



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

Complaint no.	2628 of 2021
Date of filing complaint	06.07.2021
First date of hearing	15.09.2021
Date of decision	16.11.2022

<p>1. Lt. Col. Girish Sinha 2. Mrs. Punam Sinha</p> <p><b>both R/o:</b> 3F, 801, Gurjinder Vihar, AWHO Township, Sector CHI-1, Pocket 5, Gautam Buddha Nagar, Greater Noida-201310</p>	<b>Complainants</b>
Versus	
<p>1. New Look Builders and Developers Pvt. Ltd. (Formerly known as Ansal Phalak Infrastructure Pvt. Ltd.) <b>Registered Office:</b> 206, B wing, 2<sup>nd</sup> floor, Naurang House, 21, Kasturba Gandhi Marg, New Delhi-11001</p> <p>2. Ansal Properties and Infrastructure Ltd. <b>Registered Office:</b> 115, Ansal Bhawan, 16, Kasturba Gandhi Marg, New Delhi-11001</p> <p>3. Ansal API Infrastructure Ltd. <b>Registered Office:</b> Half Mezzanine no. 1, Sandhya Deep Building, 15, East of Kailash, Near Community Centre, New Delhi-110065</p>	<b>Respondents</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Ms. Shivangi Singh proxy counsel	<b>Complainants</b>
Shri Deeptanshu Jain (Advocate)	<b>Respondents</b>

**ORDER**

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in

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short, the Act) read with rule 29 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 allottees as per the agreement for sale executed inter se.

#### A. Unit and project related details

- The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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	"Versalia", Sector 67, 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.	Promoter	M/s Ansal Phalak Infrastructure Pvt. Ltd.
8.	Date of first payment	30.07.2013 paid to respondent no. 2 for project "Palm Villa" (inadvertently mentioned as 30.03.2013 in proceedings dated 16.11.2022) (Page 39 of complaint)





9.	Date of first payment to respondent no. 1	26.10.2015 (Page 44 of complaint)
10.	Unit no.	FF3129, First Floor (Page 70 of complaint)
11.	Unit area admeasuring (super area)	Not on record
12.	Date of Floor Buyer Agreement	Not executed
13.	Possession clause	Not on record
14.	Due date of possession	Cannot be ascertained
15.	Total sale consideration	Rs. 1,20,65,000/- (As submitted by respondent in its reply)
16.	Amount paid by the complainant	Rs. 54,12,630.5/- (As mentioned by respondent in page 2 of reply and also confirmed by complainant on page 6 of complaint)
17.	Surrender Letter	13.04.2018 (Page 49 of complaint)
18.	Amount paid by respondent to complainant	Rs. 37,50,000/- (As mentioned by both the parties in their respective submissions)
19.	Settlement Agreement	11.05.2018 (Page 68-69 of complaint)
20.	Occupation Certificate	Not obtained
21.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. That in and around July 2013 the representatives of the respondent herein approached the complainants and informed about the project named "**Palm Villa**" at Sushant Lok, Lucknow, Uttar Pradesh and made

tall claims. That being lured by the assurances, representations, brochures and meetings with the respondents, the complainants decided to purchase a unit in the said project and made a payment of Rs.6,76,407/- (Rupees Six Lacs Seventy-Six Thousand Four Hundred Seven Only) through cheque bearing no. 194357 dated 30.07.2013 as an advance payment on account of booking and were allotted a unit no.3813-0 3813-0 P/02/113.

4. That the complainants further made a payment of Rs. 13,52,814/- (Rupees Thirteen Lacs Fifty-Two Thousand Eight Hundred Fourteen Only) through cheque bearing no. 194360 dated 16.08.2013 to the on account of the unit booked. The complainants herein further made a payment of Rs. 19,25,624.85 (Rupees Nineteen Lacs Twenty-Five Thousand Six Hundred Twenty-Four and paisa eighty-five only) on 10<sup>th</sup> December 2013 through cheque bearing no. 268116 dated 10.12.2013 against preponed payment of 2 installments. Hence, a total of Rs. 39,54,845.85/- (Rupees Thirteen Lacs Fifty-Four Thousand Eight Hundred Forty-Five and Paisa eighty-five only) was paid by the complainants till 10<sup>th</sup> December 2013.
5. It is submitted that no construction work whatsoever was started by the respondents and the above-named project did not even take off on time. The complainants herein being apprehensive of the delay, requested the respondents to return the money, however, the representatives of the respondents herein once again advised the complainants that they should shift to a different project named **"Golf Gateway Towers"** situated in Sushant Lok, Lucknow being developed by the same group company/respondents and assured that the same will be timely completed. It was also agreed that the amount already paid by the





complainants for the previous project will be duly adjusted in the new project. Relying on respondents' assurance, the complainants agreed to book a unit in the project "**Golf Gateway Towers**" and was allotted a unit no. 3010-0-B-2/001/02 and was asked to make a further payment of Rs. 14,27,785/- (Rupees Fourteen Lacs Twenty-Seven Thousand Seven Hundred Eighty-Five Only). It is submitted that the they were not supplied with the signed copy of the builder buyer agreement for both the projects even when the same was demanded time and again by the complainants.

6. That the complainants again made a payment of Rs. 50,000/- (Rupees Fifty Thousand Only) on 09.01.2014 through cheque on account of part payment to the additional amount of Rs. Rs. 14,27,785/- (Rupees Fourteen Lacs Twenty-Seven Thousand Seven Hundred Eighty-Five Only) demanded by the Respondents herein for the project "Golf Gateway Towers". It is pertinent to mention herein that the Complainants made all the payments on a timely manner and without any delay, however, they were never apprised of the status of the project by the respondents herein. The complainants further made a payment of Rs.13,77,785/- (Rupees Thirteen Lacs Seventy-Seven Thousand Seven Hundred Eighty-Five Only) on account of remining payment of Rs. 14,27,785/- (Rupees Fourteen Lacs Twenty-Seven Thousand Seven Hundred Eighty-Five Only) through cheque bearing no. 019778 dated 09.10.2014. Hence by 09<sup>th</sup> October 2014 the complainants had paid a total amount of Rs. 53,82,630.85/- (Rupees Fifty-Three Lacs Eighty-Two Thousand Six Hundred Thirty and Paisa Eighty-Five Only) to the respondents.

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7. That the complainants approached the respondents and asked them to refund the amount already paid by them. However, the respondents once again with the assurance that they will give a separate unit to the complainants in a different and better project situated in NCR region requested to take a unit in the project named **"Versalia" situated in Sector 67 Gurgaon (now Gurugram), Haryana**. Since the complainants were in need of the house to stay thus, they believed the words of the respondents and agreed to shift to the project being developed by the respondents named "Versalia" situated in Sector 67 Gurgaon, Haryana and also made an additional payment of Rs.30,000/- (Rupees Thirty Two Thousand Only) through cheque bearing no. 268143 dated 21.08.2015 as was demanded by the respondents. It is pertinent to mention herein that no builder buyer agreement was executed inter se the parties even after repeated requests.
8. It is submitted that at the time of booking of the project in "Versalia" it was assured to the complainant that the project will be completed within a period of 3 years and the same will be handed over by 2018. It was further agreed that the amounts already paid by the complainants for the above mentioned two projects will be duly adjusted as payments received for the current project. The complainant were finally allotted a unit FF 3129. By 26<sup>th</sup> October 2015 the complainants had paid a sum of Rs. 54,12,630.85/- (Rupees Fifty-Four Lacs Twelve Thousand Six Hundred Thirty Rupees and Paisa Eighty-Five Only).
9. That after the site visit by the complainants and being not satisfied with the rosy pictures presented by respondents' representatives, the complainant decided that it is best to seek refund of the amount and wrote a letter dated 14<sup>th</sup> April 2018 addressed to the respondents





seeking refund of the entire amount along with the interest and attached several other communications and documents with the letter.

10. After much deliberation and follow up with the respondents, the builder-promoter agreed to refund the amount along with the interest. The complainants agreed to the respondents' request of repayment in instalments. The respondents herein issued a cheque dated 28.07.2018 in favor of the Punam Sinha for an amount of Rs.5,00,000/- (Rupees Five Lacs Only) on account of part payment/instalment of the refund of the total consideration paid. A second cheque dated 04.08.2018 in favor of the complainant (Punam Sinha) for an amount of Rs. 5,00,000/- (Rupees Five Lacs Only) on account of part payment/instalment of the refund of the total consideration paid was issued. By 18<sup>th</sup> February 2019 the complainants had received a total sum of Rs. 37,50,000/- (Rupees Thirty-Seven Lacs Fifty Thousand Only) on account of refund of the total consideration of Rs. 54,12,630.85/- (Rupees Fifty-Four Lacs Twelve Thousand Six Hundred Thirty Rupees and Paisa Eighty-Five Only). However, no interest amount whatsoever was paid by the respondents till date as was agreed between the parties in April 2018.
11. The respondents after making the payment on 18<sup>th</sup> of February 2019 stopped making further payments. The complainants herein wrote several emails, made several calls and met with their representatives but to no avail. Even after repeated reminders and follow ups have not made any payments and an amount of Rs.16,62,630.85/- (Rupees Sixteen Lacs Sixty-Two Thousand Six Hundred Thirty and Paisa Eighty-Five Only) is pending on account of principal amount and an approximate amount of Rs. 10,00,000/- (Rupees Ten Lacs Only) is pending on account of interest and the respondents are liable to pay the same.

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12. That in the aforesaid facts and circumstances, the present complaint is being filed against the respondent companies *inter alia* seeking relief of refund of the balance amount due along with the simple interest @12% per annum within a reasonable time.

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

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

- i. Direct the respondent to refund the amount of Rs. 16,62,630.85/- out of total paid-up amount along with interest from the date of respective deposits till actual realisation.
- ii. Direct the respondent to pay compensation and litigation costs.
- iii. To conduct inquiry u/s. 35 of the Act including calling for all the records including calling for the latest financial reports, balance sheet etc. of the respondent and its representatives, directors etc.
- iv. To freeze the bank account of the respondent and ensure that no money is being misused by it.

**D. Reply by respondent:**

The respondents by way of written reply made following submissions:

14. It is stated at the outset that all the averments made in the complaint under reply may be considered to have been replied to and all the allegations contained therein may be considered to have been specifically denied and controverted, unless admitted hereinafter.

15. It is humbly 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 16,62,630/- (Rupees Sixteen Lakh Sixty Two Thousand Six Hundred and Thirty Only)





along with interest to the respondents, which were paid by the complainant towards the allotment of unit no. 3129, first floor in the project "Avante Floors, Versalia" in Sector 67, Gurugram, Haryana (hereinafter referred to as "**Unit**"). It is pertinent to mention that the complainant has made a total payment of Rs. 54,12,630.85/- (Rupees Fifty-four Lacs Twelve Thousand Six Hundred Thirty Rupees and Paisa Eighty-Five Only) till date toward the allotment of the Unit out of total basic sale consideration of Rs. 1,20,65,000/- (Rupees One Crore Twenty Lacs Sixty-Five Thousand Only) excluding EDC, IDC charges plus club members fee plus interest-free maintenance charges plus service charges.

16. It is humbly submitted that the allotment of the complainant towards the said unit has already been cancelled and the parties have executed a settlement agreement. That the respondent has already paid Rs. 37,50,000/- (Rupees Thirty Seven Lakh and Fifty Thousand Only) (Appx.) in terms of the settlement. It is pertinent to mention that execution of settlement agreement has suspended the operation of flat buyer agreement. Therefore, since the flat buyer agreement executed between the parties cannot be enforced and has been superseded by the, this Hon'ble Authority no longer have the jurisdiction under the Act to adjudicate upon the Issue as the complainant is not a allottee within the definition of Section 2(d) of the Act. Hence, the captioned complaint is liable to be dismissed to lack of jurisdiction of the subject matter of the case.

17. 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. The complaint under reply is not only gross abuse of process of law but the same is filed with mala fide intentions of maligning the reputation and goodwill of the respondent. The contents of the instant complaint would reveal that the complainants have suppressed material facts that are extremely relevant to the adjudication of the instant complaint. The courts have on all occasions come down heavily on litigants who have approached courts suppressing material facts. That the complainant by way of the present complaint is attempting to mislead this Hon'ble Authority by fabrication and concealment of facts which never existed and trying to unduly gain at the cost of the respondent, for which the complainant is not entitled under the law.

18. That the true and correct facts of the present case are mentioned below for proper adjudication of the captioned complaint:

- a. The Complainant had approached Respondent No. 2 i.e., Ansal Properties and Infrastructure Pvt. Ltd. on 30.07.2013 for booking a particular unit in the project "Palm Villa" situated at Sushant Lok, Lucknow (hereinafter referred to as "**First Project**") and paid Rs. 6,76,407/- (Rupees Six Lakh Seventy Six Thousand Four Hundred and Seven Only).
- b. Thereafter, in January, 2014 the allotment of the complainant in the first project was cancelled on his request and he was allotted another unit of similar value in the project "Golf Gateway Towers" situated as Lucknow (hereinafter referred to as "**Second Project**") by respondent No. 2 and 3.





- c. It is pertinent to mention that answering respondent company is not the developer or was in anyway involved in the allotment of unit in the name of the complainant in the first or the second project. That the complainant had made a total payment of Rs. 53,82,630/- (Rupees Fifty-Three Lakh Eighty Two Thousand Six Hundred and Thirty Only) towards the basic sale price to respondent no. 2 and 3 till 25.10.2015.
- d. That thereafter, on 26.10.2015 the complainant along with respondent no. 2 and respondent no. 3 approached answering respondent submitted application for allotment of unit in the upcoming project of the answering respondent namely 'Avante Floors, Versalia' **situated at Section 67/67A, Gurugram, Haryana** of the answering respondent company exchanging the booking from the '**Project Golf Gateway Towers**'.
- e. For allotment of the unit in the project of answering respondent by way of transfer of funds from respondent no. 2 and 3, the complainant vide application dated 26.10.2015 approached the respondent company and agreed for allotment of an independent residential dwelling unit in Avante/Woodwinds, Versalia, upon the terms and conditions of sale as mentioned in the flat buyer agreement dated 26.10.2015 (hereinafter referred to as "**FBA**").
- f. Thereafter, the answering respondent provisionally allotted dwelling unit no. FF 3129, in the project "Avante Floors, Versalia" in name of the complainant for a total sale consideration of Rs. 1,20,65,000/- (Rupees One Crore Twenty Lacs Sixty-Five Thousand Only) excluding



EDC, IDC charges plus club members fee plus interest-free maintenance charges plus service charges.

- g. As mentioned above, the complainant had already paid some amount as part of sale consideration amounting to Rs. 54,12,630.85/- (Rupees Fifty-four Lacs Twelve Thousand Six Hundred Thirty Rupees and Paisa Eighty-Five Only) to the respondent no. 2 and 3 with regard to other projects. at the time of allotment of the unit, the said amount was transferred by respondent no. 2 and 3 to the accounts of answering respondent i.e., on 26.10.2015. The transferred amount was adjusted to the total sale consideration of the project and the remaining amount was to be paid by the complainant to the answering respondent company in terms of the FBA.
- h. It is denied that the FBA was never executed between the parties or that the copy of FBA was not given to the complainant. The aforesaid fact is evident from the bare perusal of the FBA bearing the signatures of the complainant, had it been the case that the FBA was never shown to the complainant, it would not be bearing the signatures of the complainant.
- i. In terms of the FBA the answering respondent was obligated to deliver the possession of the unit to the complainant within 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.
- j. That the complainants failed to pay the due installments 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

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never adhered to by the complainants. It is submitted that the non-timely payment by the allottees is a major contribution to the non-timely delivery of the project.

- k. That the answering respondent had repeatedly called for payment of the amount but despite the call notices dated 26.11.2015 and 29.12.2015 the amount was not paid by the complainant.
- l. Particularly, on 26.11.2015 a call notice was sent to the complainant which included basic price plus service tax basic amounting to Rs. 24,86,155.59/- (Rupees Twenty-Four Lacs Eighty-Six Thousand Hundred and Fifty-Five and Paise Fifty-Nine Only) which was due on 10.12.2015. However, the complainant failed to make the payment against the aforesaid call notice.
- m. Thereafter, on 29.12.2015 another call notice was issued by the answering respondent calling complainant to pay Rs. 38,77,010.67/- (Rupees Thirty-Eight Lacs Seventy-Seven Thousand and Ten and Paise Sixty-Seven Only) which was due on 24.01.2016. However, the complainant defaulted in that in payment once again.
- n. Thereafter, the complainant approached the answering respondent and requested to cancel the allotment of the unit and to refund the consideration paid towards the unit. The answering respondent being a customer-oriented organization once again accommodated the request of the complainant and entered into settlement through letter dated 11.05.2018 (hereinafter referred to as "**Settlement Agreement**").
- o. Under the settlement agreement it was agreed between the parties that the complainant shall forfeit its right towards the unit and to

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claim any form of compensation, claim, etc. against the answering respondent for delay in handing over the possession of the Unit. Further, the answering respondent agreed to refund the amount paid by the complainant.

19. It is humbly submitted that the answering respondent is ready and willing to make the pending payment to the complainant in terms of the settlement agreement. It is pertinent to mention that the answering respondent was compliant in payment of the installments in terms of the settlement agreement till 2019. However, in 2020 COVID 19 lead pandemic severely affected the real estate sector resulting in financial crunch in the market. Hence the delay in payment of remaining amount.
20. It is humbly submitted that the answering respondent allotted the Unit to the complainant only on 26.10.2015 and the fund which were originally paid to the respondent no. 2 and 3 were transferred to the bank accounts of the answering respondent. Therefore, the answering respondent cannot be made liable for any kind of delay/ compensation for time lost by the respondent no. 2 and 3 before 26.10.2015.
21. It is pertinent to state that the said project of the answering respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the answering respondent. However, despite all odds, still, the answering respondent is making all efforts to complete the construction work at the project site at full pace and is expecting to hand over the possession very soon, once the present situation of pandemic 'covid-19' gets over and situation normalizes.
  - 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 answering 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 'lock-down' w.e.f. 22.03.2020 and amid this prevailing situation of the pandemic the slowing economy is also posing difficult challenges for the answering 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 answering respondent expects to complete the entire project within the said extended time period and expects to deliver the flat/unit to the complainant very soon.

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- 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 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 no. 1. Following important aspects are relevant which are submitted for the kind consideration of this Hon'ble Court.
- 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 answering 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 answering 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 answering 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.

iii. Apart from the above, it is relevant to mention here that due to the increase in pollution in National Capital Region, the Hon'ble Supreme Court of India vide Order dated 04.11.2019 passed in *Writ Petition (Civil) No. 13029 of 1985 titled as "M.C. Mehta-Versus-Union of India & Ors"* ("Writ Petition") had put a blanket ban on the construction activities in the National Capital Region. Subsequently vide order dated 09.12.2019, the Hon'ble Supreme Court of India lifted the ban partially i.e. construction activities were only allowed between 6:00 AM to 6:00 PM. It is pertinent to mention that due to the aforesaid restraining orders passed by the Hon'ble Supreme Court of India all the construction activities in the National Capital Region came to a standstill, resultantly the project got delayed. The said ban is completely lifted by the Hon'ble Supreme Court only on 14.02.2020. In past also the construction was banned by Hon'ble courts and tribunals.

22. All the above problems are beyond the control of the developer i.e., the answering respondent. It may be noted 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.

23. All other averments made in the complaint were denied in toto.
24. 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 those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

**E. Jurisdiction of the authority:**

25. 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 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**

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)*

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*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.*

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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*

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*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**

26. The respondents-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 was 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 a long duration of time had expired since booking of unit even before COVID-19 struck the country. 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.

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**G. Entitlement of the complainants for refund:****G.I Direct the respondents to refund the entire paid-up amount along with interest at the prescribed rate.**

27. In the present case, the complainant initially booked a unit in project Palm Villa being developed by respondent no. 2 in Lucknow in the year 2013. However, the respondent no. 2 was not able complete the construction of the project and hence, the respondent advised the complainant to shift its unit in "Golf Gateway Towers" in Lucknow itself. The complainant believing the respondent agreed to shift the unit in the project. It was also agreed that the amount paid for a unit in first project will be transferred to the new project. However, even this project could not be started and therefore, the complainant requested for refund of his paid-up amount, but the respondent requested the complainant to rather take a unit in project named Versalia, Sector 67, Gurugram i.e., the present project in the year 2015. The total amount paid by the complainant for units in Palm Villa and then Golf Gateway Tower was then transferred as payment for the unit in the Versalia. The complainant then vide letter dated 13.04.2018 requested refund of his paid-up amount. Both the parties then reached an agreement with respect to the same dated 11.05.2018 whereby the respondent was to make payments in instalments to the complainants. In lieu of the same, the respondent even made payments to the complainant. However, certain amount is still due to be paid to the complainant and the present complaint has been filed for the same.
28. Given the fact that the complainant had surrendered the unit vide letter dated 13.04.2018, the respondent was liable to act upon it. The complainants made their first payment for a unit in the project of





respondent no. 2 in 2013. It is pertinent to mention that the Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018* observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract". In the instant case, the respondent did not even execute a buyer's agreement of the complainant even after transferring it to three different projects. The complainants cannot be made to wait endlessly. Thus, the due date of possession has been calculated as three years from date of first payment by the complainants i.e., 30.03.2013 as the same was booking amount which comes out to be 30.03.2016.

29. The complainants thus withdrew from the project after expiry of the due date of possession. The parties thereafter entered into an agreement for refund of the amount dated 11.05.2018 however, the respondent failed to adhere to the terms of the agreement. Given the fact that the respondent did not refund the amount to the complainant, the complainants approached the Authority for refund of balance amount. It is pertinent to specify that the respondent has made payment till 18.02.2019 and has submitted that it is willing to make remaining payments (page 9 of reply). The authority hereby directs the promoter to return the balance amount deposited with him along with interest at the rate of 10.25% (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 payment as promised in the settlement agreement till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G.II. To direct the respondent to pay compensation**

30. The complainants in the aforesaid head 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.

**G.III. To conduct inquiry u/s. 35 of the Act including calling for all the records including calling for the latest financial reports, balance sheet etc. of the respondent and its representatives, directors etc.**

**G.IV. To freeze the bank account of the respondent and ensure that no money is being misused by it.**

31. Both these issues being interconnected are being taken up together. The above-mentioned relief sought by the complainants were not pressed during the arguments. The authority is of the view that the complainants does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any findings w.r.t. to the above-mentioned relief.

**H. Directions of the Authority:**

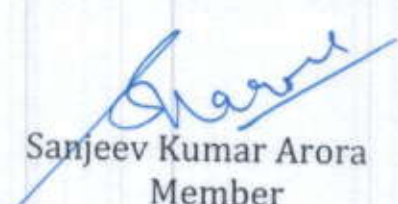
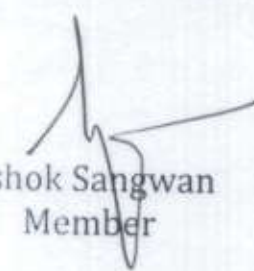


32. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.

- i. The respondent-promoter is directed to refund the balance amount i.e., Rs. 16,62,630.5/- deposited with him by the complainants along with interest at the rate of 10.25% (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 payment as promised in the settlement agreement till the actual date of refund of the 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 would follow.

33. Complaint stands disposed of.

34. File be consigned to the registry.

  
Sanjeev Kumar Arora  
Member  
Ashok Sangwan  
Member  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 16.11.2022

