

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

Complaint no.:	689 of 2022
Order reserved on:	10.01.2023
Date of pronouncement:	29.03.2023

Dipak Kumar Saharia & Rachna Saharia through SPA
R/o 2, Shyam Path, Near Jagdhatri Tower, Uliyan,
Kadma, Jamshedpur, Jharkhand-831005

Complainants

Versus

M/s Agrante Developers Pvt. Ltd.

Office address: 522-524, 5th floor, DLF Tower-A, Jasola,
New Delhi-110025

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Member
Member

APPEARANCE:

Shri. Rishabh Jain (Advocate)

None

Complainants
Respondent

ORDER

1. The present complaint dated 15.03.2022 has been filed by the complainants/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. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants(s), 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	"Beethoven's 8", Sector- 107, Gurgaon
2.	Nature of project	Group housing complex
3.	RERA registered/not registered	Not Registered
4.	DTPC License no.	23 of 2012 dated 23.03.2012
	Validity status	Not available on record
	Name of licensee	Narendra Kumar Gupta & others
	Licensed area	18.0625 acres
5.	Unit no.	Harmony I K/B/1704
		[pg. 36 of complaint]
6.	Unit area admeasuring	1702 sq. ft.
		[pg. 36 of complaint]
7.	Allotment letter	17.10.2014
		[pg. 33 of complaint]



8.	Date of builder buyer agreement	17.10.2014 [pg. 34 of complaint]
9.	Total sale consideration	₹ 1,03,60,970/- [pg. 43 of complaint]
10.	Amount paid by the complainants as per sum of receipts	₹ 27,80,102/-
11.	Possession clause	<p>Clause 18(a)</p> <p><i>Subject to other terms of this Agreement/Agreement, including but not limited to timely payment of the Total Price, stamp duty and other charges by the Vendee(s), the Company shall endeavor to complete the construction of the Said Apartment within 42 (Forty-two) months from the start of construction, which is not the same as date of this Agreement. The Company will offer possession of the Said Apartment to the Vendee(s) as and when the Company receives the occupation certificate from the competent authority(ies). Any delay by the Vendee(s) in taking possession of the Said Apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof.</i></p> <p><i>(Emphasis supplied)</i></p> <p>[pg. 50 of complaint]</p>
12.	Due date of possession	17.04.2018 [Due date calculated from date of agreement i.e., 17.10.2014 as date of start of construction is not known]
13.	Delay in handing over possession till the date of filing of this complaint i.e., 15.03.2022	3 years 10 months 26 days



14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
- The complainants, Mr Dipak Kumar Saharia and Mrs Rachana Saharia (hereinafter referred to as "complainants"), are peace loving and law-abiding citizens of India, who nurtured hitherto an un-realized dream of having their own apartment in the upcoming society with all facilities and standards, situated around serene and peaceful environment. The complainants always lead their life with full of honesty and truthfulness and epitomize utmost kindness and humanism.
 - The grievances of the complainants relate to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent in regard to the apartment no. Harmony I K/B/1704, 17th Floor, having a super area of 1702 square feet in the group housing scheme "Beethoven's 8" (hereinafter referred to as "Project") located at Sector - 107, under revenue estate of village Dharampur, Gurugram, Haryana, purchased by the complainants paying their hard earned money.
 - The respondent, Agrante Developers Private Limited (formerly known as RMS Estates Private Limited) (hereinafter referred to as respondent/developer/seller/builder/promoter/company) is a company duly incorporated under the Companies Act, 1956 (as amended up to date) and is being sued through its chairman cum managing director. The respondent is carrying out business as builder,

promoter and colonizer and is inter alia engaged in development and construction activities.

- d. In the agreement to sale (hereinafter referred to as "agreement") it is stated that the respondent along with its associates/subsidiary companies owns various parcels of land measuring 18.0625 acres in Sector 107, under revenue estate of village Dharampur, Gurugram, Haryana and the Director, Town and Country Planning, Haryana vide licence bearing no. 23 of 2012 dated 23rd March, 2012, had granted permission for the promotion and development of a said group housing complex to be known as "Beethoven's 8".
- e. The respondent demanded and collected a total sum of ₹ 27,80,102/- for the said apartment till December 2013. The respondent promised to deliver the possession till 17th April, 2018. Thereafter, despite of a delay of more than three (3) years and ten (10) months from the date of possession, the respondent has failed to offer for possession of the apartment till date.
- f. The genesis of the present complaint lies in the gross indifference, refusal and failure of the various obligations on the part of the respondent. The respondent initially enticed various customers including the complainants to pay their hard-earned money for the purchase of apartment in the said project known as "Beethoven's 8", located at Sector 107, under revenue estate of village Dharampur, Gurugram, Haryana. The respondent failed to timely develop the project and duped the complainants by withholding their hard-earned money completely due to the lapses and failure of the respondent.
- g. The respondent has failed to deliver the possession of the said apartment to the complainants by 17th April 2018, which is the date of



possession as per the agreement. Despite of a delay of more than three (3) years and ten (10) months from the date of possession, the respondent has failed to make offer for possession of the apartment till date and that is why, the complainants now seek refund of their deposited amount, with interest from dates of receipts, from the respondent for his failure to deliver the possession of the apartment.

h. The respondent published very attractive colourful brochure, highlighting the group housing complex 'Beethoven's 8' located at Sector - 107, under revenue estate of village Dharampur, Gurugram, Haryana. The respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country, in order to lure prospective customers including the complainants to buy apartment in the project. There are fraudulent representations, incorrect and false statements in the brochure. The complainants invite attention of the Hon'ble chairman of the Haryana Real Estate Regulatory Authority, Gurugram to Section 12 of the Act, 2016. The project was launched in 2012 with the promise to deliver the possession in time and huge funds were collected over the period by the respondent.

i. The complainants were approached by the sale representatives of the respondent, who made tall claims about the project "Beethoven's 8" describing it as the world class project. The complainants were invited to the sale office and were lavishly entertained, and promises were made to them that the project would be finished in time, complete with parking, horticulture, parks, club, and other common area facilities. The complainants were impressed by their statements and oral representations and ultimately lured to buy an apartment in the said



project. The complainants paid a total amount of ₹ 27,80,102/- till December 2013, towards the purchase of said residential apartment in its project "Beethoven's 8" located at Sector 107, under revenue estate of village Dharampur, Gurugram, Haryana.

- j. The allotment letter dated 17th October 2014 was issued by the respondent to the complainants, for allotment of residential apartment no. Harmony I K/B/1704, measuring 1702 square feet of super area in the project "Beethoven's 8". The agreement to sale was executed between the complainants and the respondent on 17th October, 2014 towards purchase of the residential apartment no. Harmony I K/B/1704, 17th floor, having a super area of 1702 square feet, for a total consideration of ₹ 1,07,46,409/- inclusive of EDC & IDC amounting ₹ 5,70,170/-, interest free maintenance security (IFMS) amounting ₹ 1,70,200/-, preferential location charges (PLC) amounting ₹ 85,100/- club membership charges amounting ₹ 1,00,000/-, car parking charges amounting ₹ 3,00,000/-, electricity installation charges amounting ₹ 1,00,000/-, power backup charges amounting ₹ 1,00,000/- and taxes amounting ₹ 3,85,439/-, in the group housing complex "Beethoven's 8" situated at Sector 107, under revenue estate of village Dharampur, Gurugram, Haryana. The respondent also acknowledged the payment of ₹ 27,80,102/- made by the complainants, in clause 3 f(a) of the said agreement.
- k. The respondent violated Section 13 of the Act, 2016 by taking more than ten per cent (10%) cost of the apartment before the execution of the agreement to sale. The total cost of the flat is ₹ 1,07,46,409/- including the EDC and IDC, interest free maintenance security (IFMS), preferential location charges (PLC), car parking, club membership,



electricity installation charges, power backup charges and tax, while the respondent had collected a total sum of ₹ 27,80,102/- which is more than 25% of the total cost of the apartment till 10th December 2013.

- l. The complainants paid in total of ₹ 27,80,102/- to the respondent. The respondent has demanded and collected a huge amount without following the payment plan stipulated in the agreement. The respondent collected more than 25% of the total consideration including the EDC and IDC, interest free maintenance security (IFMS), preferential location charges (PLC), car parking, club membership, electricity installation charges, power backup and taxes, but hardly completed 10% (ten percent) construction works of the project.
- m. The respondent kept the complainants in dark about the actual and true status of the construction of the apartment, bought by the complainants. The respondent kept telling the complainants that the apartment would be ready as per the commitments and the promises made to the complainants. The complainants have reposed faith in the representations made by the respondent, about the development of the project. The respondent kept raising demands, but the construction activities were not visible at the project site. The complainants have reasons to believe that the project had been abandoned by the respondent.
- n. The respondent has failed to deliver the possession of the said apartment to the complainants by 17th April 2018, which is the date of possession as per the agreement. Despite of a delay of more than three (3) years and ten (10) months from date of possession, the respondent has failed to make offer for possession of the apartment till date and

that is why, the complainants now seek refund of the deposited amount, with interest from dates of receipts, from the respondent for his failure to deliver the possession of the apartment.

- o. The complainants have lost confidence and in fact have got no trust left in the respondent/developer/builder as the respondent has deliberately and wilfully indulged in undue enrichment, by cheating the complainants beside being guilty of indulging in unfair trade practices and deficiency in services in not refunding the deposited amount of ₹ 27,80,102/- with interest and then remaining non responsive to the requisitions of the complainants.
- p. The complainants, both residing outside India, executed two (2) special power of attorney, both dated 30th December, 2021, in which both Mr Dipak Kumar Saharia and co-owner Mrs Rachana Saharia authorised Shri Bhola Lal Mittal as their true and lawful special attorney, for the purpose of filing court case, pursuing litigation, complaint case or to initiate any such other required process against the respondent, Agrante Developers Private Limited (formerly known as RMS Estates Private Limited) in regard to apartment no. Harmony I K/B/1704, 17th floor at "Beethoven's 8" situated at Sector 107, under revenue estate of village Dharampur, Gurugram, Haryana.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s)
 - a. Direct the respondent to refund the complainants the complete sum of ₹ 27,80,102/- along with appropriate interest as deemed fit by this authority from the date of payment till the realization of the said account.

b. Direct the respondent to pay a sum of ₹ 1,00,000/- towards legal expenses and costs.

5. 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.

6. The respondent has contended the complaint on the following grounds:

a. That the present reply is being filed on behalf of the respondent by Shri Satish Kumar who is the authorised representative of the respondent duly authorised vide board resolution dated 12.09.2022.

b. That the tower-H & J in the said project is ready and the construction of super structure is complete in tower-H and almost completed for tower-J. The necessary electrical wiring and works pertaining to plumbing and sanitation are also ready. It is submitted that the promoter would be in a position in all probability to offer possession of the flats in tower-H in 10-11 months from the date of filing of the present reply. The promoter has incurred and utilised his own funds and loans towards construction of the project and if the complaints pertaining to refunds are entertained at this stage it would jeopardize the fate of the project which would consequently hamper the valuable rights of the other allottees of project. The promoter is in the process of applying for occupation certificate for tower- H and J.

c. That the respondent proposes to transfer the unit of the complainants from tower-K to tower-H or J as suitable to the complainants. The

promoter is willing to adjust for the interest components as computed for delay in offering possession towards the balance sale consideration of the complainants as the promoter will offer possession in tower-H and J to the complainants shortly.

- d. That the statement of objects, reasons and preamble of the Act makes it manifestly clear that it is not only the interest of the consumers of the real estate sector which the Act seeks to protect and safeguard but also the promotion of the real estate with a view to ensure sale of plot, apartment etc. Therefore, this Ld. AO should consider the said objective especially in light of preceding paragraphs. The Hon'ble authority is empowered not only to monitor the projects but also to ensure their timely completion where projects are held up or stopped and to take steps so the same are completed in time and in the interest of the allottees who are awaiting possessions of the units in the project. It is not out of place to mention here that due to pending registration of the project with the Hon'ble Authority the promoter since the implementation of the Act unable to raise funds from its existing customers nor it could raise finance by selling unsold inventory. The shortage of funds to enable rapid construction had been a determining factor for the delay as it slowed down the pace of construction considerably. It is reiterated that the promoter is undertaking costs of constructions from its own pockets and is not demanding anything from the allottees, an act which is unprecedented by any other real

estate company, and it is now for this Authority to balance the interest of the consumers and the promoters harmoniously to achieve the maximum good and benefits.

- a. **FORCE MAJEURE CIRCUMSTANCES:** That M/s RMS Estate Pvt Ltd (now known as "Agrante Developers Pvt Ltd") was granted development license from Director Town and Country Planning, Haryana ("DTCP") for development of land spread over a total area of 18.0625 acre of land on which the present project is being developed. The said license was granted on 27.03.2012 and was valid for 4 years.
- b. That subsequent to grant of the above license the promoter had executed a development/collaboration agreement dated 23.05.2013 with M/s Sarvaram Infrastructure Pvt Ltd ("Collaborator"). An area admeasuring 10.218 acres out of the aforesaid total land was handed to the collaborator with absolute and exclusive rights for the purposes of developing the same. It is pertinent to mention here that M/s Sarvaram Infrastructure Pvt Ltd himself or through his nominee had proposed to build a separate project namely "ELACASSA" on that parcel of land with which the promoter has no association whatsoever. Thus, resultantly there were two projects being developed under the same license by two distinct colonizers with rights and liabilities strictly framed under the said collaboration agreement. It would not be out of place to mention here that such agreements were in common practice then.

- c. The development/collaboration agreement dated 23.05.2013 stipulated strict liability on M/s Sarvaram Infrastructure Pvt Ltd or his appointed nominee to be in compliance of all statutory compliances, bye-laws applicable as per HUDA, DTCP etc as applicable for his parcel of land. M/s Sarvaram Infrastructure Pvt Ltd was further under the obligation to remit all the dues accrued towards governmental authorities arising under the agreement for the portion of land with the collaborator under the agreement.
- d. That M/s Sarvaram Infrastructure Pvt Ltd however, started defaulting in his compliance of statutory duties and contractual obligations. The promoter had on several occasions issued written requests and even served legal notices to M/s Sarvaram Infrastructure Pvt Ltd to rectify the said defaults inter-alia payment of EDC and IDC charges. The promoter had taken every step to ensure compliance of statutory obligations as non-compliance by M/s Sarvaram Infrastructure Pvt Ltd would directly prejudice the promoter's project completion having the common license. It is submitted that the license for the land lapsed due to non-renewal, and it cannot be renewed until outstanding EDC & IDC charges along with penalty is not cleared for the total land jointly by the promoter and M/s Sarvaram Infrastructure Pvt Ltd in proportion to their respective projects. Needless to mention here that the promoter is ready and willing to pay its share of EDC and IDC charges for the purposes of renewal of license.

- e. That the bona-fide of the promoter can be further gathered by the fact that the promoter is running post to pillar and has filed a representation before financial commissioner (Haryana) seeking a bifurcation of the license in two parts for two projects respectively and pursuing the same sincerely. It is pertinent to mention that only after renewal of license the promoter will be competent to obtain RERA registration. The promoter has undertaken every possible measure in his armour to salvage the project and complete the same.
- f. It is submitted that the promoter has filed for HARERA registration vide order letter dated 09.08.2018 of its project on the said land which was to be with the applicant as per the agreement. The fate of the application is dubious and is still pending as the aforesaid license has lapsed and not existing anymore as on date and further, EDC and IDC charges are unpaid which were to be paid by the M/s Sarvarm Infrastructure Pvt Ltd. It is pertinent to mention here that the directors of the Sarvarm Infrastructure Pvt Ltd are lodged in jail presently. The promoter is crippled in the sense that he is unable to correspond with them which could perhaps lead to any fruitful results. Moreover, insolvency proceedings are pending against them before Hon'ble National Company Law Tribunal.
- g. It is submitted that due to non-registration with HARERA, the promoter is unable to sell its proposed units in its project. More particularly the applicant is crippled financially as no demand can be

raised from its existing members. It is to be kindly considered by this Hon'ble Court that the promoter has accordingly not raised a single demand from its members and has not collected more than 40% of total sale consideration of a unit from any of its members. On the contrary the promoter has undertaken the tedious task of completing the construction of the project from its own finances and loans so as to offer possession and is also remitting the interests on subvention scheme on behalf of customers so as to protect them from further loss. The overall conduct of the promoter plays a vital part in deciding the complaint such as the present one. The promoter is faced with peculiar circumstances which would require mutual cooperation of its members.

- h. That, it would be of high importance to mention one similar complaint filed with this Hon'ble Authority wherein similar issues were being adjudicated. The Hon'ble Authority under HARERA had the opportunity to deal with similar complex issues faced by developers in respect of the licensed land wherein the original licensee had further subdivided the land for development purposes on the basis of collaboration agreements. This Hon'ble Authority in complaint no. 826/2018, 1402/2018, 1343/2018, 1344/2018 had passed common orders. The issues in these complaints were similar to the applicant's issues. In this case also the original licensee Triveni Ferrous Infrastructure Pvt Ltd a joint venture comprising of two groups Seth

and Mittal Group who had subsequently divided/assigned development/marketing rights into five separate lands holding to be developed separately pursuant to which similar issues arose which are being faced by the applicant. This Hon'ble Authority in that complaint had passed its conclusions and recommendations more particularly the recommendation to Town and Country Planning Department, Haryana stressing the grave importance that DTCP must divide license in five parts (as there were five assignee developers) and determine liabilities of each party individually and separately (liability on account of overdue License fee, EDC, IDC penal interest and other charges). Once the license is bifurcated separate RERA registration would be permissible besides this Hon'ble Authority had also pertinently recommended that DTCP should defer recovery of their overdue EDC so as to leave some cash flow in the hands of the developers for investing in the project. Therefore, the promoter prays with folded hands to refer the present matter to the Hon'ble Authority in light of the aforementioned case law as cited so that similar recommendations can be issued on behalf of the promoter to Town and Country Planning Department, Haryana. It is submitted that such recommendations would be in parlance with the statutory duty of the Hon'ble Authority in section 32 of the Act which states the functions of the Hon'ble Authority for promotion of the real estate sector.

7. 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 on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. 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

9. 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

10. 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.

11. 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.
12. 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. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

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

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to refund the entire amount paid by the complainants along with interest from the date of each payment till realization of the same in view of violation of section 18(1) of the Act.

14. In the present complaint, the complainants 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. 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)

15. Clause 18(a) of the agreement provides for handing over of possession and is reproduced below:

"18(a).

Subject to other terms of this agreement/agreement, including but not limited to timely payment of the total price, stamp duty and other charges

*by the vendee(s), the company shall endeavour to complete the construction of the said apartment **within 42 (forty-two) months from the date of allotment, which is not the same as date of this agreement.** The company will offer possession of the said apartment to the vendee(s) as and when the company receives the occupation certificate from the competent authority(ies). Any delay by the vendee(s) in taking possession of the said apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof."*

16. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The due date of possession has been calculated as per clause 18(a) of the BBA, the possession of the subject apartment was to be delivered within a period of 42 months from the date of start of allotment, which is not the same as date of this agreement. Accordingly, the due date calculated from date of allotment i.e., 17.10.2014.
17. Keeping in view the fact that the allottees/complainants wish to withdraw from the project and are 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 application form as mentioned in the table above is 17.04.2018 and there is delay of 3 years 10 months 26 days on the date of filing of the complaint.
18. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which they had

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....."

19. Further, 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. observed as under: -

"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."

20. 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) of the Act. The promoters have 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 promoters are liable to the allottees, as the allottees wishes

to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.

21. 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.
22. **Admissibility of refund along with prescribed rate of interest:** The complainants is seeking refund the amount paid by them along with interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest. 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.

23. 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.
24. 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., 29.03.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.



25. The authority hereby directs the promoter to return the amount received by them i.e., ₹ 27,80,102/- after deducting the amount already paid by the respondent, if any along 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 rules.

F.II Cost of litigation

26. 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 complainants may approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:
- The respondents/promoters are directed to refund the entire amount of Rs. 27,80,102/- after deducting the amount already paid by the

respondent, if any along with interest at the rate of 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 respondents/builders are 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.

28. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.03.2023

HARERA
GURUGRAM