

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

Date of decision: 15.12.2022

NAME OF THE BUILDER		ANSAL HOUSING LTD.	
PROJECT NAME		ANSAL HEIGHTS 86	
S. No.	Case No.	Case title	APPEARANCE
1	CR/174/2020	Nitin Suri & Chavi Suri Vs Ansal Housing Ltd.	Ms. Priyanka Agarwal Ms. Meena Hooda
2	CR/323/2020	Dheeraj Kukreja & Jyoti Kukreja Vs Ansal Housing Ltd.	Ms. Priyanka Agarwal Ms. Meena Hooda
3	CR/838/2020	Achla Gulati & Ravi Kumar Vs Ansal Housing Ltd.	Ms. Ria Jain Ms. Meena Hooda

**CORAM:**Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora**Member**  
**Member****ORDER**

1. This order shall dispose of all the 3 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ansal Heights 86" (group housing colony) being developed by the same respondent/promoter i.e., M/s Ansal Housing Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	<b>ANSAL HOUSING LTD "ANSAL HEIGHTS 86" Sector-86, Gurugram.</b>		
<b>Possession Clause: - 31</b>	<p><i>"The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 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 42 months as above in offering the possession of the unit."</i></p> <p style="text-align: right;"><b>(Emphasis supplied)</b></p>		
<b>Occupation certificate: - Not obtained</b>			
<b>Due date:</b>	01.10.2017 ( <b>Note:</b> 42 months from date of start of construction i.e., 01.10.2013 being later + 6 months grace period allowed being unqualified)		
<b>Complaint No., Case Title, and Date of filing of complaint</b>	<b>CR/174/2020 Nitin Suri &amp; Chavi Suri Vs Ansal Housing Ltd.</b>	<b>CR/323/2020 Dheeraj Kukreja &amp; Jyoti Kukreja Vs</b>	<b>CR/838/2020 Achla Gulati &amp; Ravi Kumar Vs Ansal Housing Ltd.</b>



		<b>Ansal Housing Ltd.</b>	
<b>Reply status</b>	17.03.2020	Not yet received	Not yet received
<b>Unit No.</b>	F-0102 [pg. 16 of complaint]	H-0801 [pg. 16 of complaint]	I-0403 [pg. 24 of complaint]
<b>Date of apartment buyer agreement</b>	28.07.2012 [pg. 13 of complaint]	26.09.2012 [pg. 13 of complaint]	22.12.2012 [pg. 21 of complaint]
<b>Date of transfer of unit in name of complainant</b>	NA	Cannot be ascertained	18.01.2013 [pg. 42 of complaint]
<b>Total Consideration (TC) / Total Amount paid by the complainant(s) (AP)</b>	TC: ₹ 64,38,675/- AP: ₹ 63,81,340/-	TC: ₹ 54,17,050/- AP: ₹ 51,85,170/-	TC: ₹ 53,97,644/- AP: ₹ 53,19,936/-
<b>Relief Sought</b>	<ol style="list-style-type: none"> <li>1. Refund the entire amount paid by the complainant along with the interest.</li> <li>2. Request the authority for conducting forensic audit.</li> <li>3. Quash the one-sided clauses incorporated in BBA.</li> <li>4. Payment of GST amount levied upon the complainant.</li> </ol>	<ol style="list-style-type: none"> <li>1. Refund the entire amount paid by the complainant along with the interest.</li> <li>2. Request the authority for conducting forensic audit.</li> <li>3. Quash the one-sided clauses incorporated in BBA.</li> <li>4. Payment of GST amount levied upon the complainant.</li> <li>5. Compensation</li> </ol>	<ol style="list-style-type: none"> <li>1. Refund the entire amount paid by the complainant along with the interest.</li> <li>2. Compensation</li> </ol>

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over

the possession by the due date, seeking award of refund the entire amount along with interest and compensation.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case *CR/174/2020 Nitin Suri & Chavi Suri V/s Ansal Housing Ltd.* are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.

**A. Project and unit related details**

7. 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:

**CR/174/2020 Nitin Suri & Chavi Suri V/s Ansal Housing Ltd.**

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Heights 86", Sector 86, Gurugram.
2.	Total area of the project	12.843 acres
3.	Nature of the project	Group housing colony

4.	DTCP license no.	48 of 2011 dated 29.05.2011 valid upto 28.05.2017
5.	Name of licensee	Resolve Estate Pvt. Ltd.
6.	Registered/not registered	Not registered
7.	Unit no.	F-0102 [annexure P1, pg. 16 of complaint]
8.	Area of the unit	1690 sq. ft. [annexure P1, pg. 16 of complaint]
9.	Date of execution of buyer's agreement	28.07.2012 [annexure P1, pg. 13 of complaint]
10.	Possession clause	<p><b>31.</b></p> <p><i>The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 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 42 months as above in offering the possession of the unit."</i></p> <p><i>(Emphasis supplied)</i></p> <p>[annexure P1, pg. 21 of complaint]</p>
11.	Date of start of construction as per customer ledger dated 01.01.2019	01.10.2013 [pg. 35 of complaint]

12.	Due date of possession	01.10.2017  (Note: 42 months from date start of construction i.e., 01.10.2013 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., 17.01.2020	2 years 3 months 16 days
14.	Total sale consideration as per customer ledger dated 01.01.2019 on pg. 30 of complaint	₹ 64,38,675.50/-
15.	Total amount paid by the complainant as per customer ledger dated 01.01.2019 on pg. 33 of complaint	₹ 63,81,340.64/-
16.	Offer of possession	Not offered

### B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- That the complainants are a law-abiding citizen and consumer who have been cheated by the malpractices adopted by the respondent is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainants being interested in the project because it was a housing project and the complainant had needed an own home for his family.
  - That the complainants were subjected to unethical trade practice as well as subject of harassment, flat buyer agreement clause of escalation cost, many hidden charges which will forcedly imposed on buyer at the



time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided. That the executed builder buyer agreement between respondent and complainant mentioned in developer's representations, DTCP given the licence 48 of 2011 to Resolved Estate Pvt. Limited (confirming party -1) this company was transferred his rights to Optus Corona Developers Pvt. Ltd. (confirming party-2) this company was transferred his rights to Samyak Projects Pvt. Ltd (confirming party-3). At last confirming party -3 makes another arrangement to joint with respondents those all arrangements create doubt, suspicion, M/S Ansal Housing & Construction Ltd. have legal right to collect money from allottees against the F-0102, tower-F, "Ansal Heights, 86", Gurugram and have legal & valid license to develop this project.

- c. That the based-on promises and commitment made by the respondent, complainants booked a 3 BHK flat admeasuring 1690 Sq Ft, along with one covered car parking in the unit no. F-0102, tower-F in residential project Ansal Heights, 86", Sector 86, Gurugram, Haryana. The initial booking amount of Rs 7,73,713/- (including tax) (Rupees seven lakhs seventy-three thousand seven hundred thirteen only) was paid through cheques no-204244,204242 and 204246 dated 04.10.2011, 30.09.2011 and 01.11.2011 (**more than 8 year back**).
- d. That the respondent to dupe the complainants in their nefarious net even executed flat buyer agreement signed between M/s Ansal Housing & Construction Ltd. and Mr Nitin Suri & Mrs Chavi Suri dated 28.07.2012 just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement

persistently raised demands due to which they were able to extract huge amount of money from the complainants.

- e. That it is pertinent mentioned here that according to the statement the complainant paid a sum of Rs 64,14,237/- (Rs sixty-four lakhs fourteen thousand two hundred thirty-seven only) to the respondent till March 2017 and before this builder was demanded more than 95% amount without doing appropriate work on the said project, which is illegal and arbitrary.
- f. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainants have fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainants herein are not in breach of any of its terms of the agreement. That the complainants have already paid home loan of ₹ 5,70,790.44/- from axis bank which was taken for bought this flat and also complainants are paying EMI of another sanction home loan ₹ 1,00,00,000/- which create extra financial burden on complainants.
- g. That, complainants have paid all the installments in a timely manner and deposited Rs. 6414237/- (Rs sixty four lakhs fourteen thousand two hundred thirty seven only) that respondent in an endeavor to extract money from allottees devised a payment plan under which respondent linked more than 35 % amount of total paid against as an advance rest 60% amount linked with the construction of super structure only ) of the total sale consideration to the time lines, which is not depended or co-related to the finishing of flat and internal



development of facilities amenities and after taking the same respondent have not bothered to any development on the project till date as a whole project not more than 40 % and in term of particular tower just built a super structure only. Extracting the huge amount and not spending the money on a project is illegal and arbitrary and matter of investigation.

- h. That as the delivery of the apartment was due on January 2016 which was prior to the coming into of force of the GST Act, 2016 i.e., 01.07.2017, it is submitted that the complainants are not liable to incur additional financial burden of GST due to the delay caused by the respondent. Therefore, the respondent should pay the GST on behalf of the complainants but just reversed builder collect the GST from complainants and enjoy the input credit as a bonus, this is also matter of investigation.
- i. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of FBA with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants and his family and new possession date given by builder also too long from now December 2021 has been rudely and cruelly been dashed the savoured dreams, hopes and expectations of the complainant to the ground and the complainant is eminently justified in seeking return of the entire money with interest.
- j. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, the chances of getting physical possession of the assured unit in near future seems bleak and

that the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainants who have spent his entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional loss.

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

9. The complainant has sought following relief(s)
  - a. Refund the entire amount paid by the complainants along with the interest.
  - b. Request the authority for conducting forensic audit.
  - c. Quash the one-sided clauses incorporated in BBA.
  - d. Payment of GST amount levied upon the complainant.
10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

11. The respondent has contested the complaint on the following grounds.
  - a. That the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this Hon'ble Authority. The complainant has filed the present complaint seeking refund and interest for alleged delay in delivering possession

of the unit booked by the complainant. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the Adjudicating Officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act" for short) read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as "the Rules") and not by this Hon'ble Authority. The present complaint is liable to be dismissed on this ground alone.

- b. The relief sought in the complaint by complainant is based on false and frivolous grounds and they are not entitled to any discretionary relief from this hon'ble authority as the person does not come with clean hands may be thrown out without going into the merits of the case. However, the true facts of the case are that the land of the project is owned and possessed by the respondent through its subsidiary M/s Resolve Estates Pvt. Ltd., having its Registered Office at 153, Okhla Industrial Estate, Phase-III, New Delhi-110020. The said company has under an arrangement granted, conveyed and transferred all its rights, entitlement and interest in the development, construction and ownership of the total permissible FSI on the land aforesaid to M/s Optus Corona Developers Pvt. Ltd., having registered office at J 181, Saket, New Delhi. The said M/s Resolve Estates Pvt. Ltd. has further under an arrangement granted, conveyed and transferred all its rights,

entitlement and interest in the development, construction and ownership of the total permissible FSI on the land aforesaid to M/s Samyak Project Pvt. Ltd., having its registered office at 111, First Floor, Antriksh Bhawan, K.G. Marg, and New Delhi.

- c. That, even otherwise, the complainant has no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the flat buyer's agreement dated 28.07.2012, as shall be evident from the submissions made in the following paragraphs of the present reply.
- d. 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 Mr. Vaibhav Chaudhary, whose authority letter is attached herewith. The above said project relates to License no.48 of 2011 dated 29.05.2011 received from the Director General Town and Country Planning (DGTCP), Haryana, Chandigarh over the land measuring 12.843 acres comprising in Rect. No.19, Killa No.3 Min (6-0), 4 (8-0), 5 (8-0), 8/1 (0-8), 13/2 (0-8), 1/1 Min (0-4), 17/1 (17/1 (5-14), 24/2/1 (1-8), 25 (8-0), 7 (8-0), 14 (8-0), 17/2 Min (0-18), Rect. No.14, Killa No.19 (8-0), 20 (8-0), Rect. No.15, Killa No.14/2 (3-7), 16 (8-0), 17 (8-

- 0), 24/1 (4-8), 22/2 Min (0-5), 23 Min (7-15) situated within the revenue estate of Village Nawada-Fatehpur, Gurugram, which falls within Sector-86, Gurugram, Manesar-Urban Development Plan. The building plans of the project have been approved by the DGTCP; Haryana vide memo no. ZP-781/D/(BS)/2013/50373 dated 03.09.2013. Thereafter, respondent herein was granted the approval of firefighting scheme from the fire safety point of view of the housing colony measuring 12.843 acres by the Director, Haryana Fire Service, Haryana, Chandigarh vide letter memo no. DFS/F.A./2015/326/66492 dated 24.11.2015.
- e. That the complainant had booked an independent unit in its upcoming residential project "Ansal Heights 86" (hereinafter "the project") situated in Sector 86, Village Nawada, Fatehpur, Gurgaon. It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner from the respondent.
- f. That thereafter the complainant vide application form dated 30.11.2011 applied to the respondent for provisional allotment of a

- unit in the project on 06.11.2011. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no. F-0102, in Tower-F, Type of Unit-3 BHK, sale area 1690 sq. ft..The complainant consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant.
- g. It is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period as given by the respondent to the authority.
- h. 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 within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as 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. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana Government.

- i. That it is submitted that the complaint is not maintainable or tenable under the eyes of law as the complainant has not approached to this Hon'ble Authority with clean hands and has not disclosed the true and material facts relates to this case of complaint. The complainant thus has approached the Hon'ble Authority with unclean hands and has suppressed and concealed the material facts and proceedings which has direct bearing on the very maintainability of purported complaint and if there had been discloser of these material facts and proceedings the question of entertaining the present complaint would have not

arising in view of the case law titled as *S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page 1* in which the Hon'ble Apex Court of the land opined that non-discloser of material facts and documents amounts to a fraud on not only the opposite party, but also upon the Hon'ble Authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as *Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012* decided on 25.09.2013.

- j. That it is submitted that several allottees, including the complainant, have defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible.
- k. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the

contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which registered with the Authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the builder buyer's agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in case titled as Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298, the liberty to the promoter /developer has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of Section 3 of RERA Act as it was opined that the said Act named RERA is having prospective effect instead of retrospective. Para no.86 and 119 of the above said citation are very much relevant in this regard.

1. It would be relevant to mention here in case titled as **Mr. Abhishek Mohan Gupta Vs. M/s Ireo Grace Realtech (Pvt.) Ltd., Complaint No.2044 of 2018, date of first hearing 12.03.2019, decided on 12.03.2019** by the Hon'ble Authority, in para no.36, it was held by the Hon'ble Authority that *the authority came across that as per clause 13.3 the respondent has agreed to offer the possession of the said apartment within a period of 42 months from the date of approval of building plans and/or fulfillment of preconditions imposed thereunder + 180 days grace period. The building plan for the project in question was approved on 23.07.2013 which contained a precondition under clause 17(iv) that respondent should obtained clearance from Ministry of Environment and Forest, Government of India before starting construction of project. The said environment clearance for the project in question was granted on 12.12.2013 containing a pre-condition of obtaining fire safety plan duly approved by fire department before starting construction. The respondent obtained the said approval on 27.11.2014. Therefore, the due date of possession comes out to be 27.11.2018 and the possession has been delayed by 3 months and 13 days till the date of decision...."*
12. Reply to the complaints bearing no. **CR/323/2020 Dheeraj Kukreja & Jyoti Kukreja Vs Ansal Housing Limited & CR/838/2020 Achla Gulati & Ravi Kumar Vs Ansal Housing Ltd.** have not been filed by the respondent. Notice to the promoter/respondent in the above mentioned complaint was sent through speed post and through e-mail address

([customerconnect@ansals.com](mailto:customerconnect@ansals.com), [ansaltechggn@yahoo.com](mailto:ansaltechggn@yahoo.com) & [ansalhoksharma2@ansals.com](mailto:ansalhoksharma2@ansals.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 10.08.2022 the respondent was directed to file the reply in two weeks i.e., by 24.08.2022 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.

13. 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.
14. 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.

15. 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**

16. 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.1 Territorial jurisdiction**

17. 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**

18. 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.*

19. 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.
20. 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."*

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

22. In the present complaints, the complainant intends 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) i  
*n accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

(b) d  
*ue 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)*

23. Clause 31 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

**"31.**

***The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 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 42 months as above in offering the possession of the unit."***

24. 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.

25. **Due date of handing over possession and admissibility of grace period:** In this particular case, the Authority considered the above contentions raised by the respondent and observes that the promoter has proposed to hand over the possession of the apartment within a period of 42 months from the date of execution of the agreement or within 42 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 commencement of construction i.e., 01.10.2013 being later. The period of 42 months expired on 01.04.2017. 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.
26. **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.*

27. 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.
28. 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%**.
29. 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;"*

30. 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 31 of the agreement executed between the parties on 16.08.2012, the possession of the subject apartment was to be delivered within stipulated time i.e., by April 2017. 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 01.10.2017.
31. 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.
32. The due date of possession as per agreement for sale as mentioned in the table above is 01.10.2017 and there is delay of 2 years 3 months and 16 days on the date of filing of the complaint.
33. 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....."*

34. 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."*

35. 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.

36. 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 entire amount paid by them at the prescribed rate of interest i.e., @ 10.35% 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. Request the authority for conducting forensic audit.**

**F.III. Quash the one-sided clauses incorporated in BBA.**

37. In view of the findings detailed above on issues no. 1, other issues become redundant being related to possession of the unit.

**F.IV. Payment of GST amount levied upon the complainant.**

38. 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.V. Compensation for mental agony**

39. 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.

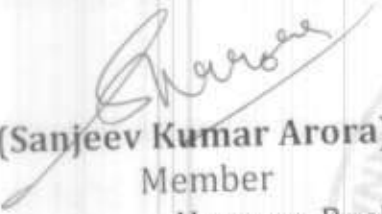
**G. Directions of the authority**

40. 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 respondent/promoter is directed to refund the amount received by it from the complainant along with interest at the rate of 10.35% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- ii. A period of 90 days is given to the 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 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.


41. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
42. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
43. Files be consigned to registry.

  
**(Sanjeev Kumar Arora)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.12.2022

  
**(Ashok Sangwan)**

Member