

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

Complaint no.:	4391 of 2021
First date of hearing:	04.01.2022
Date of decision:	12.04.2023

Arun Kumar Singh

R/o D-92, Seema Apartments, Plot no. 7, Sector-11,  
Dwarka, New Delhi-110075

**Complainant**

Versus

1. Ansal Housing & Construction Ltd.

**Office address:** 15 UGF, Indraprakash, 21,  
Barkhamba Road, New Delhi- 110001

2. Samyak Projects Pvt. Ltd.

**Office address:** 111, First Floor, Antriksh Bhawan,  
22, K.G. Marg, New Delhi- 110001

**Respondents**

**CORAM:**

Shri Ashok Sangwan

Shri Sanjeev Kumar Arora

**Member**

**Member**

**APPEARANCE:**

Shri. Daggar Malhotra (Advocate)

Smt. Meena Hooda (Advocate)

Complainant

Respondents

**ORDER**

1. The present complaint dated 10.11.2021 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 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 as provided under the provision 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Heights 92", Sector 92, Gurugram.
2.	Total area of the project	10.563 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	76 of 2010 dated 01.10.2010 valid up to 30.09.2020
5.	Name of licensee	JSG Builders Pvt. Ltd. & anr.
6.	Registered/not registered	Not registered
7.	Unit no.	V-017 [annexure C3, pg. 21 of complaint]
8.	Area of the unit	5000 sq. ft. [annexure C3, pg. 21 of complaint]
9.	Date of execution of buyer's agreement	03.05.2012 [annexure C3, pg. 18 of complaint]
10.	Possession clause	<b>29.</b> <i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely</i>



		<p><i>payment of all dues by buyer and subject to force majeure circumstances as described in clause 30. Further, there shall be a <b>grace period of 6 months allowed to the developer over and above the period of 36 months</b> as above in offering the possession of the unit."</i></p> <p><i>(Emphasis supplied)</i></p> <p><i>[page 27 of complaint]</i></p>
11.	Date of start of construction as per customer ledger dated 26.06.2020	14.06.2012 [pg. 63 of complaint]
12.	Due date of possession	14.12.2015 <b>(Note:</b> 36 months from date of start of construction i.e., 14.06.2012 being later + 6 months grace period allowed being unqualified)
13.	Delay in handing over possession till the date of filing of this complaint i.e., 10.11.2021	5 years 10 months 27 days
14.	Total sale consideration as per customer ledger dated 26.06.2020 on pg. 63 of complaint	₹ 1,38,22,245.01/-
15.	Total amount paid as per call letter dated 07.06.2017 at pg. 43 of complaint	₹ 1,15,47,669/-
16.	Offer of possession	Not offered
17.	Occupation certificate	Not obtained

**B. Facts of the complaint**

3. The complainant has pleaded the complaint on the following facts:

- a. That, a project by the name of "Ansal Heights" situated in Sector 92, Gurugram was to be developed by the respondent no.1 and 2 jointly. That, around that time, in the year 2012, complainant was looking for a residential unit at that time and, in pursuance of the



same, approached the respondent no.1 to understand the features and specifications of the residential units being offered by the respondent no.1 in its project- "Ansal Heights".

- b. The respondent no.1 shared the E-brochure of its project which included the layout plan as well, with the complainant. The complainant thoroughly read through the E-brochure and relying completely on the representations made by the said respondent in the said E-brochure, and believing the said representations to be true, decided to book a villa in the said project. The structure of the villa as mentioned in the E-brochure was as follows: basement, ground floor, first floor and second floor each with its own features and specifications, all of which, in totality, matched with the requirements and needs of the complainant with a total sale area of 5000sq.ft.
- c. Therefore, in furtherance of the same, an apartment buyers' agreement dated 03.05.2012 was entered into between the complainant and respondents. The basic sales price of the said villa (being villa no: 017) was ₹ 1,09,07,500/-, sale area being 5000 sq. ft. and rate per being ₹ 2,181/-. Further, the due date of possession as per clause 29 of the said agreement was 36 months plus 6 months grace period to be calculated from the date of execution of the said agreement or from the date of obtaining all the required sanctions and approvals necessary for the commencement of construction whichever is later. Thereby, the due date of possession being 03.11.2015. The payment was construction-linked and the respondent raised demands as per the stage of constructions as alleged in the demand letters. Believing the

alleged demands to be accurate, the complainant complied with all such demands and made timely payments. The total amount paid by the complainant to the respondent no.1 till date is ₹ 1,15,30,597/- plus TDS of ₹ 13,370/-.

- d. That, the complainant visited the project site in October,2021 and was utterly shocked to see that the respondent unilaterally changed the structural plan from basement, ground floor, first floor and second floor (as was mentioned and shown to the complainant in the respondent's brochure at the time of booking) to just ground floor, first floor and second floor. As per the E-brochure the basement was to consist of one home theatre, one lounge, one storeroom, one servant room with attached toilet, one pantry. The absence of the same not only considerably reduced the area by nearly 1000 sq ft (i.e., approx. 20% of the total sale area) but also led to a lack of the necessary requisite amenities and features that the complainant had booked for. As per clause 4 of the apartment buyers' agreement, the respondents were obligated to inform the complainant in writing of any modification resulting in more than 10% of addition/reduction in the area of the said unit.
- e. On enquiring from HUDA, the complainant got to know that the respondent had never received any approval for basement as a part of the structure. Therefore, the respondent, had deceitfully with malafide intentions made false statements and misrepresentations in its layout plan and E-brochure, on the basis of which the complainant paid the respondent her hard-earned money, totaling to considerable amount of ₹ 1,15,30,597/- plus TDS of ₹ 13,370/-.





- f. Furthermore, the complainant during his mentioned visit, captured some photographs of the site which point out that even though the respondent no.1 has deceitfully taken an amount more than the total sales price from the complainant under the alleged demands of electrical fittings, plumbing fitting, sanitary fittings, kitchen fittings, staircase railings etc. whereas in reality no such work has even been carried out by the respondents in the said villa. Various other misrepresentations and false depictions made by the respondent no.1 regarding the project land as well as the villa surfaced during such visit as follows:
- i. Entry point to the property has also been changed to a back lane instead of an internal road between towers and villas, as given in the brochure and site plan given by the respondent.
  - ii. That when the complainant applied for the said property, according to the site plan given by the respondent, area in front of the property was shown as forest area which has now been made into concrete area and added two-storey structure of school building instead.
- g. That, till date, even after a lapse of almost 7 years from the due date of possession, the construction of the unit is not only incomplete but also hugely different from what was initially represented to the complainant at the time of booking.
- h. In the present case, there has not only failure on the part of the respondent to carry out its obligations but most importantly, there have been false representations, statements and depictions made by the respondents to the complainant at the time of booking of said villa and the complainant, in good faith, relying on and





believing those misrepresentations has been made to part away with a considerable amount of money, as mentioned above, by the respondent.

- i. Thus, on account of failure of the respondents to carry out its obligations and in line with the proviso to Section 12, the complainant wishes to withdraw from the project and humbly prays for her hard earned to be returned to her with interest and reasonable amount of compensation in line with Rule 15. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (1) of Section 18 or the promoter fails to give possession of the apartment/plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19.
- j. Lastly, both respondent no.1 and 2 were jointly developing and promoting the said project. The same is mentioned in apartment buyer's agreement. The said agreement was entered among parties being JSG Builders Pvt. Ltd, NCC Urban Infrastructure (both called its landowners), Samyak Projects Private Ltd. (referred to as

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confirming party), Ansal Housing and Construction Ltd. (mentioned as developer) and the complainants. The agreement starts with the words the project namely 'Ansal Heights' is being developed by developer i.e., Ansal Housing and Construction Ltd. The said developer i.e., respondent no.1 has entered into an agreement with the confirming party i.e., respondent no. 2 to jointly promote, develop & market the proposed project. Accordingly, both respondent no.1 and 2 can be termed its 'promoters' in view of section 18 of Act. Thus, both of the promoters i.e., respondent no.1 and 2 are jointly and severally responsible towards the complainant and reliefs are being sought against both the respondents.

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

4. The complainant has sought following relief:
  - a. Refund entire amount paid by the complainant along with the interest.
  - b. Grant cost of litigation & compensation.
5. On the date of hearing, the authority explained to the respondents/promoter about the contravention 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 no. 1.**

6. The respondent has contested the complaint on the following grounds:
  - a. That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this Hon'ble Authority, as the complainant has admitted that she has not paid the full amount. The complainant has



filed the present complaint seeking interest. The present complaint is liable to be dismissed on this ground alone.

- b. That the complainants approached the respondent sometime in the year 2012 for the purchase of an independent unit in its upcoming residential project "Ansal Heights" situated in sector-92, Village Wazirpur, Gurugram. It is submitted that the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner.
- c. That even otherwise, the complainant has no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the apartment buyer's agreement dated 03.05.2012, as shall be evident from the submissions made in the following paragraphs of the present reply.
- d. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement was never signed between the complainant and the answering Respondent. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that parliament would not make the operation of a statute retrospective in effect.



Furthermore, in the absence of any contract between the parties the complainant cannot take benefit of the agreement that came into being between a different buyer and the respondent.

- e. It is further submitted that despite there being a number of defaulters in the project, the Respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within the prescribed time period as given by the respondent to the authority.
- f. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal thereby restraining the excavation work causing air quality index being worst, may be harmful to the public at large without admitting any liability. Apart from these, demonetization is also one of the major factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The sudden restriction on withdrawals led the respondent to be unable to cope with the



labor pressure. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana Government.

- g. That the respondent is carrying his business in letter and spirit of the builder buyer agreement but due to COVID"19 the lockdown was imposed throughout the country in March 2020 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent.
- h. That similarly, lockdown was imposed in the year 2020 which extended to the year 2022 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent.
- i. That the ban on construction was imposed by the Hon'ble supreme court of India in the year 2021 due to the alarming levels of pollution in Delhi NCR which severely affected the ongoing construction of the project.
- j. That it is submitted that the complaint is not maintainable or tenable under the eyes of the law as the complainant has not approached this Hon'ble Authority with clean hands and has not disclosed the true and material facts related to this case of complaint. The complainant, thus, has approached the Hon'ble Authority with unclean hands and also has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings



the question of entertaining the present complaint would have not arising in view of the case law titled as ***S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page-1*** in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the Hon'ble Authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as ***Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012 decided on 25.09.2013.***

- k. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to the coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the Authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant seeking interest and compensation cannot be called into aid in derogation and ignorance of the provisions of the builder buyer's agreement. It is further submitted that the interest in the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the builder buyer's agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in a case titled as ***Neelkamal Realtors***

*Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298*, the liberty to the promoter/developer has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of Section 3 of RERA Act as it was opined that the said Act named RERA is having prospective effect instead of retrospective. Para No.86 and 119 of the above said citations are very much relevant in this regard.

- l. That the respondent reserves the right to file additional replies and documents, if required, assisting the Hon'ble Authority in deciding the present complaint at the later stage. That it is submitted that several allottees have defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effect on the operation and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite the default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. The construction of the project is completed and ready for delivery, awaiting occupancy certificate which is likely to be completed by the year 2022.
- m. The Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the builder buyer's agreement, vide which complainants



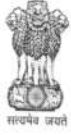




were agreed to pay in addition to basic sale price of the said unit he is liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainant further agreed to pay his proportionate share in any future enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.

- n. That the respondent approached and even sent a new agreement to the complainant to countersign it since the complainant was never the original allottee. However, the complainant only accepted the contract verbally and never put her initials over it. Therefore, the agreement between the original allottee and the respondent is imbecile for the complainant.
7. Notice to the promoter/respondent no. 2 in the above-mentioned complaint was sent through speed post and through e-mail address ([samyakprojects@gmail.com](mailto:samyakprojects@gmail.com)); the delivery report of which shows that delivery was completed. Despite service of notice, the promoter/respondent has failed to file a reply within the stipulated time period. Since, till today no reply has been submitted therefore, the authority assumes/observes that the respondent has nothing to say in the present matter and accordingly, the authority proceeds with the case without reply and the defence of the respondent no. 2 stands struck off.
8. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.





**E. Jurisdiction of the authority**

9. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I. Territorial jurisdiction**

10. 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**

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. 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 as per provisions of section 11(4)(a) of



the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

13. 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.*" SCC Online SC 1044 decided on 11.11.2021 wherein it has been laid down as under:

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

14. Furthermore, the said view has been reiterated by the Division Bench of Hon'ble Punjab and Haryana High Court in ***"Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021.*** The relevant paras of the above said judgment reads as under:

*"23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint*



*before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.*

*24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.*

*25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."*

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, and the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others. (supra)**", the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the objection raised by the respondent during the course of arguments for imposing liability upon respondent no. 2**

16. During the course of arguments held on 06.02.2023 the counsel for respondent no. 1, stated at bar that respondent no. 2 i.e., M/s Samyak Projects Pvt. Ltd. is a responsible party in the matter and is liable for relief sought. It is pleaded by the respondent that there was joint venture agreement executed between it and M/s Samyak Projects Pvt. Ltd. On the basis of that agreement, the respondent no. 1 undertook to proceed with the construction and development of the project at its own

cost. A reference to that agreement was also given in the buyer's agreement. So, in view of these facts, the presence of M/s Samyak Projects Pvt. Ltd. as a respondent before the authority is must and be added as such. But the pleas advanced in this regard are devoid of merit. No doubt there is mention to that collaboration agreement in the buyer's agreement but the complainant allottee was not a party to that document executed between respondents. The factum of merely mentioning with regard to collaboration agreement in the buyer's agreement does not ipso facto shows that M/S Samyak Projects Pvt. Ltd. is a responsible party. Moreover, the payments against the allotted units were received by the respondent no. 1 i.e., M/s Ansal Housing & Construction Pvt. Ltd. So, taking into consideration all these facts it cannot be said that M/s Samyak Projects Pvt. Ltd. is a responsible respondent. Therefore, the authority finds that the sole responsibility to return the amount paid by the complainant lies upon the respondent no. 1 as it is very clear from the documents placed on record that all the payments have been accepted by respondent no. 1 only.

**G. Findings on the relief sought by the complainant.**

**G.I. Refund entire amount paid by the complainant along with the interest.**

17. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference:

**"Section 18: - Return of amount and compensation**  
**18(1). If the promoter fails to complete or is unable to give possession**  
**of an apartment, plot, or building.-**



- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or  
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

**he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:**

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

*(Emphasis supplied)*

18. Clause 29 of the BBA dated 03.05.2012 provides for the handing over of possession and is reproduced below for the reference:

**"29. The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 30. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit."**

19. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the





commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoter are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

**Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 36 months plus 6 months from date of agreement or from the date of approvals required for the commencement of construction whichever is later. The due date of possession is calculated from the date of commencement of construction i.e., 14.06.2012 being later. The period of 36 months expired on 14.06.2015. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified.

20. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid along with interest at the prescribed rate. However, the allottees intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

**"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**  
(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.





*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

21. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
22. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., **12.04.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
23. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per agreement for sale as mentioned in the table above is **14.12.2015** and there is delay of 5 years 10 months 27 days on the date of filing of the complaint.
24. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in

***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.***

*".....The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

25. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022.*** It was observed:

*"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

26. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as 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 the unit with interest at such rate as may be prescribed.

27. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
28. The authority hereby directs the promoter to return the amount received by him i.e., 1,15,47,669/- with interest at the rate of 10.70% (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 each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

#### **F.II. Litigation cost & compensation.**

29. The complainant in the aforesaid relief is seeking relief w.r.t compensation. *Hon'ble Supreme Court of India in civil appeal 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. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

#### **H. Directions of the authority**

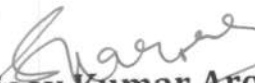


30. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the entire amount of ₹ 1,15,47,669/- paid by the complainants along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount.
- 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.
- iii. The respondent builder is directed not to create third party right against the unit before full realization of the amount paid by the complainants. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainants-allottee.

31. Complaint stands disposed of.

32. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.04.2023