground water extraction was banned in Gurgaon; orders passed by National Green Tribunal whereby mining of sand in Haryana and Rajasthan was banned, Reservation agitation in Haryana; orders of National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016; demonetization etc. adversely effected the progress of the project. That the respondent would pay the respondent appropriate compensation as per the terms and conditions of the said allotment letter duly executed by the complainant.
- f. That this Hon'ble Authority has no jurisdiction to entertain present complaint as the project has yet not received the registration certificate under RERA. That the complainant has opted for construction link plan and like several other buyers he also defaults and always irregular in paying the installments as such the project





could be jeopardies and in order to save the interest of other buyer complainant had also paid the interest on the defaults.

- g. That the complaint is not maintainable and the same is liable to be dismissed on the ground that the project has not received registration certificate under RERA and hence this Hon'ble Authority has no jurisdiction to entertain present complaint. That the no cause of action has arose against the respondents as in terms of the RERA Act the developer has changed the completion date and has undertaken to complete the project on or before 30.11.2021 Hence, on this ground alone the complaint is liable to be dismissed.
- h. That the complaint is not maintainable and the same is liable to be dismissed on the ground that the complainant seeks suitable interest and compensation, which falls under the ambit of Adjudicating Officer (under RERA) and not this Hon'ble Authority.
7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.
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 authority observed 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant 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." SCC Online SC 1044 decided on 11.11.2021 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. Furthermore, the said view has been reiterated by the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021.**" The relevant paras of the above said judgment reads as under:

*"23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.*

*24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.*

*25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication*

*and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."*

16. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, and the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others. (supra)**", the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the objections raised by the respondent**

**F.I Objection regarding jurisdiction of authority w.r.t. non-registration of the project.**

17. Objection raised the respondent that the complaint is not maintainable and the same is liable to be dismissed on the ground that the project has not received registration certificate under RERA and hence this authority has no jurisdiction to entertain present complaint. As mentioned at point 6 of the table annexed at para 2 of this order, the said project was registered with this authority vide registration no. 16 of 2019 dated 01.04.2019 valid up to 30.11.2021 and the proceedings under section 7(3) of the Act, 2016 against respondent has been initiated by this authority.

**G. Findings on the relief sought by the complainant**

**G.I. Refund entire amount paid by the complainant along with the interest.**

18. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them 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)*

19. Clause 31 of the BBA dated 22.03.2013 provides for the handing over of possession and is reproduced below for the reference:

***"31. The developer shall offer possession of the unit any time, 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 subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit."***

20. At the outset, it is relevant to comment on the pre-set 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 complainant not being in default under any provisions of this agreement 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 allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoter are 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.

21. **Admissibility of grace period:** The respondent/promoter has raised the contention that the construction of the project was badly affected on account of the orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only buy liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure.



22. The promoter has proposed to hand over the possession of the apartment within a period of 48 months plus 6 months from date of agreement or from the date of approvals required for the commencement of construction which whichever is later. The due date of possession is calculated from the date of building plan approval i.e., 16.04.2013 being later. The period of 48 months expired on 16.04.2017. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified.

23. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid along with interest at the prescribed rate. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them 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.”***

24. 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.





25. 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., **23.11.2022** is **8.35%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.35%**.
26. 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 16.10.2017 and there is delay of 4 years 7 months & 8 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 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....."*
28. 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.*

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 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.
30. 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.



31. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 86,57,493.18/- 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.

**G.II. Compensation of ₹ 10,00,000/- for damages caused to the complainant and cost of litigation of an amount of ₹ 1,00,000/-**

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.


#### **H. Directions of the authority**

33. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the entire amount of Rs. 86,57,493.18/- paid by the complainants along with

prescribed rate of interest @ 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 respondent to comply with the directions given in this order and failing which legal consequences would follow.
  - iii. The respondent builder is 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. Complaint stands disposed of.
35. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.11.2022