

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

Complaint no.	518 of 2020
Date of filing of complaint	18.02.2020
First date of hearing	22.05.2020
Date of decision	25.01.2023

1. Amita Guha
2. Arjun Guha
(Both through GPA holder Sh. Ajay Shankar Guha)
both R/O: C-042, The Icon, DLF City Phase 5, Sector
43, Gurugram-122009
Also at: 22 Spinach street valle verde 5 pasig city
metro manila philipines 1600.

Complainants

Versus

New Look Builders and Developers Pvt. Ltd.
(Previously Ansal Phalak Infrastructure Pvt. Ltd.)
Regd. Office: 115, Ansal Bhawan, 16, Kasturba
Gandhi Marg, New Delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Member
Member

APPEARANCE:

Sh. Anshumal Ashok and Mukul Kumar Sanwariya
(Advocates)
Sh. Deeptanshu Jain (Advocate)

Complainants

Respondent

ORDER

1. The present complaint 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 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Avante Floors, Versalia", Sector 67-A, Gurugram
2.	Nature of the project	Residential Plotted Colony
3.	Project area	38.262 acres
4.	DTCP license no.	81 of 2013 dated 19.09.2013 valid upto 19.09.2019
5.	Name of licensee	Lord Krishna Infra Projects Ltd. and 13 others
6.	RERA Registered/ not registered	154 of 2017 dated 28.08.2017 valid upto 31.08.2020
7.	Allotment Letter	20.10.2014 (Annexure 5 at page 36 of complaint)
8.	Unit no.	4162, Ground Floor (Page 41 of the complaint)
9.	Unit area admeasuring (super area)	3333 sq. ft. (Page 41 of the complaint)
10.	Date of Floor Agreement	Buyer 20.10.2014 (Page 40 of complaint)
11.	Possession clause	5. Possession of Floor



		<p>5.1. Subject to Clause 5.2 infra and further subject to all the buyers of the Floors in the Residential Colony making timely payment, the Company shall endeavor to complete the development of Residential Colony and the Floor as far as possible within 36 months with an extended period of (6) six months from the date of execution of this Floor buyer agreement subject to the receipt of requisite building /revised building plans/ other approvals & permissions from the concerned authorities, as well as Force Majeure Conditions as defined in the agreement and subject to fulfillment of the Terms and Conditions of the Allotment, Certificate & Agreement including but not limited to timely payments by the Buyer(s), in terms hereof. The Company shall be entitled to extension of time for completion of construction of the Unit equivalent to the period of delay caused on account of the reasons stated above. No claim by way of damages/compensation shall lie against the Company in case of delay in handing over possession of the Unit on account of the aforesaid reasons. However, if the Buyer(s) opts to pay in advance of schedule, a suitable discount may be allowed but the completion schedule shall remain unaffected. The Buyer(s) agrees and understands that the construction will commence only after all necessary approvals are received from the concerned authorities and competent authorities including but not limited to Environment & Forest</p> <p>(Emphasis supplied)</p>
12.	Due date of possession	<p>20.04.2018</p> <p>(calculated as 36 months from the date of execution of Floor Buyer's Agreement plus 6</p>

		months of grace period as the same is unqualified) Note: Grace Period is allowed.
13.	Total sale consideration	Rs. 2,01,09,900/- (As per payment plan at annexure 2 of BBA on page 71 of complaint)
14.	Amount paid by the complainant	Rs. 67,45,105/- (As mentioned by complainant in CAO on page 19 and also confirmed by respondent on page 1 of written submissions)
15.	Surrender Letter	15.02.2018 (Page 82 of complaint)
16.	MoU for refund	03.04.2019 (Page 91 of complaint)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint:

- The complainants herein are related as mother and son and they had jointly booked a residential floor in residential project named "Versalia" situated in Sector 67-A, Gurugram being developed by the respondent way back in year 2013. The complainants had paid a total amount of Rs. 49,88,057.99 vide two different cheques, bearing No. 874561 dated 16.10.2013 for Rs. 33,72,507.59/- and 554129 dated 16.10.2013 for Rs. 16,15,549.50/-. The respondents even acknowledged payment by issuing receipt nos. 2268 and 2267 both dated 18.10.2013 respectively.
- Thereafter, the respondent provisionally allotted a residential floor bearing no. 3052 on the second floor admeasuring 1818 sq. ft. for basic sale consideration of Rs. 1,44,15,000/- calculated at the rate of Rs.



7929.04 per sq. ft. However, other charges such as PLC, EDC/IDC, etc. were not included in this sale-consideration. After retaining the above booking amount paid by the complainants for about a year, vide email dated 15.09.2014, the respondent intimated the complainants about the change in the lay-out plan of the unit allotted to them and requested to call for discussion on the issue. After discussions with the respondent, the complainant agreed for re-allotment of unit no. 4162 on the ground floor and intimated their decision to the respondent vide email dated 18.09.2014.

5. Accordingly, the respondent sent a revised payment plan for the new unit and raised a demand of an amount of Rs.17,56,958/- over and above the amount deposited at the time of allotment of the old unit. After holding discussions through email, the complainant sent the new application form and a cheque for the amount demanded as above. Thereafter, the respondent again provisionally allotted a residential floor bearing No. 4162 on the ground floor admeasuring 3333 square feet, in place of unit No. 3052 on the second floor admeasuring 1818 square feet, for basic sale consideration of Rs. 1,91,10,000/- calculated at the rate of Rs. 5733.57 per sq. ft. including PLC.. The respondent had also attached a payment plan with this allotment letter, according to which the complainants were required to pay an additional amount of Rs. 17,56,958.01 in pursuance of this allotment letter.
6. Thereafter, floor-buyer agreement was executed between the complainants and the respondent on 20.10.2014 at New Delhi. As per clause 5.1 of the agreement, the possession was to be offered within 36 months (with an extended period of 6 months) from the date of execution the agreement. However, the respondent had inserted many covenants



for getting the delay on its part in handing over possession condoned on several grounds including force majeure (a legal term, which the respondent defined to suit its convenience by including all such happenings which has human intervention) and since date of sanction of the building plans and receipt of all other approvals required for starting construction.

7. Further, as per clause 4.5 of this agreement, in case of delay in deposit of the installment by the buyer, the buyer was required to pay an interest @ 18% p.a. for first three months of delay and @ 21% p.a. compounded quarterly beyond the period of three months of delay. Very surprisingly, no penalty provision was made in this agreement in case the delay is caused on part of the respondent. Despite objections to the same, this floor buyer agreement was executed between the complainants and the respondent on 20.10.2014
8. After waiting for about three years and visiting the project at regular intervals, when the complainant no. 1 found that no construction activity for completion of the project was even commenced, she vide email dated 22.09.2017 intimated the respondent that she has now lost interest in project on account of inordinate delay in commencing construction. In response thereto, the complainant no. 1 was intimated on behalf of the respondent vide email dated 25.09.2017 that work of construction of 24 meters wide road and park is in progress and the construction on individual plots shall commence tentatively from November, 2017 and unit will be tentatively handed over by last quarter of 2020. It was also intimated that the allocation of contract and other civil works is in progress to start the construction on the individual plots. However, no assurance was given for remedy of the loss on account of delay.

9. After waiting for long for any communication from the respondent, the complainant no. 1 again, vide email dated 30.01.2018, inquired about the status of the project but to no avail. After several inquiries, again vide a general email dated 02.02.2018 sent to many buyers, it was intimated on behalf of the respondent that they have now registered under RERA, received long awaited LOI of the remaining land parcel, done all the government compliances and are ready to commence construction any moment. It was further intimated that the respondent would protect the rights of buyers as investors and would pass on the benefits. However, no definite time of commencement of construction and date of handing over possession was intimated, even after more than three years booking.
10. Thereafter, the complainants visited the project site on 10.03.2010 and found that no construction activity had even commenced and the authorized representative of the respondent present on the site did not give any satisfactory reply except that construction will start soon. Therefore, the complainants vide email dated 04.04.2018 withdrew their application for allotment and sought refund of the amount deposited by them alongwith interest accrued and they cautioned the respondent that if they don't receive the amount within two weeks, then they will approach this Hon'ble Authority.
11. That vide email dated 05.04.2018, the complainants served a formal notice on the respondent, whereby they sought cancellation of the Floor Buyers Agreement dated 20.10.2014 and refund of Rs. 67,45,015.10 deposited by them alongwith interest at the rate of 8 % per annum thereon. Vide email dated 14.05.2018, the complainants were intimated on behalf of the respondent that the respondent is settling the issue of



delay with each buyer and for their purpose, the complainants are required to meet the authorized representatives of the respondent in persons for a few hours, as it is not possible for the respondent to showcase everything via emails. In response thereto, the complainant no. 1 informed the respondent that as both the complainants live outside India, hence it is not possible for them to personally meet anybody in Delhi/Gurugram in near future and asked for sending the proposal via email so that they can review and respond. She further intimated the respondent in categorical terms that the complainants are no longer interested to wait for this unit or any other alternative and that they would prefer cancellation of the agreement and refund of the deposited amount with interest.

12. In response to the email dated 23.05.2018, the complainants were offered several alternatives in lieu of their investment in this project and the respondent offered to add the accrued interest to the complainants' deposited amount and adjust the entire amount against value of some other good property. The respondent also offered to discuss the proposal with some authorized representative of the complainant available at Delhi/Gurugram. The complainants, vide email dated 29.05.2018, refused to opt for any other proposal made on behalf of the respondent and requested for process of refund to be initiated.
13. Vide email dated 31.05.2018, the complainants were intimated on behalf of the respondent that their request for refund has been forwarded to the top management of the respondent. After waiting for about a month, the complainant no. 1 again inquired about the status of refund from the respondent vide email dated 27.06.2018. In response thereto, the complainant no. 1 was informed on behalf of the respondent that refund



process is underway and entire money paid by her shall be refunded by August, 2018. When the complainant did not receive any intimation about refund status for next two months, she again inquired about the same vide email dated 29.08.2018. In response to the same, the complainants were intimated on behalf of the respondent that the process is still underway and they may expect the refund on or before October, 2018. On 05.10.2018, the complainant no. 1 again inquired about the status of the refund.

14. Thereafter, a memorandum of understanding between the complainants and the respondent was only executed on 03.04.2019, wherein the respondent agreed to refund the amount of Rs. 97,46,016/- in nine monthly installments of Rs.10,82,890/- each commencing on or before 30.04.2019 ending on or before 30.12.2019. Other formalities were also mentioned in this agreement. However, despite executing the above memorandum of understanding for refund, the respondent did not deposit the very first installment due on or before 30.04.2019. The complainants vide email dated 09.05.2019 informed the respondent about the breach of the terms of memorandum of understanding and cautioned the respondent that if the agreement is not honored, then they will be compelled to approach this Hon'ble Authority. However, no response of this email on behalf of the respondent was given to the complainants.

15. The complainants again wrote an email dated 20.05.2019 to the vice president of the respondent company, who had negotiated the refund and had agreed to refund the money as mentioned in the MOU, but no reply was received from him either in response to this email nor the subsequent email dated 25.05.2019. When the funds of second

installment due on 30.05.2019 was also not transferred, then the complainant wrote email in this regard to various office bearers of the respondent company.

16. That the respondent has not transferred any amount as agreed under the MoU dated 03.04.2019 to the account of the complainants till date, even after the expiry of the entire agreed period of the refund by 30.12.2019 and now, the complainants have reason to believe that the respondent company and the persons responsible for its affairs are involved in serious economic frauds and have misappropriated the amount deposited by the complainants and other buyers and are neither commencing the project nor refunding their money.
17. That the respondent has played fraud on the complainants by accepting deposits from them, keeping the money for more than 3 years beyond the stipulated period and has not offered possession of the completed house with occupancy certificate till today. Therefore, the complainants have lost interest in taking possession of the flat after such delay and have already withdrawn from the project and even the respondent had agreed to refund the amount deposited by them with interest @ 10% and had executed agreement for the same but is avoiding to honour the same. The complainants have reason to believe that the respondent has no bona fide intention to hand over possession of the unit and thus, have approached the Authority.

C. Relief sought by the complainants:

18. The complainants have sought following relief(s):
- Direct the respondent to refund entire amount of Rs. 67,45,015/- (Rupees Sixty Seven lakhs forty five thousand and fifteen only) alongwith interest @ 18% per annum thereon compounded on



monthly basis as charged by the respondent on delayed payment from the buyers as per clause 4.5 of the Floor Buyer agreement dated 20.10.2014 from the date of deposit till the date of actual payment, in view of the provisions contained under Section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.

- ii. Compensation of Rs. 25,00,000/- for causing mental harassment and agony by misrepresentation as to the stage of construction and for demanding final payment without completion of the construction, in view of the provisions contained under Section 18 (3) of the Real Estate (Regulation and Development) Act, 2016.

D. Reply by respondent:

19. It was submitted that the complainant through the captioned complaint has prayed for directions of refund under section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 of 67,45,105/- along with interest to the respondents, which were paid by the complainant towards the allotment of unit no. 4162, ground floor in the project. That the complainant has made a total payment of Rs. 67,45,105/- till date towards the allotment of the unit out of basic sale consideration of Rs. 1,91,10,000/- excluding EDC, IDC charges plus club members fee plus interest-free maintenance charges plus service charges.
20. That the instant complaint deserves to be dismissed at the threshold in view of the conduct of the complainant. It is the first and foremost principle of law that the party approaching any legal forum/court for dispensation of justice must approach with clean hands. That the true and correct facts of the present case are mentioned below for proper adjudication of the captioned complaint:



- a. That the complainant approached the respondent and submitted application for allotment of unit in the upcoming project of the respondent namely 'Avante Floors, Versalia" **situated at Section 67/67A, Gurugram, Haryana.**
- b. The respondent while considering the application of the complainant, executed a flat buyer agreement dated 20.10.2014 (hereinafter referred as "**FBA**") and allotted the unit no. 4162, ground floor in the project for basic sale consideration of Rs. 1,91,10,000/- excluding EDC, IDC charges plus club members fee plus interest-free maintenance charges plus service charges.
- c. In terms of the FBA the answering respondent was obligated to deliver the possession of the unit to the complainant within a period of 42 months from the date of receiving the sanction plan for the project, subject to timely payment of dues by the complainant and force majeure circumstance.
- d. That the project commenced before the enforcement/ commencement of the Real Estate Regulatory Authority (RERA) Act, 2016 and as such prior to RERA, the parties were bound by the agreed terms of the said agreement.
- e. That the complainants failed to pay the due instalments as per the payment schedule agreed thereupon, in respect of the said dwelling unit. It is pertinent to mention here that the payment schedule was never adhered to by the complainants. It was submitted that the non-timely payment by the allottees is a major contribution to the non-timely delivery of the project.
- f. That it is clearly mentioned in the call notices and the FBA, any delay in payment of the instalments as per the FBA the complainant

shall amount to breach of the terms of the FBA and the complainant be liable to pay interest at 24% p.a. for the period of delayed payment. Further, in the event the complainant sleeps upon his duty to pay the instalments for 3 years, he does not have the right to claim compensation/ interest on the consideration paid to the respondent.

- g. Thereafter, the complainant approached the respondent and requested to cancel the allotment of the unit and to refund the consideration paid towards the unit. The respondent being a customer-oriented organization once again accommodated the request of the complainant and executed a settlement agreement/ memorandum of understanding dated 03.04.2019 (hereinafter referred to as "MOU").
- h. Under the settlement agreement it was agreed between the parties that the complainant shall forfeit its right towards the unit and to claim any form of compensation, claim, etc. against the respondent for delay in handing over the possession of the unit. Further, the respondent agreed to refund the amount paid by the complainant along with the interest as full and final settlement.

25. It was submitted that the said project of the respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the respondent. The conditions have been stipulated below:

- a. That due to the exponential increase in the cases of 'Covid-19', the Central Govt. had imposed nationwide 'lockdown' w.e.f. 25.03.2020 which has been extended till 30.06.2020, resultantly, the same has caused a serious impact on the economy posing difficult challenges for everyone. It is pertinent to mention that



prior, to this unprecedented situation of pandemic 'Covid-19', the respondent no.1 along with the development manager had been carrying out the construction of the project at full pace and was expecting to deliver the units to the buyers by the end of the year 2020, however, due to the sudden outbreak of the pandemic and closure of economic activities, the respondent had to stop the construction work during the 'lockdown', as such, amid this difficult situation of 'force majeure' the respondent are not in a position to adhere to the arbitrary demands of the complainant for cancellation of the allotment and refund of the monies along with interest due to the reasons mentioned hereinabove.

- b. That owing to the present situation, the real estate sector is severely affected due to the implementation of nationwide 'lockdown' w.e.f. 22.03.2020 and amid this prevailing situation of the pandemic the slowing economy is also posing difficult challenges for the respondent. Although, considering the seriousness of the situation and prevailing circumstances caused due to implementation nationwide 'lockdown' to contain the spread of 'Covid-19', the Govt. of India has already extended the Project completion deadlines of all the projects across the nation, by another six (6) months from the scheduled deadline of completion as per the agreements. Therefore, the respondent expects to complete the entire project within the said extended time period and expects to deliver the flat/ unit to the allottees very soon.
- c. The natural life cycle was about to come back on track which was derailed in March 2020 the sudden outbreak of the second wave of the pandemic of COVID in April 2021 in the nation made the



situation worst from worse and the country once again was under the grip of COVID and subsequently, a lockdown was imposed in the country all over once again. It is further submitted that the second wave caused severe damage to the economy and the real estate sector is no exception was hit the worst.

- d. It is pertinent to mention that it is the complainant who is at fault in making timely payment of due instalments because of which the construction of the said project became delayed. Non-payment of the instalments by the allottees is a 'force majeure' circumstance.
- e. It is further submitted that the delay in handing over the possession of the dwelling unit/ apartment has been caused only due to the various reasons which are beyond the control of the respondent. Following important aspects were also highlighted by the respondent:

- i. **Non-booking of all apartments seriously affected the construction:** It is submitted that the global recession badly hit the economy and particularly the real estate sector. The construction of project of the respondent is dependent on the number of monies received from the bookings made and monies received henceforth, in form of instalments paid by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the time of launch of the project. That, the reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled

booking in the project, resulted in less cash flow to the respondent, henceforth, causing a delay in the construction work of the project.

ii. **Other various challenges being faced by the Respondent:**

The following various problems which are beyond the control of the Answering Respondent seriously affected the construction:

- a. Lack of adequate sources of finance;
- b. Shortage of labour;
- c. Rising manpower and material costs;
- d. Approvals and procedural difficulties.

In addition to the aforesaid challenges the following factors also played a major role in delaying the offer of possession:

- a. There was an extreme shortage of water in the region which affected the construction works;
- b. There was a shortage of bricks due to restrictions imposed by the Ministry of Environment and Forest on bricks kiln.
- c. The unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the Respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labours;
- d. Recession in the economy also resulted in the availability of labour and raw materials becoming scarce;
- e. There was a shortage of labour due to the implementation of social schemes like the National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM);

f. Direction by the Hon'ble National Green Tribunal & Environmental authorities to stop the construction activities for some time on regular intervals to reduce air pollution in the NCR region.

26. It was submitted that the respondent company had on many occasions orally communicated to the complainant that the construction activity at the said project site had to be halted for some time due to certain unforeseen circumstances which are completely beyond the control of the developer.

27. All other averments were denied in toto.

28. Copies of all the relevant documents have been filed and placed on 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:

29. 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

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

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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

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.

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. 2020-2021 (1) RCR (c) 357* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint

reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

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 objections raised by the respondents:

F.I Objection regarding force majeure

30. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction, COVID-19, non-booking of apartments among others. The plea of the respondent regarding various orders of the NGT are devoid of merit. The orders passed by the NGT banning construction in the NCR region were effective for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding COVID-19 is also devoid of merit since the due date of possession expired in 2018 itself. Also, non-booking of all apartments by the allottees cannot be taken as plea for delay in completion of the project. It is understood that some units might not be booked by the allottees however, the allottees who have booked their units cannot be expected to suffer because of that.



Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on relief sought by the complainant:

G.I To direct the respondent to refund the complainants the entire paid-up amount alongwith interest @18% per annum.

31. In the instant case, the complainant booked a unit in respondent's project and the same can be ascertained by the fact that the respondent raised demands from the complainant. Subsequently, a floor buyer agreement was executed between the parties on 20.10.2014. Under clause 5 of the said agreement, the respondent-builder undertook to complete the development of residential colony and the floor as far as possible ***within 36 months with an extended period of (6) six months from the date of execution of the said agreement.*** The agreement was executed on 20.10.2014 and thus, 36 months from the date of its execution comes out to be 20.10.2017. However, the respondent also sought for a grace period of 6 months under the same agreement and the same is allowed as it is unqualified. Therefore, the due date of possession comes out to be 20.04.2018.

32. The complainant has till now paid an amount of Rs. 67,45,105/- as and when demanded by the respondent. However, the complainant decided to withdraw from the project and sent a letter dated 15.02.2018 to the respondent in this regard. Therefore, it is a clear case of surrender of unit. However, the parties to the complainant entered into a MOU dated 03.04.2019 which laid down stipulations for refund of deposited amount.



The relevant clause of the MoU has been reproduced below for ready reference:

*"Clause 3: Now the second party had approached to the first party requesting to surrender their allotment in favour of the first party and is seeking refund of the paid up amount along **with the interest @ 10% p.a.** as there is some delay in the project and the second party is not interested to continue their allotment. Both the parties have agreed that the First Party, in lieu of surrendering unit no. GR-4162 by the Second Party, shall **pay refund to the second party a total amount of Rs.97,46,016/- (Rupees Ninety Seven Lakhs Forty Six Thousand and Sixteen Only) which is inclusive of refund of deposited amount along with agreed interest calculated thereupon** as full and final settlement of their entire claim including allotment, refund, interest, etc. (Hereinafter referred to as the "SURRENDERED UNIT")"*

(Emphasis supplied)

33. A bare perusal of the aforementioned clause of the agreement clearly specifies that the respondent will refund back the entire amount paid by the complainant along with interest @ 10% p.a. It is however important to emphasise the provision regulating surrender of unit by allottee is governed i.e., regulation 11(5) of the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which states that-

5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."



34. It thus becomes clear that the clause of the MoU is not inconsistent with the provision of the regulation and thus is enforceable. Keeping in view the fact that the complainant and respondent entered into an agreement for payment of refund amount, so the respondent was bound to act upon the same. Hence the authority hereby directs the respondent-promoter to refund an amount of Rs. 97,46,016/- to the complainant as agreed between the parties under clause 3 of the MoU alongwith 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 due date of each installment till actual date of refund of amount within the timelines provided in rule 16 of the Haryana Rules 2017(ibid).

G.II To direct respondent to pay litigation cost as well as compensation for mental agony.

35. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority:

36. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent-promoter is directed to refund an amount of Rs. 97,46,016/- to the complainant as agreed between the parties under clause 3 of the MoU alongwith 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 due date of each installment till actual date of refund of amount within the timelines provided in rule 16 of the Haryana Rules 2017(ibid).
- 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 shall follow.

37. Complaint stands disposed of.

38. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.01.2023