

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

Date of decision: 08.12.2022

NAME OF THE BUILDER		LANDMARK APARTMENTS PRIVATE LIMITED	
PROJECT NAME		LANDMARK CYBER PARK	
S. No.	Case No.	Case title	Appearance
1	CR/438/2018	Raman Kumar V/s Landmark Apartments Private Limited	Adv. Anshul Yadav Adv. Amarjeet Kumar
2	CR/439/2018	Sharwan Kumar V/s Landmark Apartments Private Limited	Adv. Anshul Yadav Adv. Amarjeet Kumar
3	CR/440/2018	Pawan Kumar V/s Landmark Apartments Private Limited	Adv. Anshul Yadav Adv. Amarjeet Kumar

CORAM:

Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

ORDER

- This order shall dispose of all the 3 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Landmark Cyber Park being developed by the same respondent/promoter i.e., s Landmark Apartments Private Limited. The terms and conditions of the MOU's fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	Landmark Apartments Private Limited "Landmark Cyber Park"
Assured Return clause: - 4. the first party will pay Rs. 25,960/-as assured return per month payable quarterly to second party till the date of possession or 3 years. (Emphasis supplied)	
Occupation certificate: - ➤ OC received dated 26.12.2018 for IT Tower	

<u>Common details:</u>						
Occupation certificate- Obtained on 26.12.2018						
Offer of possession- Offered on 19.09.2019						
DTCP License no. – 97 of 2008 dated 12.05.2008 valid upto 11.05.2020						
RERA registration- 61 of 2019 dated 25.11.2019						
S. no	Complaint no./title/	Unit area	Date of execution of	Assured Return Paid	Total sale consideration	Amount paid by the

	date of filing complaint.		MOU			complainant
1	CR/438/2018 Case titled as Raman Kumar V/s M/s Landmark Apartments Date of filling-04.06.2018	500 sq. ft. [Page 24 of the complaint]	09.09.2008 [Page 23 of the complaint]	13,52,926/- (Page 13 of additional facts)	Rs. 25,96,000 /- (As per page 24 of complaint)	Rs. 25,96,000 /- (As alleged by complainant)
2	CR/439/2018 Case titled as Sharwan Kumar V/s M/s Landmark Apartments Date of filling-13.06.2018	500 sq. ft. [Page 25 of the complaint]	09.09.2008 [Page 22 of the complaint]	13,48,272/- (Page 13 of additional facts)	Rs. 25,96,000 /- (As per page 25 of complaint)	Rs. 25,96,000 /- (As alleged by complainant)
3	CR/438/2018 Case titled as Pawan Kumar V/s M/s Landmark Apartments Date of filling-04.06.2018	500 sq. ft. [Page 25 of the complaint]	09.09.2008 [Page 24 of the complaint]	13,66,926/- (Page 14 of additional facts)	Rs. 25,96,000 /- (As per page 25 of complaint)	Rs. 25,96,000 /- (As alleged by complainant)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due

date, seeking award of refund the entire amount along with interest and compensation.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of **complaint case bearing no. 438/2018 titled as Raman Kumar V/s M/s Landmark Apartments Private Limited** are being taken as a lead case in order to determine the rights of the allottee(s) qua refund the entire amount along with interest.

A. Project and unit related details

7. 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:

**CR/438/2018 titled as Raman Kumar V/s M/s Landmark Apartments
Private Limited**

Succinct facts of the case as per pleadings and annexures are as under:

S. N.	Particulars	Details
1.	Name of the project	Landmark Cyber Park

2.	Project area	8.3125 acres
3.	Nature of the project	Cyber Park
4.	DTCP license no. and validity status	97 of 2008 dated 12.05.2008 valid up to 11.05.2020
5.	Name of licensee	M/s Landmark Apartments Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 61 of 2019 dated 25.11.2019
7.	Unit no.	Not Provided
8.	Unit area admeasuring	500 sq. ft. (As per on page 24 of complaint)
9.	Date of execution of agreement	Not Executed
10.	Date of execution of MOU	09.09.2008 [Page no. 23 of the complaint]
11.	Assured return clause	4. Assured Return That the first party will pay Rs. 25,960/- as a assured return per month payable quarterly to second party till the date of possession or 3 years. (Page no. 24 of the complaint).
12.	Due date of possession	Cannot be ascertained
13.	Total sale consideration	Rs.25,96,000/- (As per on 24 of complaint)

14.	Amount paid by the complainant	Rs.25,96,000/- (As alleged by complainant)
15.	Assured return Paid	Rs.13,52,926/- (As per statement of annexure R-2 on page 13 additional facts and documents)
16	Occupation certificate	26.12.2018 (As per on page 16 of additional document)
17	Offer of possession	19.09.2019 (As per on page 19 of additional document)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -

- i. That the complainant along with his brothers visited the respondent and was lured by its offer i.e., if he pays total sale consideration at the time of booking, then the respondent promised to pay assured return of Rs. 25,960/- per month till the delivery of possession. Thereafter, he agreed to book a unit in the project.
- ii. That on 09.09.2008, MOU has been executed between the parties. The MOU also mentioned that respondent would pay Rs. 25,960/- per month till the delivery of possession or 3 years.
- iii. Initially, the respondent paid the instalments of assured return within time

i.e., starting from December 2008 and stopped paying it from September 2013. When complainant approached the respondent in September 2013, it refused to pay assured returns on ground of financial loss.

- iv. The complainant has waited more than 9 years and also visited the office of respondent on many occasions to check the construction and requested it to execute BBA or provide allotment letter. But upto May 2018, the construction was still incomplete, and so the complainant requested the respondent to refund the amount. However, the same was refused.
- v. That apart to the refund of amount of **Rs. 25,96,000/-**, the respondent is also liable to pay interest on the aforesaid amount paid to the complainant.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s):
 - I. Direct the respondent to refund the amount of Rs.25,96,000/- along with interest of 18% per annum and also to recover the assured return of Rs. 70,092/- on quarterly basis due from July 2013 till date of possession or till date of filing of present complaint.
10. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

11. The respondent has contested the complaint on the following grounds.
12. That the complaint is not maintainable as the transaction being contractual in nature and so, the same is to be adjudicated by a civil court.

13. That the complainant booked a unit in a project being developed by the respondent by the name "Landmark Cyber Park" situated in sector 67 Gurugram. One of the offers made by respondent at that point of time was that the unit would have benefit of assured return for a period of three years. Thereafter, the complainant entered into an MoU dated 09.09.2008 with the respondent determining all the rights and liabilities of the parties.
14. That the complainant as per the terms of the MoU made payment of Rs. 25,96,000/- i.e., 100% payment towards the basic sale price to the respondent. However, in addition to the above, he was also supposed to make other payments in the nature of EDC/IDC, maintenance, parking etc. as per the demands raised by the respondent.
15. Thus, there was no time limit provided under the MoU for handing over the possession of the unit. It is pertinent to mention that time was not the essence of the contract for delivering the possession, however, it was mutually agreed upon that the complainant would be entitled to the benefit of assured returns for a period of 3 years or till the possession.
16. That it is pertinent to mention here that the respondent successfully completed the project in the year 2015 and accordingly applied for OC in April 2015.
17. That the respondent after applying the OC accordingly informed the tentative date of receiving the OC to all its buyers including the complainant vide letter dated 10th July 2015.
18. That in consideration of the aforementioned facts, it becomes quite evident that the respondents had already applied for grant of OC in April 2015 when

the building was complete in all respects and based on the application, Occupation Certificate was granted on 26.12.2018.

19. The very inclusion of such a clause in the MOU goes a step further in illustrating the fact that the complainant very well knew and understood the implication having no date of possession but having a buffer/protection of payment of assured return. Hence, now it doesn't lie in the mouth of the complainant to allege that there has been undue delay in the handing over of the possession and the present case needs to be dealt within the parameters of the clauses contained in the MOU executed between the parties by fully understanding the import of its contents without any coercion, influence of undue pressure.
20. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

21. 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

22. 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

23. 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.

24. 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.

25. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed

by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1) R.C.R. (Civil) 357)* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:

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

26. 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.1 Direct the respondent to refund the amount of Rs.25,96,000/- along with interest of 18% per annum and also to recover the assured return

of Rs. 70,092/- on quarterly basis due from July 2013 till date of possession or till date of filing of present petition.

27. The counsel for the complainant contended that as per MoU signed by the parties on 09.09.2008, clause 13 specifically provides that the first party would reimburse the entire principal amount in case of non-completion of the project along with bank interest of 18% annually besides payment of assured return on monthly basis till the date of possession or three years. But neither date of possession has been specified in the MoU and nor any BBA has been executed subsequent to the signing of MoU. It is an admitted fact that the assured return has been paid by the respondent till 2013 only and now the complainant is not seeking the relief of assured return but return of the amount along with interest as per MoU as the project is still incomplete and the authority in case *of Harish Gupta and an. Vs. M/s Landmark Apartment Pvt. Ltd.* decided on 14.12.2018 by Hon'ble Authority, had itself granted the relief of refund along with interest after deducting the amount of assured return.
28. The MoU dated 09.09.2008 is a document which was executed between both the parties and can be termed as an agreement. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and the allottee with freewill

and consent of both the parties. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral parts of this agreement is the transaction of assured return inter-se parties. The “agreement for sale” after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but the Act of 2016 does not rewrite the “agreement” entered between promoter and allottee prior to coming into force of the Act as held by the Hon’ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.***, 2017 SCC Online Bombay 9302’ decided on 06.12.2017. Since, the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured return between the promoter and the allottee arises out of the same relationship. Therefore, it can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4)(a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottees.

29. While taking up the cases of '**Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd.** (complaint no 141 of 2018)', and '**Sh. Bharam Singh & Anr. Vs. Venetain LDF Projects LLP**' (complaint no 175 of 2018') decided on 07.08.2018 and 27.11.2018 respectively, it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. However, there is no bar to take a different view from the earlier one if new facts and law have been brought before an adjudicating authority or the court. There is a doctrine of "prospective overruling" and which provides that the law declared by the court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. A reference in this regard can be made to the case of '**Sarwan Kumar & Anr Vs. Madan Lal Aggarwal Appeal (civil) 1058 of 2003**' decided on 06.02.2003 and wherein the hon'ble apex court observed as mentioned above. So, now a plea raised with regard to maintainability of the complaint in the face of earlier orders of the authority is not tenable. The authority can take a different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land. It is now well

settled preposition of law that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum , memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement for sale defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and the allottee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arise out of the agreement for sale only and between the same contracting parties to agreement for sale. In the case in hand, the issue of assured returns is on the basis of contractual obligations arising between the parties. In cases of '**Anil Mahindroo &Anr. v/s Earth Iconic Infrastructure Pvt. Ltd.** (Company Appeal (AT) (Insolvency) No. 74 of 2017)' and '**Nikhil Mehta and Sons (HUF) and Ors. vs. AMR Infrastructure Ltd. (CA NO. 811 (PB)/2018 in (IB)-02(PB)/2017)**' decided on 02.08.2017 and 29.09.2018 respectively, it was held that the allottees are investors and have chosen committed return plans. The builder in turn agreed to pay monthly committed return to the investors. Thus, the amount due to the allottee comes within the meaning of 'debt' defined in Section 3(11) of the I&B Code. Then in case of '**Pioneer Urban**

Land and Infrastructure Limited &Anr. v/s Union of India & Ors. (Writ Petition (Civil) No. 43 of 2019)’ decided on 09.08.2019, it was observed by the Hon’ble Apex Court of the land that “...allottees who had entered into “assured return/committed returns’ agreements with these developers, whereby, upon payment of a substantial portion of the total sale consideration upfront at the time of execution of agreement, the developer undertook to pay a certain amount to allottees on a monthly basis from the date of execution of agreement till the date of handing over of possession to the allottees”. It was further held that ‘amounts raised by developers under assured return schemes had the “commercial effect of a borrowing’ which became clear from the developer’s annual returns in which the amount raised was shown as “commitment charges” under the head “financial costs”. As a result, such allottees were held to be “financial creditors” within the meaning of section 5(7) of the Code” including its treatment in books of accounts of the promoter and for the purposes of income tax. Then, in the latest pronouncement on this aspect in ***case ‘Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors. (24.03.2021-SC): MANU/ SC/0206 /2021’***, the same view was followed as taken earlier in the case of ***‘Pioneer Urban Land Infrastructure Ld & Anr.’*** with regard to the allottees of assured returns to be financial creditors within the meaning of section 5(7) of the Code. Further after coming into force the Act of 2016 w.e.f 01.05.2017, the builder is obligated to register the project

with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(o) of the Rules, 2017. The Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case '**Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors., (Supra)**' as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law.

30. Section 2(4) of the BUDS Act, 2019 defines the word 'deposit' as an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:

- i. *an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—*
- ii. *advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable*

property as specified in terms of the agreement or arrangement.

31. A perusal of the above-mentioned definition of the term 'deposit' shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India. Similarly rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include.

- i. *as a advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property*
- ii. *as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*

32. So, keeping in view the above-mentioned provisions of the BUDS Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.

33. The Government of India enacted the ***Banning of Unregulated Deposit Schemes Act, 2019*** to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters

connected therewith or incidental thereto as defined in section 2 (4) of the BUDS Act 2019 mentioned above.

34. It is evident from the perusal of section 2(4)(l)(ii) of the BUDS Act of 2019 that the advances received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advances are adjusted against such immovable property as specified in terms of the agreement or arrangement do not fall within the term of deposit, which have been banned by the Act of 2019.
35. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. When the builders failed to honor their commitments, a number of cases were filed by the creditors at different forums such as **Nikhil Mehta, Pioneer Urban Land and Infrastructure** which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case **Baldev Gautam VS Rise Projects Private Limited (RERA-PKL-2068-2019)** where in it was

held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainant till possession of respective apartments stands handed over and there is no illegality in this regard.

36. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
37. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. The authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings.
38. Though it is the case of complainant where he has already received assured return up to August 2013 and during court proceedings, the counsel for the

complainant stated at bar that he only wants the relief of refund of paid-up amount along with interest from date of its deposit. Hence, the relief of assured return cannot be allowed in such a situation. Even otherwise, both the reliefs i.e., relief of assured return as well as interest on paid-up amount at the prescribed rate, cannot be allowed concurrently.

39. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and is 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.
40. The occupation certificate of the project where the unit is situated has been obtained by the respondent/promoter on 26.12.2018, So it shows that after the promoter stopped paying assured return and the due date has expired, the allottee exercised his right to withdraw from the project and sought refund of the paid-up amount. Moreover, 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. Moreover, the fact cannot be ignored that the said OC dated 26.12.2018 was obtained after the date of institution of present complaint.

41. 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., 08.12.2022 is **8.35%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.35%**.

42. 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. (Supra)*** 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."

43. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 10.35% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) from the date of deposit till date of realization of amount after deduction of amount of assured return already paid to the complainant-

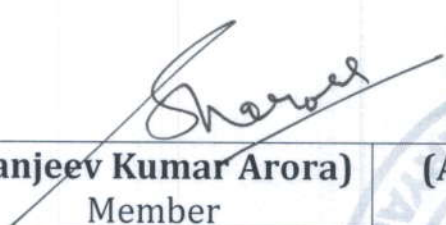

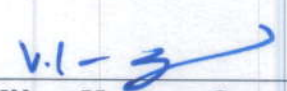
allottee as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the authority

44. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount received by it from the complainants (mentioned at serial no. 3 of this order) i.e., Rs. 25,96,000/-, Rs. 25,96,000/- and Rs. 25,96,000/-, respectively along with interest at the rate of 10.35% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each deposit till date of realization of amount after deduction of amount of assured return already paid to the complainant-allottees.
- 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.

45. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
46. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
47. Files be consigned to registry.

 (Sanjeev Kumar Arora) Member	 (Ashok Sangwan) Member	 (Vijay Kumar Goyal) Member
Haryana Real Estate Regulatory Authority, Gurugram Dated: 08.12.2022		