BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**1862 of 2021**
First date of hearing:	**17.05.2021**
Date of decision:	**10.01.2023**

Sunita Malhotra
R/o Flat no. 201, Vaikunth Appt, Prin S V Desai Marg, Opp Nabard Vihar Flats Navrangpura, Ahmedabad-380009 **Complainant**

Versus

Ansal Housing Ltd.
Office address: 2nd floor, Ansal Plaza, Sector-1, Near Vaishali Metro Station Vaishali, Ghaziabad, Uttar Pradesh-201010 **Respondent**

CORAM:
Shri Vijay Kumar Goyal **Member**
Shri. Ashok Sangwan **Member**
Shri Sanjeev Kumar Arora **Member**

APPEARANCE:
None Complainant
Shri Maheshwar Rathee (Advocate) Respondent

ORDER

1. The present complaint dated 06.04.2021 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 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.	C-0403 [pg. 16 of complaint]
8.	Area of the unit	1895 sq. ft. [pg. 16 of complaint]
9.	Date of execution of buyer's agreement	24.09.2012 [pg. 13 of complaint]
10.	Possession clause	***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."* *(Emphasis supplied)* [pg. 21 of complaint]
11.	Date of start of construction as per customer ledger dated 09.03.2016 on pg. 38 of complaint	01.10.2013
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., 06.04.2021	3 years 6 months 5 days
14.	Total sale consideration as per customer ledger dated 09.03.2016 on pg. 33 of complaint	₹ 72,91,676.75/-
15.	Total amount paid by the complainant as per customer ledger dated 09.03.2016 on pg. 36 of complaint	₹ 69,45,108.26/-
16.	Offer of possession	Not offered

B. Facts of the complaint

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

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a. That the complainants are a law-abiding citizen and consumer who has 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 complainant being interested in the project because it was a housing project and the complainants had needed an own home for her family.

b. 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 allotees against the unit no.-C-403, Tower C, "Ansal Heights 86", Sector 86, Gurugram, Haryana and have legal & valid license to develop this project.

c. That the based-on promises and commitment made by the respondent, complainant booked a 3 BHK flat admeasuring 1895 Sq Ft, along with 2 (two) covered car parking in the unit no. C-403,

Tower-C in residential project "Ansal Heights 86", Sector 86, Gurugram, Haryana. The initial booking amount of Rs 6,00,000/- (including tax) (rupees six lakhs only) was paid through cheque no-557561, dated 12.11.2011 for ₹ 4,50,000/- plus another cheque no. 018007 dt. 28.09.2011 for Rs. 1,50,000/-.

d. That the respondent to dupe the complainants in their nefarious net even executed flat buyer agreement signed between M/S Ansal Housing Ltd. and complainants (Mrs Sunita Malhotra) dated 24.09.2012. Respondents 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 the total cost of the said flat is Rs. 72,91,676.75/-out of that sum of Rs. 70,05,108.26/- (60,000 shown as credit in the ledger statement—this is interest we were forced to paid—but for refund claim, this should also be claimed) paid by the complainant in time bound manner. That it is pertinent mentioned here that according to the statement the complainants paid a sum of Rs. 70,05,108.26 to the respondent till date 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.

g. That complainant has paid all the instalments timely and deposited Rs. 70,05,108.26/- 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. Extracted the huge amount and not spend the money in project is illegal and arbitrary and matter of investigation.

h. That as the delivery of the apartment was due on 24th March 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 complainant is 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 complainant 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 complainant 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. Complainant wrote several emails to respondents in 2019, 2020, 2021 and also communicate with respondent regarding status of project "Ansal Heights 86". Respondent offered the other project and asked shifting of unit Ansal Heights 86 to Ansal Town Walk" Sector-104, Gurugram with commitment new project is ready to move in and builder will execute fresh agreement and documents with in an month and deliver the project in 6 months but both activity was not happened neither builder executed buyer's agreement nor given the possession builder was bought the time only. Complainant wrote the email to refund the paid amount with interest.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:

   a. Refund the entire amount paid by the complainant along with the interest @24% p.a.

   b. Restrain the respondent from raising any fresh demand with respect to project.

5. On the date of hearing, the authority explained to the respondents/promoter about the contravention as alleged to have been

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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:

   a. That the present complaint is neither maintainable nor tenable by both law and 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.

   b. That even otherwise, the complainant has no locus-standi or 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 buyer's agreement dated 24.09.2012, as shall be evident from the submissions made in the following paragraphs of the present reply.

   c. 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 details of the

same are given in builder buyer agreement, situated within the revenue estate of Village Nawada-Fatehpur, Gurugram, which falls within Sector-86, Gurugram, Manesar-Urban Development Plan.

d. 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 and possessed by the through its subsidiary M/s Optus Corona Developers Pvt. Ltd., having registered office at J 181, Saket, New Delhi and M/s Samyak Project Pvt. Ltd., having its registered office at 111, First Floor, Antriksh Bhawan, K.G. Marg, and New Delhi.

e. That the complainant approached the respondent sometime in the year 2011 for purchase of 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 by 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. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no. C-D403 in the said project. 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. The complainant further undertook to be bound by the terms and conditions of the application form.

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 sucking /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 and tenable under the eyes of law, as the complainant has not approached the hon'ble authority with clean hands and not disclosed the true and material facts relates to this case of complaint. The complainant, thus, have approached the hon'ble authority with unclean hands and suppressed and concealed the material facts and proceedings which has direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view

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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-disclosure 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.

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.

E. Jurisdiction of the authority

8. 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

9. 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

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 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.

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." 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*

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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. 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."

14. 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 paid by allottee alongwith interest at the prescribed rate.

F. Findings on the relief sought by the complainants

F.I. Refund entire amount paid by the complainants along with the interest.

15. 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 @24% p.a. 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)*

16. Clause 31 of the BBA dated 24.09.2012 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 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."*

17. 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's 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.

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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 sucking /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.

18. The promoter has proposed to hand over the possession of the apartment within a period of 42 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 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 of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be 01.10.2017.

19. 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 **01.10.2017** and there is delay of 3 years 6 months 5 days on the date of filing of the complaint.

20. 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....."*

21. 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 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*

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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."

22. 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) of the Act. 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.

23. 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.

24. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund of the amount paid along with interest at @24% p.a. However, section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee 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."*

25. 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.
26. 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., **10.01.2023** is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.
27. The authority hereby directs the promoter to return the amount received by him i.e., ₹ 69,45,108.26/- with interest at the rate of 10.60% (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 Rules ibid.

G. Directions of the authority

28. 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) of the Act:

i. The respondent/promoter is directed to refund the entire amount of ₹ 69,45,108.26/- paid by the complainant along with prescribed rate of interest @ 10.60% p.a. as prescribed under rule 15 of the rules 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 is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable 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

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.01.2023