



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

Complaint no.:	1166 of 2021
First date of hearing:	15.04.2021
Date of decision:	12.07.2022

Purandeep Singh Khandpur,
R/o 33, Double Story, 2nd Floor, New Rajinder Nagar,
New Delhi.

Complainant

Versus

M/s Ansal Housing and Construction Ltd.
Office address: 15, UGF, Inderprakash 21, Barakhamba
Road, New Delhi-110001

Respondent

CORAM:

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Satya Prakash Yadav (Advocate)
Meena Hooda (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 04.03.2021 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	"Estella", Sector 103, Gurugram, Haryana
2.	Total area of the project	15.743 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	17 of 2011 dated 08.03.2011 valid up to 07.03.2015
5.	Name of licensee	Rattan Singh and 9 others
6.	Registered/not registered	Extension granted vide no.- 09 of 2019, dated:25.11.2019 Valid till:17.08.2020 (Validity of registration has expired)
7.	Unit no.	K-0808 [annexure A, pg. 30 of complaint]
8.	Area of the unit	1245 sq. ft. [annexure A, pg. 30 of complaint]
9.	Date of execution of buyer's agreement with original allottee	24.05.2012 [annexure A, pg. 26 of complaint]
10.	Possession clause	30. <i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required</i>



		<p><i>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 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit."</i></p> <p><i>(Emphasis supplied)</i></p> <p><i>[page 37 of complaint]</i></p>
11.	Date of start of construction as per demand raised by the respondent upon commencement of construction	25.05.2012 [annexure G, pg. 73 of complaint]
12.	Due date of possession	25.11.2015 (Note: 36 months from date of start of construction i.e., 25.05.2012 being later + 6 months grace period allowed being unqualified)
13.	Delay in handing over possession till the date of filing of this complaint i.e., 04.03.2021	5 years 3 months 7 days
14.	Basic sale consideration as per BBA at page 30 of complaint.	₹ 34,86,000/-
15.	Total sale consideration as per customer ledger dated 26.11.2020	₹ 42,97,527/- [annexure G, pg. 74 of complaint]
16.	Total amount paid by the complainant as per customer ledger dated 26.11.2020	₹ 42,03,969.63/- [annexure G, pg. 77 of complaint]
17.	Offer of possession	Not offered

B. Facts of the complaint

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



- a. That the complainant is a peace loving and a law-abiding citizen of India and is presently residing at the address mentioned above. That the respondent is a company registered under the Company Act,1956
- b. That the respondent had launched a residential group housing project named "Estella" at Sector-103, Gurugram, Haryana. The complainant herein is the purchaser of the flat no. 0808, Tower K measuring 1245 sq. ft
- c. The complainant with the hope of living in a luxurious home desired to purchase a plot in the project being developed by the respondent as the same was being advertised by the respondent as one of the best living spaces to be built in the area where the project is situated. In this effect, the respondent even assured the complainant that it has taken all the necessary permissions and approvals for the project from the competent authorities and will deliver possession in the project within a period of thirty-six (36) months from the date of execution of the apartment buyer agreement.
- d. The complainant, on believing the bona fide of the respondent and the representations made by it with regards to the project, decided to book a plot in the project. Subsequently, the respondent provided the complainant with a brochure detailing the terms and conditions of allotment in the project.
- e. That believing the representations made by the respondent to be true, the complainant paid Rs. 3,50,000/- as registration/booking amount to the respondent vide cheque bearing no. 748957 dated 13.11.2010 drawn at Bank of Baroda, New Delhi. The respondent



- upon clearance of the cheque subsequently issued a receipt dated 19.01.2011 acknowledging the registration of the apartment of the complainant in the project of the respondent. It is submitted that a letter dated 15.01.2011 acknowledging the application of the complainant for provisional booking of apartment in the project was also issued by the respondent along with a statement of account asking the complainant to pay the balance amount of Rs. 3,03,402.75/- out of the 1st instalment towards the apartment.
- f. It is submitted that the complainant duly paid the balance amount before the due date mentioned by the respondent and subsequently letter dated 18.03.2011 was issued by the respondent to the complainant by way of which it was informed to the complainant that the respondent has obtained statutory approval vide license no. 17 of 2011 by DTCP, Haryana for the construction of the project. That the complainant once again believed the representations of the respondent and was very much excited to see the promises made by the respondent being fulfilled.
- g. That even when after payment of the 1st installment by the complainant for the project, an allotment letter was not issued by the respondent, the complainant raised the issue before the respondent and enquired about the delay in issuance of provisional allotment letter to which the respondent ensured the complainant that an apartment has been provisionally allotted to the complainant and the details of the unit will be shared with the complainant at the earliest. Thereafter, upon various requests of the complainant to the respondent, the respondent issued an allotment letter for the said flat.



- h. That on 24.05.2012 the complainant was asked by the respondent to execute an ABA. That the complainant at the time of execution of ABA was for the first time informed about the flat number and tower in the project which was allotted to the complainant. It is submitted that pursuant to the terms agreed upon between the respondent and the complainant at the time of registration, the respondent was to provide possession of the plot to the complainant within thirty-six (36) months, i.e., by May 2015. However, the complainant was in utter shock to see that the respondent unilaterally added a clause in the agreement i.e., 30, wherein it was entitled to deliver the possession with a grace period of six months over and above the 36 months as originally promised.
- i. That since the complainant had already paid a huge amount as earnest money before execution of ABA, the complainant was left with no other option but to sign on the dotted lines as dictated by the respondent. It is submitted that the terms of the ABA are extremely unfair, one sided, unreasonable to the advantage of the respondent. It is submitted that a bare reading of clause 22 of the agreement points to the malafide of the respondent by which the respondent lures innocent people into their trap by asking to deposit 20% of the sale considering as earnest money and later on pressurizes innocent persons to sign on the agreement as per the terms and conditions laid by the respondent.
- j. The complainant submits that even a bare reading of clause 30 of the agreement points to the malafide of the respondent in never originally intending to hold good to the representations and



promises made by it to the complainant at the time of booking with regards to the delivery of possession of the apartment. The aforementioned clause is so arbitrarily and vaguely drafted that a strict reading of the same would lead to a conclusion wherein the respondent seeks to accept absolutely no responsibility, liability, or obligation whatsoever with regard to providing timely delivery of the project.

- k. The complainant further brings to the notice of this hon'ble authority clause 35 of the agreement, wherein the respondent has fixed a meagrely compensation to be paid by it in the event of delayed possession when in fact the respondent has been charging enormous interest at the rate of 24% per annum on delayed payments. The complainant submits that in light of the 24% p.a. interest rate charged by the respondent on the complainant for any delay in payment on their part, the compensation to be paid by the respondent amounts to a substantial unconscionability and renders clause 35 of the ABA unenforceable.
- l. The complainant, despite the issues as explained above, continued to make all payments as demanded and prescribed by the respondent, honouring the promises made by the complainant, and hoping that the respondent will hold good on its promises as well, especially with regards to timely possession of the plot.
- m. It is submitted that the respondent has abjectly failed to deliver the possession as promised within 36 months i.e., May 2015. It is submitted that because of the aforesaid default, the complainant has suffered huge losses since there is a sharp downward revision



in the market price of the said flat. It is submitted that the said loss is clearly attributable to the respondent.

- n. It is submitted that the complainant on not receiving any word from the respondent about the offer of possession of apartment, enquired the same from the respondent but once again the respondent assured the complainant that the project work is being done as per the timeline and the possession will be offered to the complainant at the earliest. That when the respondent failed to offer possession after the deadline for offering possession as per the ABA, the complainant started enquiring about the same from the respondent, however the respondent kept on avoiding the same on one pretext or the other.
- o. It is submitted that even after failure of the respondent to deliver the possession of the apartment as per ABA, the respondent sent a demand notice dated 20.02.2017 asking the complainant to pay value added tax of Rs. 28,367/- levied by the Haryana Govt and when the complainant denied paying the same before the offer of possession, the respondent started levying interest on the due amount and kept raising the demands from the complainant.
- p. The complainant is greatly aggrieved by this 60-month delay caused by the respondent in delivering the plot and seek the same quantum of interest from the respondent for the delay in delivering possession of the plot as the respondent seeks from the complainant for delay in making payments, i.e., 24% p.a. the complainant submits that the respondent is liable to pay a total sum of Rs. 1,02,47,096.34/- including Rs. 43,93,721.20/- the amount already paid by the complainant. The complainant submits



that the respondent is liable to pay to the complainant an interest amount totalling to Rs. 58,83,375.14/-.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:

- a. Direct the respondent to refund entire amount paid by the complainant along with the interest.
- b. Cost of litigation.

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

D. Reply by the respondent

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

- a. That the present complaint is neither maintainable nor tenable by both law and facts the complainant has no locus-standi and cause of action to file the present complaint. the present complaint is based on an erroneous interpretation of the provisions of the act as well as an incorrect understanding of the terms and conditions of the apartment buyer's agreement dated 24.05.2012, as shall be evident from the submissions made in the following paragraphs of the present reply.
- b. That the respondent is a public limited company registered under the companies act, 1956, having its registered office at 606, Indra **Prakash**, 21 Barakhamba road, New Delhi - 110001. the present reply is being filed by the respondent through its duly authorized representative, namely, Mr. Vaibhav Chaudhary whose authority letter is attached herewith. the above said project is related to



licence no.17 of 2011 dated 08.03.2011, received from the director general, town and country planning, Chandigarh, Haryana (dgtcp) over the land measuring 15.743 acres comprised in rect. no.9, killa no.3/1/1, 2/1, 4/1 area 12 kanal 1 marla, rect. no.3, killa no.10, 11/1, 26/1 area 9 kanal 14 marla, rect. no.4, killa no.181, 17/2, 23/2 & 24/1 area 11 kanal 14 marla, rect. no.4, killa no.13/2/2, 14/1, 29, area measuring 9 kanal 6 marla, rect. no.7 & 8, killa no.5/2,6/1 & 25/2 area 15 kanal 16 marla, rect. no.4, killa no.6, 7/1, 14/2 & 15/1 area 10 kanal 5 marla, rect. no.9 & 10, killa no.1, 2/1, 9/1/2, 26, 21, 22/1 area 27 kanal 2 marla, rect. no.4, killa no.8/2 & 13/2/1 area 4 kanal 15 marla, rect. no.4, killa no.13/1, 19/1, 18/2, 22 & 23/1 area measuring 25 kanal 14 marla falling in the revenue estates of village Dhanwapur and tikampura, tehsil & district gurugram presently the part of residential sector-103 of the Gurugram Manesar urban plan - 2021. the building plans of the project have been approved by the dtcp haryana vide memo no. zp-7333/jd(bs)2011/17636 dated 28.11.2011. thereafter, the respondent herein was granted the approval of firefighting scheme from the fire safety point of view of the housing colony measuring 15.743 acres by the director, Haryana fire service, Haryana, Chandigarh.

- c. That the relief sought in the complaint by the complainant is based on false and frivolous grounds; thus, is not entitled to any discretionary relief from this hon'ble authority, as the person not coming 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 landowners under the project had entered into agreements with



erstwhile owners of the project land to obtain licence from government of Haryana for setting up of a group housing project on the project land to develop and market the same. after receipt of the licence, the landowners have purchased the entire project land from the erstwhile owners of land through various sale deeds after taking necessary permission from the director general, town and country planning, Haryana for such purchase. the landowners had entered into an agreement with the developer whereby the landowners have assigned the complete right to develop, build and market sanctioned FSI area of 5,00,000 sq. ft. and the developers in exercise of the rights so acquired are developing and marketing a part of the project and more specifically the built-up area comprised in towers k, l, m, n, o and p. the remaining area of the project is being developed, built and marketed by the landowners themselves.

- d. That the complainant approached the respondent sometime in the year 2011, for the purchase of an independent unit in the said project. 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 were 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.
- e. That, 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 had there been no force majeure.

- f. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent. There had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no. 20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process. Simultaneously orders at different dates were passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, maybe 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 is only by 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's agreement as well as in compliance of other local bodies of Haryana Government as well as



Government of Haryana or the Centre Government, as the case may be.

- g. The complainant, thus, have approached the hon'ble authority with unclean hands and have 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 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 adjudicating officer 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.
- h. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which registered with the Authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the builder buyer's



agreement. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298*, the liberty to the promoters/developers has been given under section 4 of the Act to intimate fresh date of offer of possession while complying the provision of section 3 of the Act as it was opined that the said Act is having prospective effect instead of retrospective. Para no. 86 and 119 of the above said citation are very much relevant in this regard.

- i. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the builder buyer's agreement.
 - j. That without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by limitation. The complainant has alleged that due date of possession in respect of the said unit was 24.05.2015, and therefore, no cause of action is arisen in favour of the complainant on 24.05.2015, and thus, the present complaint is barred by law of limitation and the hon'ble authority lacks jurisdiction.
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.

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 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. (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."



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 complainant

F.I. Direct the respondent to refund entire amount paid by the complainant along with the interest.

14. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference: -

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

15. Clause 30 of the BBA dated 24.05.2012 provides for the handing over of possession and is reproduced below for the reference:



"30. The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 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 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit."

16. 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 promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters 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.

Admissibility of grace period: The promoter has proposed to hand over the possession of the apartment within a period of 36 months plus



6 months from date of agreement or the date of commencement of construction whichever is later. The due date of possession is calculated from the date of commencement of construction i.e., 25.05.2012. The period of 36 months expired on 25.05.2015. 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.

17. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid alongwith interest at the prescribed rate. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

18. 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.
19. 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., **12.07.2022** is 7.50%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.50%.

20. 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 25.11.015 and there is delay of 5 years 3 months 7 days on the date of filing of the complaint.
21. 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...."*
22. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** it was observed:



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

23. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
24. 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.
25. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 42,03,969/- with interest at the rate of 9.50% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana



Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II. Compensation for mental agony.

26. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

27. 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 promoters as per the functions entrusted to the authority under section 34(f):
- i. The respondent/promoter is directed to refund the entire amount of Rs. 42,03,969/- paid by the complainant along with prescribed rate of interest @ 9.50% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from



the date of each payment till the date of refund of the deposited amount.


ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

28. Complaint stands disposed of.

29. File be consigned to registry.


(Vijay Kumar Goyal)

Member


(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.07.2022