

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

Complaint no.:	1651 of 2022
First date of hearing:	14.07.2022
Date of decision:	07.10.2022

Vivek Gambhir & Ritika Gambhir  
R/o B-7/1, Safarjung Enclave Extension, New Delhi-  
110029

**Complainants**

Versus

1. M/s Agrante Developers Pvt. Ltd.  
**Office address:** 522-524, DLF Tower-A, Jasola, New  
Delhi-110044
2. M/s Agrante Realty Ltd.  
**Office address:** DTJ 704, 7<sup>th</sup> floor, DLF Tower-B,  
Jasola, New Delhi-110025

**Respondents**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Member**  
**Member**

**APPEARANCE:**

Shri. Dharmender Verma (Advocate)  
Shri. Tarun Biswas (Advocate)

Complainants  
Respondents

**ORDER**

1. The present complaint dated 18.04.2022 has been filed by the complainants/allottee under section 31 of the Real Estate (Regulation and

Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Project and unit related details**

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

S. N.	Particulars	Details
1.	Name of the project	"Beethoven's 8", Sector- 107, Gurgaon
2.	Nature of project	Group housing complex
3.	RERA registered/not registered	Not Registered
4.	DTPC License no.	23 of 2012 dated 23.03.2012
	Validity status	Not available on record
	Name of licensee	Narendra Kumar Gupta & others
	Licensed area	18.0625 acres
5.	Unit no.	Symphony/B/2601 [pg. 37 of complaint]
6.	Unit area admeasuring	1702 sq. ft. [pg. 37 of complaint]

7.	Application dated	11.07.2013 [pg. 31 of complaint]
8.	Allotment letter	21.12.2013 [pg. 37 of complaint]
9.	Date of builder buyer agreement	Not executed
11.	Total sale consideration	₹ 1,12,24,501/- [pg. 31 of complaint]
12.	Amount paid by the complainant as per sum of receipts	₹ 37,13,862/-
13.	Possession clause	<p><b>Clause 19(a)</b></p> <p><i>Subject to other terms of this Agreement/Agreement, including but not limited to timely payment of the Total Price, stamp duty and other charges by the Vendee(s), the Company shall endeavor to complete the construction of the Said Apartment <b>within 42 (Forty-two) months from the start of construction, which is not the same as date of this application.</b> The Company will offer possession of the Said Apartment to the Vendee(s) as and when the Company receives the occupation certificate from the competent authority(ies). Any delay by the Vendee(s) in taking possession of the Said Apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof.</i></p> <p><i>(Emphasis supplied)</i></p> <p><i>[pg. 35 of complaint]</i></p>
15.	Due date of possession	21.06.2017 [Due date calculated from date of allotment i.e., 21.12.2013 as the date of start of construction is not known]

16.	Delay in handing over possession till the date of filing of this complaint i.e., 18.04.2022	4 years 9 months 28 days
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint: -
- a. That the present complaint is being filed by the complainants through their special power of attorney Mr. Aditya Arora against the respondent's company who failed to timely handover possession of the flat in question as per the agreed terms of the application for allotment by sale and further failed to execute the buyers agreement.
  - b. That the complainants are law-abiding citizens. The complainants having the need for residence, were desirous of buying an apartment for themselves and therefore applied for an apartment in a project namely "Beethovens 8" at Sector-107, Gurgaon being developed by the respondents. That it is pertinent to mention that application for allotment by sale was made on 11.07.2013.
  - c. That the respondent no.1 M/s Agrante Developers Private Limited formerly known as M/s RMS Estates Private Limited is a Company incorporated on 29.08.2006 under the Companies Act, 1956 and respondent no.2 M/s Agrante Realty Limited is a Public Company incorporated on 26.02.2013 both are sister concerns and owned and administered by same individuals. The respondents are having their registered office at: DTJ 704, 7th Floor DLF Towers-B, Jasola, New Delhi, Central Delhi, Delhi-110025.



- d. That the respondent companies are involved in real estate activities with own or leased property which includes buying, selling, renting and operating of self-owned or leased real estate such as apartment building and dwellings, non-residential buildings, developing and subdividing real estate into lots etc.
- e. That as the respondent no.1 was developing a project namely "Beethovens 8" at Sector-107, Gurgaon, the complainants herein made an application for the allotment of flat. Subsequently, the payments were made by the complainants to the respondents, details whereof are mentioned in the subsequent paras.
- f. That the complainants even after paying the application fee after much follow-up and persuasion had to wait till 21.12.2013 to receive the letter of allotment. However, the respondents did not execute the buyer's agreement after several follow-up and requests. That vide letter of allotment, the complainants were informed that apartment no. Symphony/B/2601 having a super area of approx. 1702 Sq.ft has been allotted to the complainants in the project "Beethovens 8" at Gurgaon.
- g. That the respondents with mala fide intention and to defraud the complainants sent them an undated letter to inform them of the commencement of construction, which itself show that respondents had a mala-fide intentions from the inception of the project to defraud the genuine home buyers and to usurp their hard-earned money.
- h. That after making the application fee payment, the complainants vide letter dated 08.08.2013 was requested to make another payment of Rs.9,68,144/-.
- i. That the said demanded amount of Rs.9,68,144/- was duly paid vide cheque no. 555106 dated 10.09.2013 and the same was duly

- acknowledged by the respondent no.2 vide receipt dated 10.09.2013. The respondents again issued a letter dated 05.11.2016 to the complainants, wherein the respondents referred to their earlier demand letter dated 13.09.2016 and threatened the complainants to adhere to their demand letters else the amount already paid by the complainants against the booking will get forfeited.
- j. That the complainants addressed an e-mail dated 15.11.2016 to the respondents wherein, the complainants referred to the respondents demand letter dated 13.09.2016 and further final intimation letter dated 05.11.2016 and apprised the respondents that payment of Rs. 9,33,760/- vide cheque no. 598290 is made under protest. The complainants made the payment of Rs.9,33,760/- vide cheque no.598290 dated 14.11.2016. The respondents have acknowledged the payment vide receipt dated 15.11.2016.
- k. That the respondents neither replied to the said enquiry made by the complainants nor intimated the complainants about the progress of construction or payment of further instalment and sent a letter dated 07.10.2017 informing that the construction will be completed by end of 2019 only. It is pertinent to mention here that the same exceeds the stipulated period of 42 months of handing over the possession but after the said letter no updates were received by the complainants.
- l. That having received no updates for nearly two years and facing mental agony and harassment due to the acts and conduct of the respondents and having left with no remedy, the complainants through their counsel sent a legal notice dated 02.12.2019 wherein the complainants sought a refund of the amount paid along with interest @ 18% per annum from the date of payment to the date of refund, to which the



respondents did not send any reply. Further, the complainants through their counsel sent a corrigendum dated 02.01.2020 to the legal notice wherein complainants notified the respondents that in the legal notice dated 02.012.2019 the aggregate amount paid by the complainants was Rs.37,13,862/- but was erroneously mentioned as Rs.35,37,011/- It is pertinent to mention here that the even till date, the project is far away from its completion.

- m. That in view of delay in construction and failure to deliver the property within the stipulated period of 42 months, the complainants are entitled to withdraw and accordingly is withdrawing from the allotment and further seeks the refund of an amount of Rs.37,13,862/- along with interest and compensation as per section 18 of the Real Estate (Regulation and Development) Act, 2016.

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

4. The complainants have sought following relief(s)
- a. Direct the respondent to refund the entire amount of ₹ 37,13,862/- along with interest @ 18 % per annum from the date of each payment till realization of the same in view of violation of section 18(1) of the Act.
- b. Compensation for mental agony & legal cost.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondents.**

6. The respondents have contended the complaint on the following grounds:

- a. At the very outset it is most respectfully submitted to this Hon'ble forum that both the respondents arrayed in the complaint are filing the present reply jointly as both are sister companies and are represented by its authorized representative Shri Satish Kumar duly authorized vide board resolution dated 12.07.2022 to file the present reply to the complaint.
- b. That the unit of the complainant is in Tower-J of the project. It is submitted that the super structure of Tower-J comprising 23 floors is almost completed. It is submitted that respondent no.1 would be in a position in all probability to offer possession of the flats in Tower-J in 10-12 months from the date of filing of the present reply. It is pertinent to mention that respondent no.1 has not demanded or is in receipt of more than 40% of the sale consideration amount from any allottee. The project being unregistered with HARERA due to force majeure circumstances enumerated in detail in succeeding paragraphs has been slow and demands were not raised in compliance with law and rules enacted by the RERA Act, 2016. The respondent no.1 has incurred and utilized his own funds and loans towards construction of the project and if complaints pertaining to refunds are entertained at this stage it would jeopardize the fate of the project which would consequently hamper the valuable rights of the other allottees of the project who wish to continue with the project and await possession. Needless to mention that necessary adjustment for the interest



- components as computed for delay in offering possession towards the balance sale consideration of the complainant will be given.
- c. The respondent no.1 further offers the complainants to re-allot unit in Tower-H from Tower-J which is finished in all major respects and the respondent no.1 is in process of applying for occupation certificate for Tower-H. This would harmonize the interests of the allottee and the builder.
- d. The statement of objects, reasons and preamble of the Act makes it manifestly clear that it is not only the interest of the consumers of the real estate sector which the Act seeks to protect and safeguard but also the promotion of the real estate with a view to ensure sale of plot, apartment etc. Therefore, this Hon'ble Authority should consider the said objective especially in light of preceding paragraphs. The Hon'ble Authority is empowered not only to monitor the projects but also to ensure their timely completion where projects are held up or stopped and to take steps so the same are completed in time and in the interest of the allottees who are awaiting possessions of the units in the project.
- e. **FORCE MAJEURE CIRCUMSTANCES:** That M/s RMS Estate Pvt Ltd (now known as "Agrante Developers Pvt Ltd") was granted development license from Director Town and Country Planning, Haryana ("DTCP") for development of land spread over a total area of 18.0625 acre of land on which the present project is being developed. The said license was granted on 27.03.2012 and was valid for 4 years.

- f. That subsequent to grant of the above license the promoter had executed a development/collaboration agreement dated 23.05.2013 with M/s Sarvaram Infrastructure Pvt Ltd ("Collaborator"). An area admeasuring 10.218 acres out of the aforesaid total land was handed to the collaborator with absolute and exclusive rights for the purposes of developing the same. It is pertinent to mention here that M/s Sarvaram Infrastructure Pvt Ltd himself or through his nominee had proposed to build a separate project namely "ELACASSA" on that parcel of land with which the promoter has no association whatsoever. Thus, resultantly there were two projects being developed under the same license by two distinct colonizers with rights and liabilities strictly framed under the said collaboration agreement. It would not be out of place to mention here that such agreements were in common practice then.
- g. The development/collaboration agreement dated 23.05.2013 stipulated strict liability on M/s Sarvaram Infrastructure Pvt Ltd or his appointed nominee to be in compliance of all statutory compliances, bye-laws applicable as per HUDA, DTCP etc as applicable for his parcel of land. M/s Sarvaram Infrastructure Pvt Ltd was further under the obligation to remit all the dues accrued towards governmental authorities arising under the agreement for the portion of land with the collaborator under the agreement.

- h. That M/s Sarvaram Infrastructure Pvt Ltd however, started defaulting in his compliance of statutory duties and contractual obligations. The promoter had on several occasions issued written requests and even served legal notices to M/s Sarvaram Infrastructure Pvt Ltd to rectify the said defaults inter-alia payment of EDC and IDC charges. The promoter had taken every step to ensure compliance of statutory obligations as non-compliance by M/s Sarvaram Infrastructure Pvt Ltd would directly prejudice the promoter's project completion having the common license. It is submitted that the license for the land lapsed due to non-renewal, and it cannot be renewed until outstanding EDC & IDC charges along with penalty is not cleared for the total land jointly by the promoter and M/s Sarvaram Infrastructure Pvt Ltd in proportion to their respective projects. Needless to mention here that the promoter is ready and willing to pay its share of EDC and IDC charges for the purposes of renewal of license.
- i. That the bona-fide of the promoter can be further gathered by the fact that the promoter is running post to pillar and has filed a representation before financial commissioner (Haryana) seeking a bifurcation of the license in two parts for two projects respectively and pursuing the same sincerely. It is pertinent to mention that only after renewal of license the promoter will be competent to obtain RERA registration. The promoter has undertaken every possible measure in

his armour to salvage the project and complete the same. The process for bifurcation of license is still under consideration.

- j. It is submitted that the promoter has filed for HARERA registration vide order letter dated 09.08.2018 of its project on the said land which was to be with the applicant as per the agreement. The fate of the application is dubious and is still pending as the aforesaid license has lapsed and not existing anymore as on date and further, EDC and IDC charges are unpaid which were to be paid by the M/s Sarvarm Infrastructure Pvt Ltd. It is pertinent to mention here that the directors of the Sarvarm Infrastructure Pvt Ltd are lodged in jail presently. The promoter is crippled in the sense that he is unable to correspond with them which could perhaps lead to any fruitful results. Moreover, insolvency proceedings are pending against them before Hon'ble National Company Law Tribunal.
- k. It is submitted that due to non-registration with HARERA, the promoter is unable to sell its proposed units in its project. More particularly the applicant is crippled financially as no demand can be raised from its existing members. It is to be kindly considered by this Hon'ble Court that the promoter has accordingly not raised a single demand from its members and has not collected more than 40% of total sale consideration of a unit from any of its members. On the contrary the promoter has undertaken the tedious task of completing the construction of the project from its own finances and loans so as to



offer possession and is also remitting the interests on subvention scheme on behalf of customers so as to protect them from further loss. The overall conduct of the promoter plays a vital part in deciding the complaint such as the present one. The promoter is faced with peculiar circumstances which would require mutual cooperation of its members.

1. That, it would be of high importance to mention one similar complaint filed with this Hon'ble Authority wherein similar issues were being adjudicated. The Hon'ble Authority under HARERA had the opportunity to deal with similar complex issues faced by developers in respect of the licensed land wherein the original licensee had further subdivided the land for development purposes on the basis of collaboration agreements. This Hon'ble Authority in complaint no. 826/2018, 1402/2018, 1343/2018, 1344/2018 had passed common orders. The issues in these complaints were similar to the applicant's issues. In this case also the original licensee Triveni Ferrous Infrastructure Pvt Ltd a joint venture comprising of two groups Seth and Mittal Group who had subsequently divided/assigned development/marketing rights into five separate lands holding to be developed separately pursuant to which similar issues arose which are being faced by the applicant. This Hon'ble Authority in that complaint had passed its conclusions and recommendations more particularly the recommendation to Town and Country Planning Department,

Haryana stressing the grave importance that DTCP must divide license in five parts (as there were live assignee developers) and determine liabilities of each party individually and separately (liability on account of overdue License fee, EDC, IDC penal interest and other charges). Once the license is bifurcated separate RERA registration would be permissible besides this Hon'ble Authority had also pertinently recommended that DTCP should defer recovery of their overdue EDC so as to leave some cash flow in the hands of the developers for investing in the project. Therefore, the promoter prays with folded hands to refer the present matter to the Hon'ble Authority in light of the aforementioned case law as cited so that similar recommendations can be issued on behalf of the promoter to Town and Country Planning Department, Haryana. It is submitted that such recommendations would be in parlance with the statutory duty of the Hon'ble Authority in section 32 of the Act which states the functions of the Hon'ble Authority for promotion of the real estate sector.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
8. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. SLP(Civil) No(s). 3711-3715 OF 2021*), the issue before authority is



whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.5.2022 in **CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP** and was observed that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.

9. Keeping in view the judgement of Hon'ble Supreme Court in case titled as **M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra)** the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/CRA. Both the parties want to proceed further in the matter accordingly. The Hon'ble Supreme Court in case of **Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019** has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the pleading and submissions made by both the parties during the proceedings.

**E. Jurisdiction of the authority**

10. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

12. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....  
(4) The promoter shall-

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

13. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be



decided by the adjudicating officer if pursued by the complainants at a later stage.

14. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the relief sought by the complainants.**

**F.I Direct the respondent to refund the entire amount of ₹ 37,13,862/- along with interest @ 18 % per annum from the date of each payment till realization of the same in view of violation of section 18(1) of the Act.**

16. In the present complaint, 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 rate of 18% 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)*

17. Clause 19(a) of the application form provides for handing over of possession and is reproduced below:

***"19(a).***

*Subject to other terms of this Agreement/Agreement, including but not limited to timely payment of the Total Price, stamp duty and other charges by the Vendee(s), the Company shall endeavor to complete the construction of the Said Apartment **within 42 (Forty-two) months from the start of construction, which is not the same as date of this application.** The Company will offer possession of the Said Apartment to the Vendee(s) as and when the Company receives the occupation certificate from the competent authority(ies). Any delay by the Vendee(s) in taking possession of the Said Apartment from the date of offer of*



*possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof."*

18. 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. No BBA has been executed inter-se parties, moreover there is nothing on record to show the date of start of construction. The due date of possession has been calculated as per clause 19(a) of application form, the possession of the subject apartment was to be delivered within a period of 42 months from the date of start of construction, which is not the same as date of this application. Accordingly, the due date calculated from date of allotment i.e., 21.12.2013 as the date of start of construction is not known.
19. Keeping in view the fact that the allottees/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 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 application form as mentioned in the table above is 21.06.2017 and there is delay of 4 years 9 months 28 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 respondents/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 they had 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, 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."*

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 promoters have 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 promoters are liable to the allottees, as the allottees wishes to withdraw from the project, without prejudice to any other remedy



available, to return the amount received by them 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 the amount paid by them at the rate of 18% p.a. 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. 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., 07.10.2022 is **8%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10%**.

27. The authority hereby directs the promoter to return the amount received by them i.e., ₹ 37,13,862/- after deducting the amount already paid by the respondent, if any along with interest at the rate of 10% (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.

**F.II Cost of litigation & compensation**

28. The complainants in the aforesaid relief are 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 complainants are advised to approach the adjudicating officer for seeking the relief of compensation.


**G. Directions of the authority**

29. 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) of the Act:

- i. The respondents/promoters are directed to refund the entire amount of Rs. 37,13,862/- after deducting the amount already paid by the

- respondent, if any along with interest at the rate of 10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondents/builders are directed not to create third party right against the unit before full realization of the amount paid by the complainants. 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.
30. File be consigned to registry.

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.10.2022

**HARERA**  
**GURUGRAM**