BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 977 of 2018
First date of hearing: 21.05.2019
Order reserved on: 04.10.2022
Order pronounced on: 31.01.2023

1. Vikas Gulaty
2. Aradhana Gulaty
3. Anant Bhatnagar

All having R/o: - J-195, Saket, New Delhi- 110017 **Complainants**

Versus

M/s Raheja Developers Limited.
Regd. Office at: W4D, 204/5, Keshav Kunj, Cariappa Marg, Western Avenue, Sainik Farms, New Delhi-110062 **Respondent**

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

APPEARANCE:
Sh. Vikas Gulati (Complainant in person) Complainants
Sh. Garvit Gupta (Advocate) Respondent

ORDER

1. The present complaint dated 09.10.2018 has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all

obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Raheja Revanta", Sector 78, Gurugram, Haryana
2.	Project area	18.7213 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no. and validity status	49 of 2011 dated 01.06.2011 valid up to 31.05.2021
5.	Name of licensee	Sh. Ram Chander, Ram Sawroop and 4 Others
6.	Date of approval of building plans (revised)	24.04.2017 [As per information obtained by the planning branch]
7.	Date of environment clearances (revised)	31.04.2017 [As per information obtained by the planning branch]
8.	RERA Registered/ not registered	Registered vide no. 32 of 2017 dated 04.08.2017

9.	RERA registration valid up to	31.07.2022 5 Years from the date of revised Environment Clearance
10.	Unit no.	C-125, 12th floor, Tower/block- C
11.	Unit area admeasuring	2813.310 sq. ft.
12.	Date of execution of agreement to sell	01.04.2013
13.	Date of allotment letter	01.04.2013
14.	Possession clause	**4.2 Possession Time and Compensation** *That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser* ***within*** *thirty-six (36) months in respect of 'TAPAS' Independent Floors* ***and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell*** *and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller.* ***However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above.*** *The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to*

		the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay……."
15.	Grace period	**Allowed** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by April 2017. As per agreement to sell, the construction of the project is to be completed by April 2017 which is not completed till date. **Accordingly, in the present case the grace period of 6 months is allowed.**
16.	Due date of possession	01.10.2017

		(Note: - 48 months from date of agreement i.e., 01.04.2013 + 6 months grace period)
17.	Basic sale consideration as per BBA at page 40 of complaint	Rs.2,04,97,647/-
18.	Total sale consideration as per applicant ledger dated 31.08.2018 page no. 61 of complaint	Rs.2,16,61,052/-
19.	Amount paid by the complainant as per applicant ledger dated 31.08.2018 page no. 61 of complaint	Rs.2,01,48,642/-
20.	Occupation certificate /Completion certificate	Not received
21.	Offer of possession	Not offered
22.	Request to withdraw from the project by the allottee	24.07.2018 (Page no. 26 of the complaint)
23.	Delay in handing over the possession till date of filing complaint i.e., 09.10.2018	1 year and 8 days

B. Facts of the complaint

3. The complainants have made the following submissions: -

I. That vide booking application dated 21.01.2013, the complainants booked the unit bearing no. C-125, in the project namely "Raheja Revanta- Surya Tower" admeasuring 2813.310 sq. ft.

II. That the respondent did not make refund on requests made by the complainants after it become evident that misinformation had been given by it at the time of the booking and cheque payments of 10% with form and 15% of the basic sale price by post-dated cheque taken with the form application for processing by the selection committee of the respondent company on 21.03.2013.

III. That the respondent constantly delayed in response to email and letter to sort pending accounting issues, not standing the "demand invoice" letter by courier on time before due dates (some letters are not received and others 2 to 9 days from the due date to pay), not sending marked photos, architect certificate, supporting proof of notices and invoices for demands on adhoc charges. Further, the intention of the respondent company was to verify the structural construction floor slab and stage of construction with structural safety in the tallest residential building in an earthquake zone, as claimed finished with 'quality', on time, for paying the demand as an essence of payments and ensuring future delivery of the apartment as stipulated, reiterated, and enforced as per the terms and conditions of the agreement to sell.

IV. That the request of the complainants to send the demand invoices by courier at least 30 days in advance was not implemented and

meeting of the project proponent and MD Shri Navin M Raheja, who accepted that it was a practise that they would fix and reminders to the respondent also on many occasions to not delay and send all the complete, relevant required information on time by courier for demands and others (photo and architect certificate) by email with their demand as part of the respondent obligation to receive timely payments from the complainants and not having them pay high penalties way of 18% monthly compounded interest and interest on accrued interest. The complainants further submitted that they have paid 18% per annum monthly compounded interest on delay payments.

V. That the complainants submitted that the agreement to sell alteration without informing the complainants of its intent, purpose and applicable consequences of the over-whitening, over-writing, the date of signing on 17.03.2013, to change it to 01.04.2013 for unknown benefits of dominance. The agreement had been vitiated by the respondent by these relevant wilful uninformed, non-consent and not ratified changes with added legal validity in question with an e-stamp registration purpose of Article 23-A of the sale agreement dated 01.04.2013 but executed on 01.052013with delivery receipt as signed received by the complainants of a jointly signed single copy.

VI. That the complainants submitted that the non-delivery of the unit in the said project with multiple delay extensions tentative

deadlines, increasing their exposure to future risk of electricity, infrastructure and water charges as marked as estimated in the agreement to sell annexed with the payment plan of the said agreement.

VII. That the respondent collected huge sum of construction linked advanced and PLC payments for green Aravali views from the complainants from 2013-2015, without having the environmental approval to being excavation and further construction, a violation not disclosed to them at the time of booking application forms, provisional allotment letter, and agreement to sell. The respondent wilfully did not disclose this material fact of the environment violation if any, under the application, approvals and compliances rules and regulation of SEIAA, EIA, Pollution and Water Control Board, Forest, and Water Act etc.

VIII. That on preliminary investigation by the complainants in 2018, it became evident that the respondent had already violated the SEIAA/EIA rule and regulation as on date of application booking and advances taken on 21.03.2013 as it had cleared the land, excavated and construction before it got the SEIAA clearance vide SEIAA/HR/2013/1075 dated 23.10.2013and did not have the clearances to construct in violation of the laws and acts as on date 21.01.2013, of the said unit as per the Environment Acts, conditions, terms and regulations covering construction, operations and compliances.

IX. That the respondent constantly apologized for delay both on account of response, delivery of documents, photos, resolving issues and ignored to respond to give a definite date on delivery of the said project and failed to given timeline of the project in the year 2011 as mentioned by them as 'soon' as 'tentatively' as next year. Further, the respondent failed to focus on the construction of the project, but worked consistently and diligently with reminders to make undue profit by charging @18% monthly compounded interest on account of complainants delays, whilst ignoring their own delays, mis representations and refund of the earnest money with 10% interest not made as per terms and conditions of the booking application form despite a no-consent given to go ahead within 30 days of application dated 20.02.2013 and again made false representations of giving extension of payment, did not honour and charged further 18% interest as well.

X. That the complainants have submitted that the delay in moving the overhead electricity lines on the project with poor project pre-planning and non-execution of work till 2018 and passing on the additional cost of infrastructure to them by way of further maintenance expense burden despite collection of payments of EDC, IDC on 21.05.2013 and internal electricity and water connection charges as paid in 2017.

XI. That the respondent has every time misleading, misrepresentation and false claims of work and stage of progress going on at *high,*

tremendous, fast pace, fast track, with emails, letters, and face book on project updates sent to the complainants in total contradiction to the executions.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).

   i. Direct the respondent to refund of installment advances, taxes, interest, Adhoc and service charges paid to the respondent with the prescribed rate of interest from 21.01.2013 as per the Act of 2016 and the rules of 2017, and regulation for non-performance of the agreement and non-delivery of the apartment by the respondent.

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 respondent

6. The respondent contested the complaint on the following grounds: -

   i. That the complaint filed by the complainants before the authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this authority as the reliefs being claimed by them cannot be said to even fall within the realm of jurisdiction of this authority.

   ii. That the respondent's project is a group housing project i.e., Raheja Revanta which is situated in Sector-78, Gurgaon. The said project

has two components, one is Tapas Towers, and another is Surya Tower and is the most iconic and tallest structure of Haryana. The instant complainants booked an apartment in Surya Tower of the said project on which they were allotted with unit no. C-125, 12th floor, tower-C and having a super area 2813.310 sq. ft.

iii. That the respondent had always complied with laws and after the enforcement of the Act, 2016, applied for the registration of the said project. The said project is registered with the authority vide registration no. 32 of 2017 dated 04.08.2017.

iv. That the agreement was executed between both the parties on 01.04.2013. As per clause 4.2 of the agreement, in case of Surya tower, the possession was to be handed over after providing of necessary infrastructure specially road, sewer and water in sector to the complex by the Government and subject to force majeure conditions of Government inaction etc.

v. That the complainant is seeking refund along with interest. The prayer of the complainants should not be entertained by this authority as the development of the project is in full swing and in progress. The project has been completed more than 75%. That there been no delay in handing over the possession due to lack of infrastructure and circumstances which are beyond the control of the respondent. It is humbly submitted that the basic infrastructure has not been provided by the State Government authorities such as roads, sewerage line, water, and electricity

supply in the sector where the said project is being developed. Till date, no steps for development of road, sewerage, lay down of water and electricity supply line has taken place. So due to various defaults and non-delivery of commitments made by the State agencies, the answering respondent is developing the project on time and the progress on the project is as per the terms of agreement to sell. As per Article 4.2 of the agreement, which was issued to the complainants, in case of Surya tower, the possession was to be handover within 48 months plus 6 months (grace period) from the date of execution of the agreement to sell is subjective and conditional. However, it was specifically mentioned in that agreement that such stipulated period of delivery of possession would start only after the necessary infrastructure especially road, sewer & water etc. are provided, in the sector by the Government. So, the complainants are making false allegations that the respondent was not in position to hand over the possession. This is apparently clear from the latest Google picture of project site and area surrounding it showing that there is no development of sector roads in Sector-78, Gurugram.

vi. That the respondent had also filed RTI application for seeking information about the status of basic services such as road, sewerage, water, and electricity. Thereafter, the respondent received the reply of such application from HSVP where it is clearly stated that no external infrastructure facilities were laid down by

the concerned Government agency/department. Therefore, delay in delivery of said unit could not be attributed on the part of the respondent. The State Government agencies contributory to such direction. Thus, they are vicariously liable for any compensation or penalty to be paid by respondents, if any.

vii. That recently the Competition Commission of India (hereinafter referred as "CC") has held in its order dated 01.08.2018 that Government Authorities i.e., Directorate of Town and Country Planning, Haryana and Haryana Urban Development Authority (HUDA) rechristened as Haryana Shehri Vikas Pradhikaran (HSVP) have not developed and laid down the essential basic infrastructure i.e., external development work despite collecting the charges for same purposes from various builders and real estate companies. Due to such apathy and discriminatory practices and standards adopted by such Govt. agencies, the majority of the builders, including but not limited to the answering respondent, was not able to develop the project within stipulated time period. Furthermore, it has been observed that HSVP and DGTCP may initiate external development works and for that purpose may start acquisition of land for lying of roads, electricity etc.

viii. That without basic external infrastructure facilities such as hygienic water, roads, sewerage, the allottees would suffer more if they take the possession of the apartments. The government agencies have failed miserably to provide essential basic

infrastructure facilities, due to which answering respondent has been struck in situation, where delay in completing and handing over the project is causing force majeure where default/delay of possession the term of agreement becomes unintentional, qua delay in offer of possession. Rather, the respondent including developer is forced to bear the brunt of non-performance by the concerned Government Department. It is pain for customers, but the respondent too has to suffer the cost escalations. It is pertinent to mention that due to default of the concerned government agencies, the fixtures, apparatus, equipment, gadget, and devices installed in the project/units get decayed and diminishes the value and effectiveness of such items, also their warranty would lapse without usage.

ix. That there is another substantial and justifiable reason for delay which has occurred in making offer of possession. As a matter of fact, two High Tension (HT)cables lines were passing through the project site which were clearly shown and visible from the zoning plan. The respondent was required to get these HT lines removed and relocate such HT Lines for the blocks/floors falling under influence of such HT Lines. The respondent proposed the plan of shifting the overhead HT wires to underground and submitted building plan to DTCP, Haryana for approval, approved by the DTCP, Haryana. It is pertinent to mention that such HT Lines have been put underground in the revised Zoning Plan. It is pertinent to

mention that two 66 KV HT lines were passing over the project land which was intimated to all the allottees as well as the complainants. The respondent had requested to M/s KEI Industries Ltd for shifting of the 66 KV S/C Gurgaon to Manesar Line from overhead to underground Revanta project Gurgaon. The HVPNL took more than one year in giving the approvals and commissioning of shifting of both the 66KV HT Lines. It was certified by HVPNL Manesar that the work of construction for laying of 66 KV S/C & D/C 1200 Sq. mm. XLPE Cable (Aluminium) of 66 KV S/C Gurgaon Manesar line and 66 KV D/C Badshahpur - Manesar line has been converted into 66 KV underground power cable in the land of the respondent's project which was executed successfully by M/s KEF Industries Ltd and 66 KV DC Bad More commissioned on 20 03 2013.

x. That the respondent got the overhead wires shifted underground at its own cost and only after adopting all necessary processes and procedures and handed over the same to the HVPNL and the same was brought to the notice of District Town Planner vide letter dated 28.10.2014 requesting to apprise DGTCP, Haryana for the same. As multiple Government and regulatory agencies and their clearances were in involved/required and frequent shut down of HT supplies was involved. It took considerable time/efforts, investment and resources which was a force majeure i.e., event beyond the control of the respondent. The respondent did his level

best to ensure that complex is constructed in the best interest and safety of the prospective buyers. It is pertinent to mention that during such time when all such procedure and process were taking place, concurrently some amendments took place in Haryana Fire Safety Act, 2009 due to which it was further technically advised and mandated to have additional service floors/fire refuge area in the high-rise tower as additional safety norms and the respondent complied in letters and spirit to the same.

xi. That after revision of zoning plan, the respondent applied for revision of building plan incorporating all the advised changes and left-over area due to overhead HT wires which was to be built and shown as to be shower and presented in first/original building and marketing plan. The application for revision of building plans was made vide application dated 14.01.2016 to DTCP, Haryana with a per initiated committed project layout and design only.

xii. That the respondent through its application for allotment of apartment in the aforementioned project had clearly intimated in writing and had explained it detail about the status of infrastructure and its effect on the construction of the project. Further, the respondent also in the buyer's agreement to sell had again informed in writing to its all customers and complainants as well for handing over the possession of apartment would start from the availability of the basic infrastructure.

xiii. That the respondent is a law-abiding person and is making all the efforts to complete said project within shortest time period. The complainant's unit falls in Surya tower which is expected to complete by end of 2020 post which is expected and subject to good developing infrastructure such as sector road and laying providing basic external infrastructure such as water, sewer, electricity etc. as per terms of the application and agreement to sell executed. The handover formalities shall be initiated possession shall be offered once the basic infrastructure facilities will be provided by the State Government. It is further submitted that the said project is on full swing but due to exceptional circumstances, the respondent is forced to delay timing of possession of the said unit awaiting infrastructure.

xiv. This clearly shows that the complainants have not come with clean hands and their sole objective is to exit from the project by making frivolous and false allegations against the respondent as the real estate market have slowed down and expected priority is not coming in expected time. The complainants seem to be misusing this forum for quick gains by illegally claiming interest and refund while the money stands invested in land and building.

xv. That the complainants have failed to bring on record anything contradictory or in violation of the provisions of the Act, 2016. Moreover, nowhere in the complaint, any violation of the

provisions of the Act, 2016 has been mentioned. Thus, the petition is liable to be dismissed solely on this ground.

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 submissions made by the parties.

E. Jurisdiction of the authority

8. The respondent has contended in its reply that the complaint on ground of jurisdiction be rejected. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. 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.

11. 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.

12. 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. 2021-2022 (1) RCR (Civil), 357*** *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."

13. 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 of installment advances, taxes, interest, Adhoc and service charges paid to the respondent with the prescribed rate of interest from 21.01.2013 as per the Act of 2016 and the rules of 2017, and regulation for non-performance of the agreement and non-delivery of the apartment by the respondent.

14. The complainants intend 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)

15. The clause 4.2 of the agreement to sell dated 01.04.2013 provides for handing over of possession and is reproduced below:

4.2 Possession Time and Compensation

That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser ***within*** *thirty-six (36) months in respect of 'TAPAS' Independent Floors* ***and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell*** *and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller.* ***However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above****. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay..... "*

16. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. 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 making payment as per the plan 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 a clause in the agreement to sell 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 a mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

17. **Due date of handing over possession and admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 6 months of grace period, in case the construction is not complete within the time frame specified. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by April 2017. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay incompletion of the project. Accordingly, in the present case, the grace period of 6 months is allowed.

18. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the

prescribed rate interest. However, the allottees 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.*

19. 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.

20. 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., 31.01.2023 is **8.60%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.60%.**

21. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1),** the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement to sell dated form executed between the parties on 01.04.2013, the possession of the subject unit was to be delivered

within a period of 48 months from the date of execution of buyer's agreement which comes out to be 01.04.2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 01.10.2017.

22. Keeping in view the fact that the allottee/complainants wish to withdraw from the project and are 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 plot 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.

23. 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 1 year and 8 days on the date of filing of the complaint.

24. 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....."

25. 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. reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others (supra)** it was observed

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

26. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wish 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.

27. 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 complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.60% 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.

G. Directions of the authority

28. 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 i.e., Rs.2,01,48,642/- received by it from the complainants along with interest at the rate of 10.60% 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 is further directed not to create any third-party rights against the subject 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 subject unit, the receivables shall be first utilized for clearing dues of allottee-complainants.

29. Complaint stands disposed of.

30. File be consigned to registry.

(Sanjeev Kumar Arora)
Member

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.01.2023