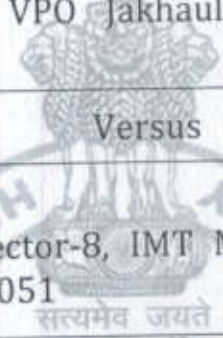
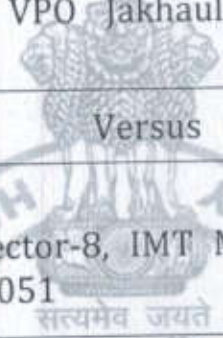


**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no.	:	2695 of 2022
Date of filing	:	07.06.2022
First date of hearing:		06.07.2022
Date of decision	:	05.01.2023

1. Smt. Mamta Chauhan W/o Sh. Jagjit Singh 2. Sh. Jagjit Singh S/o Sh. Mitter Sain <b>Both R/o:</b> H.no. 90, VPO Jakhauli, Dist.- Sonipat, Haryana	 Versus	<b>Complainants</b>
Anant Raj Limited <b>Regd. office:</b> CP-01, Sector-8, IMT Manesar, Gurugram, Haryana-122051	 सत्यमेव जयते	<b>Respondent</b>
<b>CORAM:</b>		
Shri Ashok Sangwan		<b>Member</b>
Shri Sanjeev Kumar Arora		<b>Member</b>
<b>APPEARANCE:</b>		
Shri Prateek Agarwal (Advocate)		Complainants
None		Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottees in under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

**A. Unit and Project related details:**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.n	Particulars	Details
1.	Name of the project	"Anant Raj Estate", Sector-63A, Gurgaon
2.	Nature of project	Residential plotted colony
3.	<b>RERA registered/not registered</b>	Registered vide registration no. 142 of 2017 dated 28.08.2017
	Validity status	27.08.2022
4.	<b>DTPC License no.</b>	119 of 2011 dated 28.12.2011      71 of 2014 dated 29.07.2014
	Validity status	27.12.2019      28.07.2024
	Licensed area	100.262 acres      7.8625 acres
	Name of licensee	M/s Rose Realty Pvt Ltd & others      M/s Glaze Properties Ltd & others
5.	Application letter dated	10.09.2013 [As alleged by the complainants on page no. 09 of complaint]
6.	Allotment letter	04.02.2022 [As per page no. 31 of complaint]



7.	Independent floor no.	0048 pocket B [As per page no. 31 of complaint]			
8.	Unit area admeasuring	448.88 sq. yds. (super area) [As per page no. 31 of complaint]			
9.	Total sale consideration	Rs. 3,37,31,088/- [As per page no. 34 of complaint]			
10	Details of previously allotted plots				
	<u>S. n</u>	<u>Allotment dated</u>	<u>Indepen dent floor no.</u>	<u>Unit admeasuring area</u>	
I	<u>Provisional allotment dated:-</u> 21.03.2014 [As per page no. 24 of complaint] (Letter showing acceptance of application made by the complainant and allotment was subject to selection of size/location /plot no.)	Plot no.- not specified Pocket C [As per page no. 31 of complaint]	Plot no.- not specified	Not provided on record	
II	26.02.2018	30 pocket H	485 sq. yds. (super area)	Rs. 3,88,70,325/- [As per page no.]	



	[As per page no. 27 of complaint]	[As per page no. 27 of complaint]	[As per page no. 27 of complaint]	27 of complaint]
II I	31.12.2020 [As per page no. 35 of reply]	168 pocket B [As per page no. 35 of reply]	466.44 sq. yds. (super area) [As per page no. 35 of reply]	Rs. 3,41,17,754/- [As per page no. 35 of reply]
11	Date of floor buyer agreement		Not executed	
12	Total sale consideration		Rs. 3,37,31,088/- (for forth allotment) [As per page no. 34 of complaint]	
13	Amount paid by the complainants (paid on 20.11.2014)		Rs. 40,00,000/- [As per cancellation letter dated 13.04.2022 on page no. 42 of reply]	
14	Possession clause		Cannot be ascertain as no buyers' agreement has been executed inter-se parties.	
15	Due date of possession		Cannot be ascertain as no buyers' agreement has been executed inter-se parties.	
16	Demands letters dated		14.04.2014, 26.02.2018, 31.12.2020 & 04.02.2022 (As alleged by the respondent on page no. 04 of its reply)	

17	Cancellation letter dated	13.04.2022 [As per page no. 36 of complaint]
18	Completion certificate	Not obtained
19	Offer of possession	Not offered

**B. Facts of the complaint**

3. That the complainants were impressed by the representations of the project by the respondent company. So, vide application no. 1932 dated 10.09.2013, they made booking of a residential plot in plotted colony project by the name and style of "Anant Raj" situated at Sector 63A, Gurugram, Haryana.
4. That pursuant to the booking, the respondent vide letter bearing reference no. 1932 dated 21.03.2014, initially allotted a plot in the pocket "C" of the said project and complainants were requested to choose the plot no. / size / location of the plot from the tentative layout.
5. That they made a payment of Rs. 25,00,000/- vide bank draft no. 255018 dated 10.09.2013 drawn on Punjab National Bank, Sonipat and the same was duly acknowledged by receipt dated 17.10.2013.
6. That thereafter, the complainants paid Rs. 15,00,000/- vide cheque no. 564190 dated 09.09.2014 towards the earnest money as demanded by the respondent as per the company policy. It is evident to mention that as per law of the land, a promotor should not have accepted a sum more than ten per cent of the cost of the apartment, plot, or building as the case may

be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale. It violated the provision of Section 13(1) of Act of 2016. Even without knowing the actual plot no./size/location of the plot from the tentative layout, to be selected by the complainants as per letter dated 21.03.2014, the ten percent of the sale price of the plot cannot be calculated. But despite that the respondent demanded the extra amount of Rs. 15,00,000/- on account of earnest money. So, till date, the complainants have paid total amount of Rs. 40,00,000/-.

7. That even after making of payment towards the booking of the plot and despite several follow up, neither any unit was allotted, nor allotment letter was issued. However, after much persuasions, the respondent changed the allotment of the complainants from pocket C to pocket H in the plotted colony of said project in year 2018.
8. That the respondent vide provisional allotment letter dated 26.02.2018 allotted plot no. 30 in Pocket H having approx. 485 sq. yds area for a total cost including EDC & IDC of Rs. 3,88,70,325/- and out of which Rs. 40,00,000/- were already paid. The ten per cent of the Rs. 36,375,000/- comes to Rs. 36,37,500/-. Despite the payment of more than ten per cent of the cost of the plot, the respondent despite several requests, never entered into agreement for sale.

9. That the terms and conditions mentioned in the provisional allotment letter were biased, one sided and in violation of the provisions of the Act of 2016, amounting to unfair trade practice as the complainants were compelled to sign on dotted lines in view of one-sided standard form. Therefore, the same was not binding on them with no room for any negotiation whatsoever.
10. That it is clear from the letter of allotment that no particulars of development of project have been mentioned and no date on which the possession of the plot is to be handed over was specified. Further, it is noteworthy that said clause of provisional allotment letter is part of standard form of agreement which is biased, one sided, amounting to unfair trade practice.
11. That again in the year 2020, the respondent changed the allotment of the plot from pocket H to pocket B and they were allotted plot no. 168 in pocket B of size 466.44 sq. yards approx. in the said project vide allotment letter dated 31.12.2020. The respondent changed the allotment of the complainants for their no fault and despite the fact that they were always ready and willing to make the payment but after entering into agreement of sale and they have been demanding from the respondent.
12. That again lastly vide provisional allotment letter dated 04.02.2022, respondent changed the allotment of complainants to plot no. 48, pocket B having area of 448.88 square yards approximately for a total

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consideration of Rs. 3,37,31,088/- out of which a sum of Rs. 40,00,000/- was already paid and total amount of Rs. 2,97,31,088/- was to be paid.

13. That the said provisional allotment letter dated 04.02.2022 was also in complete violation of the Act of 2016 as also mentioned above in regard to provisional allotment letter dated 26.02.2018.
14. That the complainants went to make the payment of the balance amount, with the request to execute the agreement for sale on 07.03.2022 for an amount of Rs. 1,62,64,688/- vide cheque no. 093258 dated 07.03.2022 drawn on Punjab National Bank, Kundli, Sonipat, Haryana. But the respondent made an illegal, arbitrary demand of providing an affidavit to the effect that they would not sell the plot for three years but the same was never intimated to them and was not acceptable to them. Due to that act of the respondent, the complainants stopped the payment of the cheque.
15. That the respondent threatened the complainants to cancel the allotment in case of not providing the affidavit. The respondent cannot impose unfair, unilateral conditions upon the complainants. It is submitted that the complainants upon execution of sale deed, will would become owner of the plot and no sale can be done on conditional basis.
16. That to their utter surprise and after utilizing their money since 2014, the respondent cancelled their allotment vide cancellation letter 13.04.2022. The cancellation was done wrongfully, without any sufficient cause,



unilateral and on the basis of the terms of provisional allotment letter dated 04.02.2022 which are completely one sided and against the provisions of the Act of 2016. It could not have taken undue advantage of one-sided clauses. It is submitted that it was only after the complainants objected to the affidavit on or after 07.03.2022, it wrongfully cancelled the allotment on 13.04.2022, despite the fact that they were willing and ready to make the full payment of the plot despite not entering into agreement of sale.

17. That the complainants also wrote a letter requesting the respondent to withdraw the cancellation letter which was replied by it vide letter dated 16.05.2022 rebutting their pleas.
18. That the respondent had to give information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority, the stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee. However, no such information was not given to the allottee-complainants, thus violating the provision of section 19(1), 19(2) and 11(3) of the Act.
19. That the respondent had to confirm the area of plot as per approved demarcation-cum-zoning plan allotted to the complainants after the development of the plotted area along with essential services as mandated by rules and regulation of competent authority is complete. It

never informed them of the development of the plotted area along with essential services, but it raised demand of the full amount of total consideration of the plot. Even no timelines were mentioned in the provisional allotment letter regarding the development of plotted area along with essential services keeping the complainants in dark.

20. That the respondent with malafide intent gave false assurances to the complainants regarding the new dates of handing over the possession over telephonic calls without assigning any reason whatsoever for such a prolonged delay. After coming in force of Act of 2016 and applicable rules, it has not applied for registration of the said project before authority in accordance with law.
21. That the respondent failed to adhere to the provisions of the Act of 2016 and execute the agreement for sale and did not specify any of the details as required by law in the provisional allotment letter. It has not even applied for occupancy certificate of the concerned plot in the project till today. Therefore, it seems to be a continuous and recurring defaulter and is in the habit of making false claims to dupe the hard-earned money of homebuyers like the complainants.
22. That the complainants recently come to know about the project being mortgaged with the bank and that fact has nowhere been disclosed by the respondent either to them or to any of the allottees.



23. That the respondent is a continuous and recurring defaulter and no respite is available against such a recurring either on justiciable or equitable grounds. Any further extension to them will amount to travesty of justice as respondent company actions seems to be taken in bad faith and with ill motive to misappropriate complainants' hard-earned money.

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

24. The complainants have sought following relief:

- i. Direct the respondent to withdraw the cancellation letter dated 13.04.2022.
- ii. Direct the respondent-company to restore the allotment of plot no. 48, pocket B of 448.88 sq. yards approximately in Anant Raj Estate vide provisional allotment letter dated 04.02.2022 and handover its possession.
- iii. Direct the respondent to execute agreement to sell of the allotted unit and accept the balance amount of consideration amounting to Rs. 2,97,31,008/-.
- iv. Direct the respondent to handover the peaceful possession of the plot no. 48.
- v. Direct the respondent to pay cost of Rs. 1,00,000/- towards the cost of litigation.

25. 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:**

26. That the present complaint is not maintainable as the complainants have failed to disclose any maintainable cause of action under the said provisions of the Act as alleged as well as is out of limitation period. Section 19 of the Act of 2016 clearly prescribes the rights and duties of the allottees.
27. That the complainants approached the respondent and expressed an interest in booking a unit in the residential project known as "Anant Raj Estate" developed by it and located in the villages of Ullahwas (Hb No. 83), Kadarpur (Hb No. 84), and Maidawas (Hb No. 85), in Sector-63A, Gurgaon, Manesar Urban Complex, District Gurgaon, Haryana. Prior to making such booking, they conducted extensive and independent inquiries about the project, and it was only after they were fully satisfied about all aspects of the project. They made an independent and informed decision to book the unit in the said project of the respondent and an uninfluenced in any way by it.
28. That the complainants vide an application for allotment dated 10.09.2013, applied for the booking of unit in the project being constructed by the respondent. It had no reason to suspect the bonafides of the complainants and so, it duly acknowledged the application for allotment vide its letter dated 14.04.2014. Furthermore, while acknowledging the receipt of an amount of Rs. 25,00,000/-, it further raised a demand of Rs. 15,00,000/- from them.

29. That, in accordance with the aforementioned letter and following several discussions, the complainants were allotted plot bearing no. 30 in pocket H of the project vide provisional allotment letter dated 26.02.2018. Furthermore, vide the same allotment letter, the respondent requested them to pay an amount of Rs. 3,48,70,325/- in order to clear their outstanding amount towards the payment of the plot.
30. That when the complainants failed to pay the aforesaid amount as mentioned in the allotment letter even after requests from the respondent and it was constrained to cancel their allotment. It is pertinent to mention here that the complainants again approached the respondent in the year 2020 for a fresh allotment of the plot. Out of its goodwill, the respondent, vide an allotment letter dated 31.12.2020, again allotted a plot bearing no. 168 in pocket B of the project with a condition of payment of Rs. 3,01,17,754/- till 30.01.2021. However, again they failed to pay the aforesaid amount as requested resulting in the cancellation of the allotment of the complainants.
31. That in January 2022, the complainants approached the respondent and requested not to cancel their allotted plot or provide them with an alternate plot. Again, believing their words, it allotted a plot bearing no. 48 in pocket B vide provisional allotment letter dated 04.02.2022 and requested them to make the payment of Rs. 2,97,31,088/- by 28.02.2022.
32. That it requested them to clear the remaining amount towards the total sale consideration. After not getting any response from the complainants

and not receiving the remaining outstanding amount towards the total sale consideration of the plot, the respondent finally cancelled their allotment vide cancellation letter dated 13.04.2022.

33. That the complainants have failed to pay the remaining sale consideration amounting to Rs. 2,61,17,754/- without interest. It is submitted that initially, on account of non-payment of the outstanding amount, the respondent sent numerous demand letters to the complainants.
34. That the respondent, from the very inception, had to run after the complainants to clear the outstanding dues. The same can be evidenced by the very fact that for every instalment towards the plot, the respondent had to send them a demand notice to clear the outstanding bills. It is pertinent to bring to the kind notice of this authority that from the years 2014 to 2022, i.e., before the cancellation of the unit, the respondent sent a number of demand letters w.e.f. 14.04.2014, 26.02.2018, 31.12.2020, and 04.02.2022 respectively to the complainants but with no positive results.
35. That the complainants till the issuance of the final demand letter only paid Rs. 40,00,000/- towards the total sale consideration amounting to Rs. 3,01,17,754/- approximately 15% of the total sale consideration. It is pertinent to note that they were very well aware of the continuous delays and were reminded on a continuous basis through the demand letters. They have defaulted in making the payment towards the agreed sale consideration of the unit from the very inception. It is to be noted that the

last payment towards the agreed sale consideration was made on 09.09.2014 amounting to Rs 15,00,000/- and since then no payment, whatsoever, was made by them. The respondent continuously sent numerous demand letters to clear the outstanding dues, but its request fell on deaf ears of the complainants, which clearly reflects that they are in clear breach of the terms and conditions of the allotment.

36. That the complainants, after being wilful defaulters in complying with the terms and conditions of the allotment, are trying to take shelter under the garb of the Act of 2016 and are shifting the burden on the part of the respondent and whereas, it has suffered huge financial loss due to such wilful defaulters.
37. That several allottees have defaulted on timely remittance of payment of instalments, an essential, crucial, and indispensable requirement for the conceptualisation and development of the project. Despite there being a number of defaulters, the respondent itself infused a huge amount of funds into the project.
38. That the complainants have miserably and wilfully failed to make the outstanding payments on time as well, in accordance with the terms and conditions of the allotment. It is claimed that the complainants' total delay in making payment towards the outstanding payment is approximately 2,97,31,088/- (including interest) as on 28.02.2022 on various occasions and in different instalments.

39. That the complainants have no cause of action to file the present complaint as it is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of letter of allotment. The complainants are investors and therefore booked the unit in question to yield gainful returns by selling the same in the open market. However, due to the ongoing slump in the real estate market, they filed the present purported complaint to wriggle out of their commitments. The complainants do not come under the ambit and scope of the definition of an allottee under section 2(d) of the Act, as they are investors and booked the unit in order to enjoy the good returns from the project.
40. That the earnest money of Rs. 15,00,000/- demanded was in line with the terms of the allotment. The allegation that the respondent charged more than 10% of the total cost of the unit holds no ground and is a clear reflection of an erroneous understanding of the law. The Act of 2016 came around two years after the parties entered into a transaction of plot of their free will. Thus, the Act of 2016 cannot have retrospective effect and holds no ground in the eyes of the law. Any amount that was demanded by the respondent was based on terms and conditions agreed upon and not arbitrarily. Thus, there was no violation of any provision of the said Act.
41. That the averments of the complainants are false and frivolous. Despite various contacts made by the respondent through several channels with



them regarding the allotment letter, they paid no heed. Thus, finally, after informing them, the respondent transferred the allotment of the said plot to someone else, and the complainants' unit was transferred from pocket C to pocket H in the same colony. Even after making payment of the earnest amount of Rs 40,00,000/-, the complainants never came forward to enter into an agreement to sale despite various correspondences being made from the respondent's side from time to time.

42. That the terms and conditions of the provisional allotment letter dated 26.02.2018 were agreed mutually between the two parties and no provision of the said letter is biased, arbitrary, or one-sided. There has been no violation of the provisions of the Act of 2016 and hence any allegation of unfair trade practise is unjustified and condemned. It never compelled the complainants to sign on the dotted lines in view of the one-sided standard form.
43. That the provisional allotment letter dated 26.02.2018 signed between the parties was not a standard form of contract and all other agreements entered into between respondent and all other allottees were signed through mutual understanding of the two parties. The contention that there was no ground for negotiation in the provisional allotment letter is erroneous, and all the terms mentioned and agreed upon were mutually determined between the parties.
44. That clause 5 of that provisional allotment letter does not say that the respondent may cancel the provisional allotment. Rather, it was

conditioned upon the non-fulfilment of terms and conditions agreed mutually between the complainants and respondent. Any earnest money demanded by the respondent was based on terms and conditions agreed mutually. Furthermore, the provisions of the Act came into effect in 2016 while the agreement was signed in 2014. So, there can be no retroactive effect. The 10% deposit condition came into effect only in 2016. Thus, there has been no violation of any provision of the law in force at the time of the agreement.

45. That the allotment of plot was again changed from pocket H to pocket B with plot number 168 of size 466.44 sq. yd. in the same locality with the consent of the complainants and not arbitrarily. The changes made in the allotment of plots have been on account of non-payment of the due charges by the complainants. Hence, any allegation of the respondent's action being arbitrary is completely false and hence denied. Any change in allotment of plot has been on account of the complainant's own fault. The respondent, vide allotment letter on 04.02.2022, changed the allotment of the complainant's plot to plot no.48, pocket B of 448.88 sq. ft. on account of non-payment of due charges and with their prior permission.
46. That the averments of the complainants qua affidavit are false and frivolous. It is denied that the respondent demanded any affidavit stating that the complainants would not sell the plot unit for at least three years. The said allegation is completely baseless. The only precondition was

payment of dues and which the complainants failed to do. Thus, their unit was rightly cancelled.

47. That the cancellation of the said plot vide cancellation letter dated 13.04.2022 is on account of non-payment of dues. The said reason had been conveyed to the complainants' time and again since the beginning of the transaction and hence the action of cancellation cannot be called arbitrary. There is no question of objection to the affidavit when such an affidavit never existed in the first place. The said plot was cancelled on 13.04.2022 after duly communicating the complainants on account of non-payment of due payments.
48. That the complainants had no intention of making the payment of the balance amount since they, from the very inception and defaulted in making timely payments. The respondent was in no hurry to cancel the allotment as can be affirmed from various correspondences made from its side, and thus, the reasons stated are well justified. The request to withdraw the cancellation letter was not entertained on account of the complainant's refusal to make payment on time. Thus, the complainants cannot be allowed to take advantage of their own wrongs.
49. That the respondent since the beginning gave full information about the sanctioned plans, layout plans along with the specifications, stage-wise time schedule, provisions of water, electricity, etc. to the complainants and confirmed the area of plot as per the approved demarcated plan to be allotted to the allottees after the development of the plotted area along

with essential services. The provisional allotment letter clearly mentioned the developmental plan and timeline of the said area along with other essential services.

50. That the respondent, at the very inception of the Act of 2016, applied for registration. It has even received an occupation certificate for the same project. Further, the allegation of the complainants that the said project being mortgaged with the bank are false and hence denied.
51. All other averments made in the complaint were denied in toto.
52. 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 based on these undisputed documents.

#### **E. Jurisdiction of the authority**

53. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

##### **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 allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

*Section 11(4)(a)*

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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 of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent:**

**F.1 Objection regarding maintainability of complaint on account of complainants being investors.**

54. The respondent has taken a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the

real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainants are buyers' and they have paid total price of Rs. 40,00,000/- to the promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the allotment letter executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra

Real Estate Appellate Tribunal in its order dated 29.01.2019 in *appeal no. 0006000000010557 titled as M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

**F.II Objection regarding jurisdiction of authority w.r.t. buyers were allotted plot prior to coming into force of the Act**

55. The respondent raised a contention that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the allotment letter 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. In the instant complaint, the complainants were initially allotted plot in pocket C of project vide allotment letter dated 21.03.2014. However, the said allotment was revised, and the complainants were allotted plot bearing no. 30 in pocket H, vide allotment letter dated 26.02.2018. The same was again revised on 31.12.2020 and they were allotted plot no. 168 in pocket B of the project of the respondent. Lastly, for the fourth time, the unit of the complainants was again revised vide allotment letter dated 04.02.2022 to plot bearing no. 48 in pocket B of the project. Thus, the final allotment was made to the complainants in 2022 vide allotment letter 04.02.2022. So, there is no question w.r.t. prior allotment of plot before coming into force of Act of 2016 arise and the plea taken by the respondent is thus, devoid of merit.

**G. Findings regarding relief sought by the complainants.**

**G.I Direct the respondent to withdraw the cancellation letter dated 13.04.2022.**

**G.II Direct the respondent-company to restore the allotment of plot no. 48, pocket B of 448.88 sq. yards approximately in Anant Raj Estate vide provisional allotment letter dated 04.02.2022.**

56. Both these reliefs being inter-connected are being taken together.
57. Before touching upon the validity of cancellation of allotment issued vide letter dated 04.02.2022 by the respondent to the complainants, it is necessary to refer to the details of allotment of plot made from time to time from the promoter, their change in different pockets and finally leading to allotment of the unit in question.

S.no.	Averments of the complainants	Averments of the Respondent
1.	<b>Regarding First allotment</b> The respondent issued letter showing acceptance of application made by the complainant and allotment was subject to selection of size/location /plot no. in pocket C.	<b>Regarding First allotment</b> The complainants were allotted plot in pocket C in pursuance of application dated 10.09.2013, on 21.03.2014.
2.	<b>Regarding 2<sup>nd</sup> allotment</b> The respondent changed the pocket of the complainant and allotted unit in pocket H vide provisional allotment letter dated 26.02.2018	<b>Regarding 2<sup>nd</sup> allotment</b> With regard to discussions with the complainants, the respondent allotted plot bearing no. 30 in pocket H, vide allotment letter dated 26.02.2018.
3.	<b>Regarding 3<sup>rd</sup> allotment</b>	<b>Regarding 3<sup>rd</sup> allotment</b>



	<p>The respondent again changed the pocket of the complainants from H to pocket B. The complainants at this point of time raised request for <u>execution of agreement</u> as they have already paid an amount of Rs. 40,00,000/- constituting more than 10% of consideration.</p>	<p>Despite request, the complainants failed to pay balance payment towards consideration of allotted unit and thus, the respondent <b>cancelled their plot.</b> As per the requests of the complainants, they were allotted plot bearing no. 168 in pocket B of the project subject to payment of balance amount.</p>
<p>4.</p>	<p><b>Regarding 4<sup>th</sup> allotment</b> The respondent again changed the allotment of the complainants and allotted plot bearing no. 48 in pocket B for total consideration of Rs. 3,37,31,088/-</p>	<p><b>Regarding 4<sup>th</sup> allotment</b> In 2022, they again approached the respondent requesting it to not to cancel the allotment of plot and rather provide them with any alternative plot. As per the request of the complainants, they were allotted plot bearing no. 48 in pocket B subject to payment of balance consideration by 28.02.2022. As a result of non-payment of balance consideration, the plot of the complainants was cancelled vide letter dated 13.04.2022.</p>

58. It is evident from the perusal of the particulars given in the tabular form above that vide letter of allotment dated 21.03.2014, the complainants were allotted plot in pocket C of the project without its dimensions, location and size against payment of Rs. 25,00,000/- as advance money.

Later on, an advance of Rs. 15,00,000/- was made and the same was fulfilled on 09.09.2014. However, that allotment was changed to plot no. 30 in pocket H, vide allotment letter dated 26.02.2018 against a total sale consideration of R. 3,88,70,325/- with no buyer's agreement being signed between the parties. Though that allotment was one sided, but the respondent did not stick to the same and vide letter of allotment dated 31.12.2020 changed the allotted plot to pocket B from pocket H bearing plot no. 168 having a size of 466.44 sq. yards. approximately. That allotment did not find favour with the respondent and who changed the same to plot no. 48 pocket B having an area approximately of 448.88 sq. yards for a total sale consideration of Rs. 3,37,31,088/- vide letter of allotment dated 04.02.2022. It is a fact that on the basis of letters of allotment, the parties did not execute any buyer's agreement with regard to the allotted unit. Though it is the version of the promoter that the allotment of plots was changed at the request of the allottees made from time to time due to their inability to pay but that is only oral version with no documentary evidence. It is also a fact that the version of the respondent with regard to various reminders for payment of due amount issued to the complaints does not hold good in the absence of any documentary evidence on the record.

59. The authority observes that as per final allotment letter dated 04.02.2022 wherein allotting plot bearing no. 48 in pocket B of the project for a total consideration of Rs. 3,37,31,088/-, provides payment plan along with it.

As per said payment plan, the complainants were required to make payment of Rs. 40,00,000/- at the time of booking and balance Rs. 2,97,31,088/- is to be paid on or before 28.02.2022. The said allotment letter nowhere provides any condition or clause regarding handing over of possession, execution of buyer's agreement etc and on the other hand lays down a condition wherein demanding complete amount towards consideration of allotted plot. Moreover, the respondent alleged that demand letters dated 14.04.2014, 26.02.2018, 31.12.2020 & 04.02.2022 were sent to them but substantially failed to provide on record any documentary proof in this regard. Also, the fact cannot be ignored that the last allotment i.e. 4th allotment was itself made on 04.02.2022 and no demand letter was issued after that, before cancellation of subject plot on 13.04.2022.

60. The plea taken by the respondent that the provision of section 13(1) of Act of 2016, does not apply as the complainants were allotted plot way back in 2014 i.e. before coming into force of Act. The authority is of considered view that as per version of both the parties, despite allotment of plot in the project of the respondent in 2014, they were allotted specific unit in 2018 only. Moreover, the said unit was changed four times.
61. Coming back to present date, the authority is of considered view that the complainants-allottees have already paid an amount of Rs. 40,00,000/- towards consideration of allotted unit i.e. Rs. 3,37,31,088/- constituting 11.86% of total consideration. As per section 13(1) of Act of 2016, the

respondent was under an obligation to get the buyer's agreement executed between the parties before demanding or accepting any further demand beyond 10% of sale consideration. Therefore, in view of aforesaid circumstances, it is observed that there is gross negligence on part of the respondent-builder and thus, the cancellation issued vide letter dated 13.04.2022 is invalid, against the provisions of section 13(1) of Act of 2016 and therefore, is set aside. It is held that before raising any further demand against the allotted unit from the complainants, it was mandatory for the respondent-builder to ask them to execute buyer's agreement setting out the terms and conditions of allotment, price of the unit, its dimensions, the due date and payments due as per the provisions of Section 13(1) of the Act of 2016. There is nothing on record to prove that any such notice asking the allottees to come forward and execute the buyer's agreement was sent by it. In view of inconsistent stand of the promoter with regard to change of allotments from time to time without any request from the allottee and having received more than 10% of sale consideration of the unit, it could not have been cancelled unilaterally and that too without following the due procedure of law.

**G. III Direct the respondent to execute agreement to sell and accept the balance amount of consideration amounting to Rs. 2,97,31,008/-.**

62. As per section 13(1) of Act of 2016, the respondent was under an obligation to get the buyer's agreement executed between the parties before demanding or accepting any further demand beyond 10% of sale consideration. The respondent has violated the provisions of section



13(1) of Act of 2016. Thus, the respondent is directed to get the buyer's agreement executed in favour of the complainants within 15 days of date of this order and who are also directed to make payment of balance consideration of the allotted unit as per agreed terms within 30 days or as agreed between the parties, after execution of buyer's agreement.

**G.IV Direct the respondent to handover the peaceful possession of the plot no. 48.**

63. There is nothing on record that the respondent has obtained the CC/part CC for the said project. In view of aforesaid circumstances, the respondent is directed to handover the possession of the allotted plot within 2 months after obtaining CC/part CC, as the case may be. The complainants are also directed to fulfil the obligations conferred upon them vide section 19(10) of Act of 2016.

**G.V Direct the respondent to pay cost of Rs. 1,00,000/- towards the cost of litigation.**

64. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. *Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (2021-2022(1)RCR(C) 357)*, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore,

for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**H. Directions of the authority:**

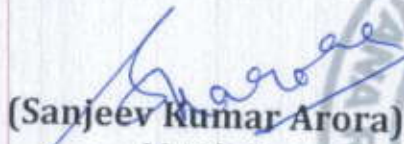
65. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:

- i. The cancellation of the allotted unit bearing no. 48 situated in pocket B measuring area 448.88 sq. yds situated in the project namely "Anant Raj Estate", Sector-63, Gurugram issued vide letter dated 13.04.2022 by the respondent to the complainants is hereby ordered to be set aside and allotment of the plot is ordered to be restored.
- ii. The respondent is directed to get the buyer's agreement executed in favour of the complainants as per letter of allotment of the unit dated 04.02.2022 within 15 days of date of this order.
- iii. The complainants are directed to make payment of balance consideration as per agreed terms within 30 days or as agreed between the parties, after execution of buyer's agreement as per section 19(6) & (7) of Act.
- iv. The respondent is further directed to handover the possession of the allotted plot within 2 months after obtaining CC/part CC, as the case may be. The complainants are also directed to fulfil the

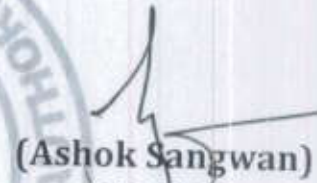


obligations conferred upon them vide section 19(10) of Act of 2016.


- v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 10.60% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
66. Complaint stands disposed of.
67. File be consigned to registry.

  
(Sanjeev Kumar Arora)

Member  
Haryana Real Estate Regulatory Authority, Gurugram

  
(Ashok Sangwan)

Member

  
Dated:05.01.2023

**HARERA**  
**GURUGRAM**