

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

Date of decision : 24.11.2022

Name of the Builder		Emaar MGF Land Limited	
Project Name		Imperial Garden	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/211/2021	Suresh Kunni ramnath and others vs. Emaar MGF Land Limited	Shri Shalaj Mridul Shri JK Dang
2.	CR/2001/2021	Emaar MGF Land Limited vs. Suresh Kunni ramnath and others Jayprakash	Shri Ganesh Kamath Shri Shalaj Mridul

CORAM:

Shri Vijay Kumar Goyal

Member

Shri Ashok Sangwan

Member

Shri Sanjeev Kumar Arora

Member**ORDER**

1. This order shall dispose of both the 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. Since common question of facts are involved in the above-mentioned complaints and vide order dated 24.11.2022, the complaint no. 2001/2021 was tagged with the matter bearing no. 211 of 2021, accordingly the same are being disposed of by this single order.

A. Project and unit related details

3. The particulars of the project, the details of sale consideration, the amount paid by the complainants/ allottees, 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	"Imperial Gardens", Sector 102, Gurugram, Haryana
2.	Total area of the project	12 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	107 of 2012 dated 10.10.2012
	Validity of license	09.10.2020
	Licensee	Kamdhenu Projects Pvt. Ltd.
	Area for which license was granted	12 acres
5.	Registered/not registered	Registered in two phases i. 208 of 2017 dated 15.09.2017 [Valid up to 31.12.2018 for 49637 sq. mtrs. and extension granted vide no.3/2019 dated 02.08.2019 which is extended up to 31.12.2019] ii. 14 of 2019 dated 28.03.2019(Phase II) [Valid up to 17.10.2018 for 4.57 acres]
6.	Applied for occupation certificate on	21.03.2018 [annexure R7, page 106 of reply]
7.	Occupation certificate granted on	17.10.2018 [annexure R8, page 107 of reply]

8.	Provisional allotment letter	10.09.2013 [annexure R2, page 40 of reply]
9.	Unit no.	IG-09-1002, 10 th floor, building no.9 [annexure R4, page 48 of reply]
10.	Area of the unit (super area)	2025 sq. ft.
11.	Date of execution of buyer's agreement	17.10.2013 [annexure R4, page 48 of reply]
12.	Possession clause	<p>14. POSSESSION</p> <p><i>(a) Time of handing over the Possession</i></p> <p><i>Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 42 (Forty Two) months from the date of start of construction; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 3 (three) months after the expiry of said period of 42 months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project. (Emphasis supplied)</i></p> <p>[page 39 of complaint]</p>

A

13.	Date of start of construction as per the statement of account dated 18.02.2021 at page 99 of reply	11.11.2013
14.	Due date of possession	11.05.2017 [Note: Grace period is not included]
15.	Total consideration as per the statement of account dated 18.02.2021 at page 99 of reply	Rs.1,89,22,981/-
16.	Total amount paid by the complainant as per statement of account dated 18.02.2021 at page 99 of reply	Rs.79,46,698/-
17.	Date of withdrawal notice	07.06.2017 (page 94 annexure C6 with the complaint)
18.	Offer of possession	31.10.2018 [annexure R6, page 101 of reply]

B. Facts of the complaint

4. The complainants made the following submissions in the complaint:

- i. That the respondent, in the year 2013, through its agent/salesperson approached the applicants/complainants at Dubai UAE and canvassed for the purchase of a unit/flat in their project called "Imperial Garden" at Gurugram, for a price of Rs. 1,82,17,721.94/- inclusive of service tax. That the applicant/complainants discussed the details of the said project, wherein, the respondent has represented, *inter alia*, to the effect that they have already secured all necessary approvals and permissions in respect of the above said project and is in the process of the construction.

- ii. The respondents made the applicants/complainants believes that the work/construction started on December 2012 and was going on and it will be finished within a period of four (4) years. That the relying on the representation of timely competition of project made by the respondents, the applicants/complainants had agreed to jointly purchase one unit/flat at the above project and pursuant thereto booked the flat and paid their hard-earned money to the tune of Rs. 10,00,000.00/- as advance towards the total purchase cost of Rs. 1,82,17,721.94 inclusive of service tax, on 25.08.2013. It is pertinent to mention that at the time of booking of flat, the respondent had made categorical statement and representation that the construction has already started and assured that the same shall be completed within the timeframe guaranteed. That, in pursuance thereof, on 17.10.2013, a buyer's agreement was executed between respondent and complainant, inter alia, recording the various representations and assurances from the respondent and the terms of transaction (hereinafter referred to as the "buyers agreement") in respect of unit bearing No. IG-09-1002, located on Floor-09, situated in tower/building no.09, having super area of 188.13 square meter 2025 square Feet, in the project "**Imperial Garden**" M/s. Emaar MGF Land Limited, sector-102.
- iii. That the buyer's agreement, amongst other things, stipulated the total sale consideration as Rs. 1,82,17,721/- inclusive of service tax. However, as against the assurance given at the time of booking of flat to the effect that the possession will definitely be given within 4 years from the date of booking, the respondent made an

extended timeline for handing over the possession i.e., 42 months plus 3 months as a grace period from the signing of agreement. However, applicants/complainants having already paid huge sum to the respondent and did not have any other ways but to subdue to the highhanded and arbitrary approach and the one-sided terms made in the buyer's agreement. The relevant clause of the buyer's agreement reproduced herein for a ready reference: -

"14. Time of handing over the Possession

(a) Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this Agreement and not being in default under any of their provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the company, the company proposes to hand over the possession of the unit within 42 (Forty Two) months from the date of start of construction: subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the company shall be entitled to a grace period of 3 (three) months after the expiry of said 42 months for applying and obtaining the completion certificate in respect of the unit and/or the project."

- iv. That however, applicants/complainants got shocked to learn that the construction has not even been started after the lapse of one year of booking, and it reveals that promise and assurance of respondent was fake and vague. continue to make payments from time to time as per the buyer's agreement. It is pertinent to take note of the fact that the respondent is in the arbitrary and high-handed habit of charging interest @ 24% p.a. on the delayed payment from the customers. As per the buyer's agreement, the possession ought to have given latest by May 2017. The respondent was entitled to have a grace period of 3 months only for applying and obtaining the completion certificate in respect of the unit and/or the project. Even after the benefit of such grace period, the

possession ought to have been handed over latest by May 2017. However, the applicants/complainants saw no sign of competition of work and handing over of the possession, as promised. In pursuance thereof, the applicant/complainant had conducted general enquiry and also done search through the website of the respondents wherein, they came to the know that the work of the above project started only in the month of January 2014 and the construction was going on in disappointingly slow pace. On this, sometimes in the month of August 2014, applicant/complainant visited respondent's office shared their anxiety and apprehension. The complainant has repeatedly communicated to the respondent, *inter alia*, vide the emails dated 16.01.2014, 25.07.2014 etc. However, respondent again reiterated and promised that respondent will offer the possession of the flat strictly according to the buyer's agreement and there will not be any violation of the same from respondent side.

- V. That as per the agreement, the applicants/complainants have been regularly paying the amount as per the invoice/demand made by the respondents from time to time, as shown above. That applicants/complainants are NRIs, and they are working at Dubai they could not visit site or the office of the respondents for the enquiry or status of the construction of the project frequently. The applicants/complaints used to enquire through telephonically or through emails and all the time the respondents are making assurance that the construction is in progress and the possession of the flat will be handed over to the applicants/complaints as per the buyer's agreement. That as a matter of fact, from October 2013

to May, 2017 (i.e., the agreed 4 years' time for handing over of the possession) absolutely, there were no progress on the project. moreover, there was no response from the respondents for the enquiry and mails of applicants/complaints about the date of handing over of the unit. On this applicant/complainant anticipated that the respondents have defrauded the applicants/complainants by giving commitments of possession. it is also pertinent to mention here that till November 2014 applicant/complainant has paid a total sum of Rs. 78,42,998/-.

- VI. That in view of the above facts and circumstances of the case, it is evident that from the date of booking the respondent has been indulged in cheating and fraudulent practices with applicant/complainant in order to illegally grab money from the applicants/complainants. As the delivery date of the project was delayed about more than 1 years, from the agreed delivery date of January 2016, the complainants had no choice but to issue a notice of withdrawal dated 07.06.2017. The notice of withdrawal dated 07.06.2017 is annexed hereto and marked as annexure C/6. On 29.06.2017 the respondent sends a communication seeking reconsideration of applicants/complainant's decision for the withdrawal from the project, copy of the communication dated 29.06.2017 is annexed hereto and marked as annexure C/7. On 08.02.2018 the respondents arbitrarily send a notice, copy of which is annexed hereto and marked as annexure C/8. Further, the applicants/complainants also issued an email dated 06.03.2018 to the respondent, a copy of which is annexed hereto and marked as annexure C/9. For the above communication respondents issued a

response on 07.03.2018 thereby apologizing for the inconvenience caused to the applicants/complainants.

VII. After the above response respondents again send another communication dated 28.03.2018 stating that the respondents are willing to refund as per the terms of the builder buyer's agreement and again seeking reconsideration of applicants/complainant's decision for the withdrawal from the project, copy of the said communication dated 28.03.2018. That further, as a matter of fact, on 16.11.2019, the applicants/complainants had also issued a notice under the provisions of insolvency and bankruptcy code, 2016/ rules framed thereunder demanding the refund of the amount "due" from the respondent. However, in view of further changes in the IBC which made it further difficult for the applicants/complainants to continue with the recourse under IBC, the respondent completely neglected said demand. After the issuance of the notice under IBC respondent without appreciating the demands of applicants/complainants, send a communication dated 16.01.2020 for clearing the outstanding dues and also to take possession of the unit. Further, seeing no positive response from the respondent, the applicants/complainants have also issued a legal notice through advocate on 30.09.2020, which was of no avail.

VIII. However, the respondent on 05.10.2020, i.e., more than 3 years from the agreed date of possession and also after the cancellation/determination of the agreement for non-performance of by the respondent, demanded further payments and documents and in the pretext of offering the possession. Needless to state that the buyer's agreement is nothing but a contract and in the

aforesaid facts and circumstances, the non-performance of the contract by one party (respondent herein) entitles the other (applicant herein) the right to terminate the contract. Thus, the respondent's communication of 05.10.2020 is of no legal sanctity or effect. Consequentially, the respondent is liable to refund the amount paid along with all other consequential payments including interests and compensation. That in view of the delay in giving possession to the complainant seeks a refund of the entire amount paid to the respondent i.e. Rs. 78,42,998/- along with interest @ 24 % per annum amongst the following grounds inter alia.

C. The complainants are seeking the following relief:

5. The complainants have sought following relief(s):

- (i) Direct the respondent for an immediate refund of the amount of Rs. 78,42,998/- along with pendent lite and future interest thereon at the rate of 24% from the due date of payments till the date of actual payment in favour of applicants/complainants and against the respondent.

D. Reply filed by the respondent

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

- i. That the complainants have not come before this authority with clean hands and have suppressed vital and material facts from this authority. That the original allottee, Mr Harish Banwari, had approached the respondent and expressed his interest in booking

an apartment in the residential group housing colony developed by the respondent known as "Emerald Floors Premier" at Emerald Estate, situated in Sector 65, Gurgaon. Prior to making the booking, the original allottee conducted extensive and independent enquiries with regard to the project and it was only after the original allottee was fully satisfied about all aspects of the project, that the original allottee took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.

- ii. The application form submitted by the original allottee is annexure R1. That apartment number EFP-II-56-0101 was provisionally allotted in favour of the original allottee. Provisional allotment letter dated 15.06.2010 and payment plan are annexures R 2 and R 3. The buyer's agreement was executed between the original allottee and the respondent on 6th sept 2010 and a copy of the same is annexure R 4. That the original allottee had opted for an instalment payment plan which was partly time bound while the remaining instalments were construction linked. In accordance with the payment plan appended along with the buyer's agreement, the respondent sent various payment request letters, notices and reminders for payment to the original allottee /complainants. That the original allottee entered into an agreement to sell the apartment in question in favour of the complainant no 1 and Mr Suresh Chand Jain. Agreement to sell between the original allottee and complainant no 1 and Mr Suresh Chand Jain is annexed hereto as Annexure R7. On the basis of the transfer documents executed by both parties (Annexure R 8 Colly),

A

executed by both parties, the allotment was transferred in favour of complainant No 1 and Mr Suresh Chand Jain.

- iii. That nomination letter dated 22.11.2011 confirming the transfer of allotment in favour of complainant No 1 and Mr Suresh Chand Jain is annexure R9. Subsequently, the name of Mr Suresh Chand Jain was deleted, and the name of complainant No. 2 was added. The documents pertaining to change of name are annexed as annexure R 10 colly. The statement of account of the complainants as on 14.04.2021 is annexure R 11. That the complainants had filed a false and frivolous complaint before the hon'ble NCDRC being complaint no 1563/2019 against the respondent. The complainants and the respondent executed a settlement agreement dated 19.03.2020 herewith annexed as annexure R12 in terms of which, *inter alia*, the complainants were to receive (i) a lump sum credit of Rs 17,00,000/- (ii) compensation at the rate of Rs. 779/- per day (subject to TDS) from 19.03.2020 till the offer of possession to be credited within 15 days from the date of registration of the conveyance deed. (iii) Amazon Gift Voucher worth Rs 1.5 lacs and (iv) refund of excess payment of Rs 1,36,699/-, in the manner set out in the settlement agreement referred to above. In lieu thereof, the complainants agreed and undertook to unconditionally withdraw the said complaint filed by the complainants and not to institute any claim against the respondent of any nature whatsoever. Thus, the present complaint has been filed in violation of the terms and conditions of the settlement agreement referred to above.

- iv. It is pertinent to mention that the respondent has also credited a sum of Rs. 1,97,087/- towards compensation, Rs. 1,37,699/- as benefit on account of anti-profiting and Rs. 1,47,207/- as benefit on account of Early Payment Rebate (EPR). Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principle amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges (dpc) or any taxes/statutory payments etc.
- v. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants, 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. The provisions of the act relied upon by the complainants cannot be called in to aid in derogation and in negation of the provisions of the buyer's agreement. The complainants cannot claim any relief which is not contemplated under the provisions of the buyer's agreement as amended by the settlement agreement. The complainants cannot demand any interest or compensation beyond or contrary to the agreed terms and conditions between the parties. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the project has got delayed on account of the following reasons which were/are beyond the

- power and control of the respondent. (I) staircase issue (ii) defaults of contractor (iii) the complainants have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question.
- vi. That it is evident from the entire sequence of events that the respondent has duly fulfilled its contractual obligations under the buyer's agreement as amended by the settlement agreement. however, the complainants have failed to fulfil their obligations by refusing to make payment of balance sale consideration and taking possession of the unit. the complainants are not only in violation of the buyer's agreement but also in violation of section 19(10) of the act in terms of which the allottee is bound to take possession of the unit within 2 months from the date of issuance of the occupation certificate by the competent authority. The complainants are thus, liable for the consequences of breach, including but not limited to payment of holding charges for their wilful and deliberate failure to take possession of the property even after valid possession has been offered in accordance with the buyer's agreement. thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold. The allegations levelled by the complainants are totally baseless. There is no merit in the allegations raised by the complainants. thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.

E. Jurisdiction of the authority

Pa

7. 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

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

9. Section 11(4)(a) of the Act 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.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-

A

compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

11. 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) RCR(Civil), 357 and reiterated in case of ***M/s Sana Realtors Pvt. Ltd. and other Vs. Union of India and other 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."

12. 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 respondent

Ac

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

13. The respondent contended that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.
14. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the

provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. *We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*
15. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

16. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable

122



under various heads shall be payable as per the agreed terms and conditions of the buyer's agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of the Act and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainants/allottees.

G.1 Direct the respondent for an immediate refund of the amount of Rs. 78,42,998/- along with pendent lite and future interest thereon at the rate of 24% from the due date of payments till the date of actual payment in favour of applicants/complainants and against the respondent.

17. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by it 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:

A



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."

18. The section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate but the allottees has been requesting the promoter for refund of their amount even before the OC was obtained as unit was not ready at that time when they sought refund. The request of the allottees met with deaf ears and promoter failed to refund the amount along with interest even after the right of allottees to claim such refund of an amount paid with interest at prescribed rate from the promoter under section 19(4) of the Act and the promoter was obligated under section 18(1) to return the amount along with interest at prescribed rate on demand to the allottees and allottees having clearly wished to withdraw from the project on account of promoter's failure to complete and unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein.
19. Section 18(1) gives two options to the allottee if the promoter fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein:
- (i) Allottee wishes to withdraw from the project; or
 - (ii) Allottee does not intend to withdraw from the project

A



The right under section 19(4) accrues to the allottees and the promoter is liable under section 18(1) on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottees have exercised the right to withdraw from the project after the due date of possession is over. The allottees have been demanding return of the amount with prescribed rate of interest impliedly means that they wished to withdraw from the project.

20. 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"

21. 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). This judgement of the Supreme Court of India

na



recognized unqualified right of the allottee and liability of the promoter in case of failure 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. The allottees have exercised this right and it is unqualified one, accordingly entitled to claim the refund of the amount paid along with interest at the prescribed rate. The promoter has offered possession of the unit after obtaining occupation certificate but the allottees have been requesting the promoter for refund of their amount even before the OC was obtained as unit was not ready at that time when they sought refund. The request of the allottees met with deaf ears and promoter failed to refund the amount along with interest even after the right of allottee to claim such refund of an amount paid with interest at prescribed rate from the promoter under section 19(4) of the Act and the promoter was obligated under section 18(1) to return the amount along with interest at prescribed rate on demand to the allottee and allottee having clearly wished to withdraw from the project on account of promoter's failure to complete and unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The authority hereby directs the promoter to return the amount received by it i.e., Rs. 79,46,698/- with interest at the rate of 10.35% (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 withdrawal request by the allottees i.e. 07.06.2017 till the actual date of realization after deduction of statutory taxes, if paid and non-refundable within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

A



G. Directions of the authority

22. 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 i.e., Rs. 79,46,698/- /- received by it from the complainants 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 withdrawal request by the allottees i.e. 07.06.2017 till the actual date of realization after deduction of statutory taxes, if paid and non-refundable.
- 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.

23. Complaint stands disposed of.

24. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.11.2022