

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

Complaint no. :	3454 of 2020
Date of filing complaint:	22.10.2020
First date of hearing:	22.12.2020
Date of decision :	10.11.2022

Puneet Gupta R/o: E 402, Jhulelal Apartments, Gig Rd. No. 44 Pitampura, New Delhi	Complainant
Versus	
M/s Vatika Limited address: Vatika Triangle, 4 th Floor, Sushant Lok, Phase-I, Block A, Mehrauli-Gurugram Road, Gurgaon-Haryana	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Aditya P Arora (Advocate)	Complainant
Sh. Harshit Batra (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 provisions of

the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.no.	Heads	Information
1.	Project name and location	"Tranquil Heights Ph.-I" at sector 82A, Gurgaon, Haryana.
2.	Project area	22646.293 sqm
3.	Nature of the project	Group Housing Colony
4.	DTCP License	22 of 2011 dated 24.03.2011 valid upto 23.03.2019
5.	RERA Registered/ not registered	Registered vide no. 359 of 2017 dated 17.12.2017 area admeasuring 22646.293 sqm. Valid upto 30.04.2021
6.	Unit no.	Tower A-2203 (page 16 of complaint)
7.	Unit area admeasuring	1550 sq.ft. -booked (page 16 of complaint) 1635 sq.ft. allotted (page 16 of complaint)
8.	Date of allotment letter	12.09.2014 (page 42 of complaint)
9.	Date of builder buyer agreement	31.08.2015 (page 45 of complaint)
10.	Due date of possession	31.08.2019
11.	Possession clause	13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT <i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said</i>

		<i>building/said Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses 14 to 17 & 37 or due to failure of Allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure -I or as per the demands raised by the developer from time to time oy any failure on the part of the Allottee(s) to abide by any of the terms or conditions off this agreement. Emphasis supplied</i>
12.	Total consideration sale	Rs. 1,13,69,790/- (page 101 of complaint) Rs. 1,08,49,860/- (page 16 of complaint)
13.	Amount paid by the complainants	Rs. 65,96,882/- (page 16 of complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complainant:
 - a. That the present proceeding before the authority has been initiated by the complainant as the respondent while providing its services has been grossly deficient, defective, and negligent. In addition to this, the conduct of the respondent has been dishonest, fraudulent wrongful, and *mala-fide* amounting to unfair trade practice, false, misleading and detrimental to the complainant.



- b. The complainant submits that the respondent is a company duly registered under the Companies Act, 2013 and engaged in the business of real estate. The complainant further submits that it gave wide publicity in the print and electronic media for its project known as 'Tranquil Heights', promising a residential complex with car parking spaces, club facilities etc. The details of the unit have been provided separately, in this annexure.
- c. That the complainant based on various luring advertisements, assurances and promised of the respondent filled up the booking form being 'expression of interest for a residential apartment' issued by it on 01.11.2013. He under the terms and conditions of the said booking form was pleased to express interest in a residential apartment ad measuring 1550 sq. ft. consisting of 2 bedroom plus study unit. He admittedly paid a sum of Rs. 6,00,000/- to it concern as the booking amount on 01.11.2013.
- d. The complainant deposited a sum of Rs. 9,03,453.41/- plus TDS on 26.02.2014 as per the payment plan attached to the booking form dated 01.11.2013. Furthermore, he was pleased to deposit a sum of Rs. 10,02,302.27/- plus TDS on 02.05.2014 as per the payment plan attached to the booking form dated 01.11.2013.
- e. The respondent issued an invitation for offer of allotment of unit in 'Tranquil Heights' as Sector 82-A, Gurugram on 29.08.2014 and a priority number 58 was issued to him. The respondent, on 12.09.2014, allotted unit number 2203 in tower - A. He was surprised when he came to know that the abovementioned unit measured 1635 sq. ft. instead of 1550 sq. ft. as booked by him. He requested it to provide a unit

measuring the same size that he had booked for 1550 sq. ft. However, it flatly refused to accept this requested and was told that his entire booking amount shall be forfeited by it if he wishes to cancel the allotment.

- f. The respondent further arbitrarily increased the price of the unit by adding Rs. 300 per square foot for all corner units on account of preferential location charges as per a builder buyer agreement. However, it is worth mentioning that each floor of the building consists of 4 units only and hence, each flat is bound to be a corner unit. Despite this fact, it charged extra amount on account of so-called PLC which, in reality, is just one of the many illegal means of extracting money from the homebuyers under the garb of a buyer agreement terms which are unilaterally drafted to safeguard and enhance the interests of the respondent. Therefore, it has also been engaged in unfair trade practices which are against the letter and spirit of the legislation.
- g. The complainant on 31.10.2014 deposited a sum of Rs. 5,01,303/- plus TDS as per the payment plan attached to the booking form dated 01.11.2013.
- h. The respondent while acting in an unfair and unjust manner issued a letter dated 16.02.2015 asking for additional payment due to increase in area of unit allotted to him unilaterally. He was forced to pay a sum of Rs. 1,65,942/- plus TDS to it on 02.03.2015. Even after more than 18 months of signing the booking form, a builder buyer agreement was not signed by it. At this juncture, it is pertinent to mention that the respondent, despite receiving 30% of the total consideration from the



complainant, failed to execute a builder buyer agreement. This is clear violation of the mandate laid under Section 13 of Real Estate (Regulation and Development) Act,2016 and should be penalised as per the scheme of the Act.

- i. After a delay of almost 21 months, the respondent finally signed a builder buyer agreement dated 31.08.2015 with the complainant.
- j. It is submitted that a builder buyer agreement was one-sided and gave flimsy grounds to the respondent to evade his duties under the agreement. Furthermore, the agreement had unfair terms and conditions such as different rates of penalising parties, unilateral grounds to justify delay on behalf of the it. Worth mentioning, as per clause 13 of a builder buyer agreement, it was to handover the possession of the allotted unit to the complainant within a period of 48 months.
- k. The complainant made a payment of Rs. 8,80,367/- plus TDS on 28.09.2015 as per the construction linked plan mentioned in the builder buyer agreement dated 31.08.2015. The complainant made a payment of Rs. 5,85,745.23/- plus TDS on 12.07.2016 as per the construction linked plan mentioned in a builder buyer agreement dated 31.08.2015.
- l. The complainant received a letter from the respondent wherein the he was asked to pay VAT on under construction property under the amnesty scheme. He made the payment of Rs. 15,468/- as mentioned above under protest since no construction activity was taking place for a period of more than one year.



- m. The Haryana Real Estate Regulatory Authority, Haryana was pleased to issue registration certificate to the respondent for their Project 'Tranquil Heights' effective from 17.11.2017 to 30.04.2021.
- n. The complainant made further payments of Rs. 6,26,486/- plus TDS as per the construction linked plan mentioned in the builder buyer agreement dated 31.08.2015 on 24.11.2017, 25.05.2018 and 27.05.2019.
- o. That on 19.08.2018 the complainant requested it that due to the change in taxation regime and introduction of GST, he has become entitled to the benefits as a consumer under Section 171 of the Central Goods and Services Act, 2017. Accordingly, complainant requested that the GST benefits shall be transferred to him. However, no reply was received from it. Till date, Rs. 11,288/- has been passed onto the complainant and the remaining GST benefit remains unpaid.
- p. The Hon'ble Haryana Real Estate Regulatory Authority, Gurugram in complaint number 1986 of 2018, passed an order dated 19.03.2019 against it in relation to the same project i.e. Tranquil Heights, whereby it was directed to refund the entire amount deposited to the complainant therein with interest @ 10.75 % per annum from the date of each deposit.
- q. The period of 48 months as prescribed under a builder buyer agreement for completion of construction of the allotted unit ended on 31.08.2019. The complainant till date has made a payment of Rs. 65,96,882/- and the construction is nowhere near completion.

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- r. Under such circumstances, the complainant had no option but to approach the authority and thus made an online registration of complaint on 14.10.2020 numbered as RERA-GRG-3490-2020.
- s. The complainant has learnt that the respondent has diverted the funds for some other use and till date the construction has not been completed. The complainant has sought refund of the deposits given along with interest @18% which respondent itself charges in case of delayed payments. However, till date complainant has received no response. It is pertinent to mention here that it has made a consumer helpline portal on their website for registering any complaints against it. However, no response from the portal has ever been received by him despite plethora of complaints made on the said portal. Apart from this portal, it has no other means of communication, email or otherwise, to enquire about the status of the project or any complaints made in relation thereto.
- t. That the respondent is a repeat offender and has defaulted in multiple projects wherein the authority, as the case may be, has been pleased to grant relief to the complainants therein. It is submitted that along with the present project, namely Tranquil Heights, it has also failed to deliver other projects such as "Vatika Express City", Premium Floor, Seven Elements etc. This clearly evidences the lax and unprofessional attitude of the respondent while handling their construction activities and causing immeasurable plight to the homebuyers who are tricked to pay huge sums of money in the hope of getting their dream homes as per the agreed timeline and price schedule.

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- u. Therefore, under section 31 of RERA, cognizance should be taken of this complaint as the respondent has not yet completed the construction of the project and is no way going to fulfil its promise of handing over the possession of the flat in the near future. Further, it has taken payment in excess of stage of construction in a fraudulent manner.
- v. It is submitted that the authority has territorial and subject matter jurisdiction to entertain the present complaint. It is submitted that the authority has the jurisdiction to grant compensation, as well as, order refund of consideration paid by him to it with interest.
- w. It is submitted that the cause of action is continuing till date as the construction of the allotted unit has still not been completed till date and he sent repeated reminders to it calling for updates on his apartment but the same have not been addressed till date, therefore this complaint is within the limitation period.
- x. That vide order dated 15.02.2022, the authority was pleased to hold that it had no jurisdiction to adjudicate the complaint in view of the judgement passed by the Hon'ble Supreme Court dated 11.11.2021 in *Newtech Promoters and Developers Pvt. Ltd. V. State of U.P. & Ors.* Therefore, in compliance of the said judgement along with the directions given by registry, the complainant is hereby filing an amended Form CRA along with Performa B.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):



- i. Direct the respondent to refund the entire amount deposited by the complainant with the respondent being Rs. 65,96,882/ along with interest @ 10.75 % per month from the date of each deposit.
- ii. Direct the respondent to pay a sum of Rs. 2,00,000/- (as reimbursements for the legal costs/expenses to the Complainant.

D. Reply by respondent:

5. The respondent made the following submissions in its reply:
 - (a) That at the outset, respondent humbly submits that each and every averment and contention, as raised in the complaint, unless specifically admitted, be taken to have been categorically denied by it and may be read as travesty of facts.
 - (b) That the complaint filed by the complainant before the authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before the authority as the reliefs being claimed by him, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of the authority.
 - (c) That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.



- (d) That the reliefs sought by the complainant appear to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
- (e) That apparently, the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.
- (f) That the complainant has miserably and willfully failed to make payments in time or in accordance with the terms of the builder buyer's agreement. It is submitted that the complainant has frustrated the terms and conditions of the builder buyer's agreement, which were the essence of the arrangement between the parties and therefore, the complainant now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. The complainant has also misdirected in claiming refund on account of alleged delayed offer for possession.
- (g) It has been categorically agreed between the parties that subject to the complainant having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said building/ said apartment within a



period of 48 months from the date of execution of the agreement unless there shall be delay due to force majeure events and failure of allottee(s) to pay in time the price of the said apartment.

(h) That the delay in completing the project is due to the reasons beyond the control of the developer. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:

- a. Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project of the Respondent which further constrained the Respondent to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the Respondent were adversely affected and the Respondent was forced to reevaluate its construction plans which caused a long delay.
- b. Delay caused by the Haryana Development Urban Authority (HUDA) in acquisition of land for laying down sector roads for connecting the Project. The matter has been further embroiled in sundry litigations between HUDA and land-owners.
- c. Due to the implementation of MNREGA Schemes by the Central Government, the construction industry as a whole has been facing shortage of labour supply, due to labourers regularly travelling away from Delhi-NCR to avail benefits of the scheme. This has directly caused a detrimental impact to the Respondent, as it has been difficult to retain labourers for longer and stable periods of time and complete construction in a smooth flow.
- d. Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the



- Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana.
- e. Disruptions caused by unusually heavy rains in Gurgaon every year.
 - f. Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.
 - g. Declaration of Gurgaon as a Notified Area for the purpose of Groundwater and restrictions imposed by the state government on its extraction for construction purposes.
 - h. Delayed re-routing by DHBVN of a 66KVA high-tension electricity line passing over the project.
 - i. The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in Air Quality in the Delhi-NCR region, especially during winter months. Among these measures were bans imposed on construction activities for a total period of 70 days between November 2016 to December 2019.
 - j. Additionally, imposition of several partial restrictions from time to time prevented the Respondent from continuing construction work and ensuring fast construction. Some of these partial restrictions are:
 - i. Construction activities could not be carried out between 6 p.m. to 6 a.m. for 174 days
 - ii. The usage of Diesel Generator Sets was prohibited for 128 days.
 - iii. The entries of truck traffic into Delhi were restricted.
 - iv. Manufacturers of construction material were prevented from making use of close brick kilns, Hot Mix plants, and stone crushers.
 - v. Stringently enforced rules for dust control in construction activities and close non-compliant sites.

The imposition of several total and partial restrictions on construction activities and suppliers as well as manufacturers of necessary material required, has rendered the Respondent with no option but to incur delay in completing construction of its projects. This has furthermore led to significant loss of productivity and continuity in construction as the Respondent was continuously stopped from dedicatedly completing the Project. The several restrictions have also resulted in regular demobilization of labour, as the Respondent would have to disband the groups of workers from time to time, which

created difficulty in being able to resume construction activities with required momentum and added many additional weeks to the stipulated time of construction

- vi. The Government of India imposed lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic. This severely impacted the Respondent as the Respondent was constrained to shut down all construction activities for the sake of workers' safety, most of the labour workforce migrated back to their villages and home states, leaving the Respondent in a state where there is still a struggle to mobilize adequate number of workers to start and complete the construction of the Project due to lack of manpower. Furthermore, some suppliers of the Respondent, located in Maharashtra, are still unable to process orders which inadvertently have led to more delay.

Further it is not disputed that due to the outbreak of Covid 19, the entire world went into lockdown and all the construction activities were halted and no labourers were available. Infact all the developers are still facing hardship because of acute shortage of labourers and even the HRERA, Gurugram has vide order dated 26.05.2020 declared the Covid 19 as a calamity under the Force Majeure clause and therefore there cannot be said to be any delay in delivering the possession by the Respondent.

- k. That the project "Tranquil Heights (Phase-I)" has been registered with the Haryana Real Estate Regulatory Authority vide registration no. 359 of 2017. That after the halt in work due to various reasons and not limited to delay on the part of the allottees, NGT notifications, covid-19 pandemic, etc., recently the work had re-started and is going on in full swing. The respondent endeavors to complete the project within the timeline committed before RERA Gurugram.
- l. That it is to be appreciated that a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers are further invested towards the completion of the project. It is important to note that a builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. It is submitted that it is important to understand



that one particular buyer who makes payment in time can also not be segregated, if the payment from other prospective buyer does not reach in time. It is relevant that the problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers. It is relevant to note that the slow pace of work affects the interests of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. It is most respectfully submitted that the irregular and insufficient payment by the prospective buyers such as the complainant freezes the hands of developer / builder in proceeding towards timely completion of the project.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

7. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

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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 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.

F. Findings on the objections raised by the respondent.

F.I Objection w.r.t. force majeure

8. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as, shortage of labour, various orders



passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 31.08.2015 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 31.08.2019. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent- builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

9. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The

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outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

10. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 31.08.2019 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Entitlement of the complainant for refund

G.1 Direct the respondent to refund the paid entire amount paid by the complainants.

8. The complainants initially booked a unit bearing no. tower A-2203 admeasuring 1550 sq. ft in the above-mentioned project of respondent and the same led to execution of buyers' agreement on 31.08.2015. They paid the respondents a sum of Rs. 65,96,882/- against the total sale consideration of Rs. 1,13,69,790/-, but due to misrepresentations w.r.t. the project they did not pay the remaining amount and are seeking refund of the paid-up amount besides interest from the respondent.
9. It is not disputed that the complainant is are allottee of the respondent having been allotted a unit no. tower A-2203 admeasuring 1550 sq. ft of the project known as Tranquil Heights, phase I, sector 82A, Gurugram for a total sale consideration of Rs.



1,13,69,790/-. It is pertinent to mention here that during the court proceeding the counsel for the respondent confirms that an application for de-registration of the project and settlement of the claims of the allottees have already been submitted which shall be separately taken up by the authority. Thus, the complainants are right in withdrawing from the project and seeking refund of the paid-up amount besides interest as the promoter failed to raise construction as per the schedule of construction despite demands being raised from them and the project being abandoned and the respondent/builder applying for its de-registration as per the provisions of section 18(1)(b) of the Act, 2016 providing for refund of the paid-up amount with interest at the prescribed rate of 10.25% p.a. from the date of each payment till the date of actual realization within the timeline as prescribed under rule 16 of the Rules, 2017. A reference to these provisions of the Act is necessary which provides as under.

18. If the promoter fails to complete or is unable to give possession of an apartment, plot or building,

(a)

(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.

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10. Thus, in view of factual as well as legal position detailed above, the authority is right in allowing refund of the paid-up amount of the complainants deposited against the allotted unit with the respondent from each date of payment upto the date of actual date of refund of that amount within the timeline provided in rule 16 of the Haryana Rules ibid.

G.II Litigation expenses & compensation

11. The complainant is also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), 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, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

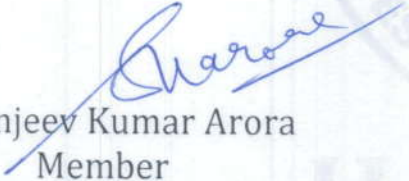
H. Directions of the Authority:

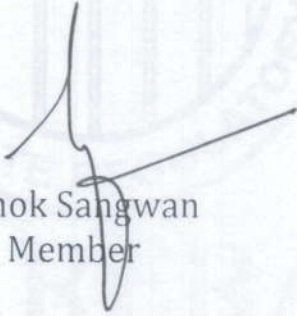
12. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the




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

- i. The respondent/promoter is directed to refund the entire amount of Rs. 65,96,882/- paid by the complainant along with prescribed rate of interest @ 10.25% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development Rules, 2017) from the date of each payment till the actual date of refund of the amount.
 - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
13. Complaint stands disposed of.
14. File be consigned to the Registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member
29.09.2022

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.11.2022