



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

**Complaint no. : 4004 of 2021**  
**First date of hearing: 22.11.2021**  
**Date of decision : 09.02.2023**

Vandana Sethi  
R/O : Flat No. C-2002, Sushant Lok,  
Phase - 1, Gurugram - 122009

**Complainant**

**Versus**

M/s Pareena Infrastructure Pvt. Ltd.  
Office: Flat No. 2, Palm Apartment, Plot No. 13B,  
Sector - 6, Dwarka, New Delhi - 110075  
Also at : C-7A, Second Floor, Omaxe City  
Centre, Sector-49, Sohna Road, Gurugram-122018

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Sanjeev Kumar Arora

**Member**  
**Member**

**APPEARANCE:**

Sh. Sukhbir Yadav  
Sh. Prashant Sheoran

**Counsel for the complainant**  
**Counsel for the respondent**

**ORDER**

1. The present complaint dated 08.10.2021 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 under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.



**A. Unit and project related details**

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:

S.N.	Particulars	Details
1.	Name and location of the project	"Coban Residences", sector-99 <sup>a</sup> , Gurgaon
2.	Nature of the project	Group Housing Project
3.	Project area	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid up to 11.06.2024
5.	Name of licensee	Monex Infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	<b>Registered</b> Vide no. 35 of 2020 issued on 16.10.2020 valid up to 11.03.2022 + 6 months = 11.09.2024
7.	Unit no.	302, 3 <sup>rd</sup> Floor, Tower. T-3 [Page 34 of complaint]
8.	Unit admeasuring area	1997 sq. ft. of super area [Page 34 of complaint]
9.	Allotment letter	20.11.2013 [Page 30 of complaint]
10.	Date of builder buyer agreement	06.04.2014 [Page 32 of complaint]
11.	Possession clause	<i>3.1 That the developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located with 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans.....</i> <b>Emphasis supplied....</b>
12.	Date of start of construction	16.10.2014



		[as per demand letter dated 05.01.2021 page 72 of complaint]
13.	Due date of possession	16.10.2018 [Calculated from start of construction i.e. 16.10.2014]
14.	Total sale consideration	Rs. 1,22,45,618/- [as per schedule pf payment page 49 of complaint]
15.	Total amount paid by the complainant	Rs. 62,14,028/- [as per demand letter dated 05.01.2021 page 72 of complaint]
16.	Occupation certificate	13.12.2022
17.	Offer of Possession	Not offered

**B. Facts of the complaint:**

3. The complainant has made the following submissions in the complaint:

- I. That in January 2013, complainant received a marketing call from the office of the respondent. The caller represented himself as a manager of the respondent and marketed a residential project namely "Coban Residences" situated at Sector - 99 A, Gurugram. The complainant along with her husband visited the Gurugram office and project site of the respondent/builder. There they met the marketing staff of builder and got information about the project. The marketing staff gave them a brochure and pricelist etc. and allured her with a shady picture of the project. The marketing staff of builder assured the complainant that possession of flat would be handover within 4 years of the booking.
- II. That believing on representations and assurances of respondent, the complainant booked flat bearing no. 302 in tower T3 for size admeasuring 1997 sq. ft. and paid a booking amount of Rs. 8,50,000/- vide Cheque No. 969184 dated 17.01.2013. The flat was purchased under the construction



linked plan for a sale consideration of Rs. 1,22,45,618/-. It is pertinent to mention here that the respondent accepted the booking before the launch of the project. It is further pertinent to mention here that the respondent got the license for the project on 12.03.2013 vide license no. 10 of 2013, and the project was launched in January 2013. On 20.11.2013, the respondent issued a provisional allotment letter in favor of complainant.

- III. That after a long follow-up, on 06.04.2014, a pre-printed, unilateral, one-sided, arbitrary ex-facie builder buyer's agreement was executed inter-se the respondent and the complainant. That agreement has a plethora of clauses and according to clause no. 3.1, the builder/respondent has to give possession of the flat within 4 years of the start of construction or execution of the agreement whichever was later. The construction of the project commenced on 16.10.2014 and therefore, the due date of possession was 16.10.2018.
- IV. That on 05.10.2016, the respondent sent a letter to the complainant and stated "To take our relationship a step forward and to compliment your commitment of timely payment, we are pleased to provide you the loyalty bonus of Rs. 5,99,100/- (@ Rs. 300/- per sq. ft.) under the canopy of Pareena Honors-a loyalty program introduced by the company. The said amount will be adjusted in future installments proportionately payable by you.
- V. That on 24.01.2017, the respondent sent a demand letter to the complainant and raised a demand of Rs. 14,03,983/- and asked her to pay the amount. It is pertinent to mention here that as per said demand letter, the complainant paid Rs. 62,14,028/- to the respondent. Upon receiving the demand letter, the complainant requested the respondent that due to some personal financial reason she is unable to pay the demand raised and requested the respondent to cancel the unit and refund the paid amount.



- VI. That in the meanwhile, the complainant made several calls to the respondent and requested to cancel the unit by deducting 10% of the earnest money and pay the balance paid amount. The complainant also informed the respondent regarding the ill health of her husband and that he was detected with cancer & due to which facing financial constraints and was not able to pay the demands raised by it. It is pertinent to mention here that even after multiple requests of the complainant regarding the cancellation of the unit & refund of the balance paid amount, the respondent did not pay any heed to the requests of the complainant.
- VII. That on 06.01.2021, the respondent sent a letter to the complainant stating "Notice for Revocation of Credit Note Under Pareena Honors" and asked to clear the outstanding dues in 7 days to enjoy the benefit under the said scheme. It is pertinent to mention here that the complainant made multiple requests to the respondent regarding the cancellation of the unit & refund of the balance paid amount and also informed that 26.05.2020, her husband died due to cancer and again requested it to cancel the unit & refund the balance paid amount but till today, the respondent has not cancelled the unit nor refunded the balance paid amount.
- VIII. That on 05.02.2021, the complainant complained to the SHO, sector - 50, and alleged "This is regarding Apartment which I had booked on 5<sup>th</sup> April 2014. According to the Builder Agreement of Pareena builder was supposed to complete construction in 4 years that is last by 5<sup>th</sup> April 2018. As per builders Agreement after 2018 they are supposed to give late fine also. Till now construction is completed only 60%. It will take another almost 2 years to complete the project. Between this time my Husband had Cancer and he passed away on 26<sup>th</sup> May 2020. Also during this me and my Husband also made end number of calls to builder to cancel the apartment and issue



refund. We have also been to builder office but no positive response was given”

- IX. That on 05.01.2021, the respondent sent a demand letter to the complainant and acknowledged that she has paid a total demand of Rs. 62,14,028/- i.e. more than 50% of the total sale consideration & also asked to pay the outstanding amount of Rs. 54,61,252/-. It is pertinent to mention here that despite making multiple requests by the complainant regarding cancellation of the unit & refund of the paid amount, the respondent kept sending the reminder letters & did not pay any heed to her requests.
- X. That the complainant visited several times the office of the respondent and made phone calls to it and asked to cancel the unit and refund the balance paid amount but the respondent did not pay any heed to the just & reasonable demand of the complainant. Hence this complaint.
- C. Relief sought by the complainant:**
4. The complainant has sought following relief(s).
- I. Direct to refund the paid money along with interest as per Act, 2016 and the rules and regulations thereunder.
  - II. Direct the respondent party may kindly be directed to the compensation of Rs. 10,00,000/- for causing mental agony and Rs. 5,10,000/-.
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 contested the complaint on the following grounds.
- a. That the construction of the said project is at an advanced stage and the structure of various towers has already been completed and remaining



work is endeavored to be completed as soon as possible. However, it is pertinent to mention here that construction work at present is nearly completed and respondent is endeavoring to apply for occupation certificate quite soon and under normal circumstances would offer possession up to first quarter of year 2022 after obtaining occupation certificate.

- b. That quite conveniently certain pertinent facts have been concealed by the complainant. The concealment has been done with a motive of deriving undue benefit through an order, which may be passed by this authority at the expense of the respondent.
- c. That the respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of installments by various allottees. This clearly shows unwavering commitment on the part of the respondent to complete the project. Yet, various frivolous petitions, such as the present one seriously hampers the capability of the respondent to deliver the project as soon as possible. The amounts which were realized from the complainant have already been spent in the development work of the proposed project. On the other hand the respondent is still ready to deliver the unit in question due to completion to the complainant, of course, subject to payment of due installments and charges.
- d. That admittedly, completion of project is dependent on a collective payment by all the allottees and just because few of the allottees paid the amount, demand does not fulfill the criteria of collective payment. It is submitted that numerous allottees have defaulted in payment demanded by the respondent, resulted in delaying of completion of project, yet the respondent is trying to complete the project as soon as possible by managing available funds.



- e. It is crystal clear that over a period of time numerous allottees have defaulted in their payments at the relevant stages of construction and it is not possible to construct with adequate funds. Though the respondent had several other projects but it is not legally permissible to divert fund of one project into another. Thus the situation of non - payment of amount by the allottees is beyond the control of respondent. It is submitted that even in the apartment buyer agreement, it was stated that period of 4 years was subject to normal conditions and force majeure and with any stretch of imagination, the situations faced by respondents are not normal. It is submitted that if we go through table given above, more than 30% payment was not received by the respondent yet the work at the site is completed approximately 80 to 90 percent. It is the fault of those allottees who had committed defaults and respondent should not be made to suffer for the same.
- f. That other than above stated factors, there are lots of other reason which either hamper the progress of construction of in many cases complete stoppage of construction work i.e. NGT orders.
- g. The Hon'ble supreme court in Nov 2019 wherein it was ordered that *"With respect to demolition and construction activities we direct that no demolition and construction activities take place in Delhi and NCR region. In case it is found that such activity is done, the local administration as well as the municipal authorities including the Zonal Commissioners, Deputy Zonal Commissioners shall be personally held responsible for all such activities. They have to act in furtherance of the Court's order and to ensure that no such activity takes place"* That said order was revoked by Hon'ble supreme court in Feb 2020 whereby it was ordered that *"The restriction imposed vide order dated 04.11.2019 is recalled. As per the*





*norms, the work can be undertaken during day and night by all concerned, as permissible. Application for direction is, accordingly, disposed of."*

- h. That the situation of COVID pandemic is in the knowledge of everyone. Since march 2020 till now our country has seen mass migration of labor, complete lockdown in whole of the country, curfews and several other restrictions. That present situation seriously hampered the construction progress in real estate sector. From march 2020 till now, there have been several months where construction work was completely stopped either due to nationwide lock down or regional restrictions. The metro cities like Gurgaon and Delhi suffered from a major outburst of COVID cases and deaths in such a number which can't be comprehended. There has severe dearth of labour due to state imposed restrictions. The developers were helpless in these times as they had no alternative but to wait for the situation to come under control. Even RERA has extended the time limit for completion of project vide notification dated 26.05.2020, by six months. But the aforesaid was the period evidencing the first wave but the relaxation in restrictions were seen at fag end of year 2020 however soon thereafter, the country saw a more dangerous variant of COVID from the month of March 2021 and only recently restrictions have been lifted by the government. The whole of this consumed more than 11 months wherein 2/3<sup>rd</sup> time there could be no construction and rest of the time, the construction progressed at very slow pace to several restrictions imposed by state government on movement and number of person allowed etc. The authority would appreciate the fact that developer has to face several difficulties in construction of project few out of the several are already discussed above. Moreover, the complainant did not opt services of respondent against a single unit isolated from whole of



the project or other units in same tower. At the time of seeking allotment in the project of respondent, complainant very well knew that unit / apartment in question is a part of tower consisting of several other units and the unit shall be completed along with other units which belong to other allottees. It is submitted that merely because few allottees have paid on time, it does not fulfill the criteria of complete payment required for construction of whole of the tower/project. The complainant knew that without complete payment on time from all allottees it is not possible or quite difficult to complete the project on time. It is submitted that for the same reason the clause of "force majeure" was made part of agreement. It is absolutely beyond the control of developer to get money from the buyer on time. It is submitted that after a demand was raised, the only thing developer can do is to send a reminder and in extreme cases cancellation. But reminders / cancellation do not bring money which the developer had already incurred and is incurring continuously.

- i. That it is the admitted fact that the builder buyer agreement was executed between the parties on 06.04.2014. However, certain extremely important facts were concealed by the complainant while drafting the present complaint. The complainant has intentionally provided details of payments only but concealed the facts whether the payments were made on time or not. It is submitted that material, labor and other requirements do not come for free. If allottees wish to get the possession on time, then it is their legal duty to pay on time, as without money it is not possible to construct the project on time. The complainant made default in payment of various dates i.e. 03.01.2017, 24.01.2017, 08.04.2017, 11.07.2017, 05.01.2021.



- j. It is clear that complainant never paid amount on time. It is submitted that RERA is based on principles of natural justice and equity and these principles applies both to allottee and developer alike. It is further submitted that RERA does not give absolute right to allottee to seek delayed possession charges if in standard time project is not completed. It is submitted that allottees rights are governed through their duties and if they failed to fulfill their duties, then they have no right to seek delayed possession charges. None is allowed to take benefit of their own mistake.
- k. The construction is reciprocal to amount paid and it is not possible to raise complete construction without getting complete amount. Thus in such cases if delayed possession charges are granted, then it would be absolutely against the natural justice. It is pertinent to mention here that whatsoever amount which was received by respondent has already been utilized for construction and it is the complainant who delayed in payments. Thus, she cannot put blame upon respondent. So keeping in view of above stated facts and circumstances, present complaint is not maintainable and deserves to be dismissed.
7. 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**

8. The authority has complete territorial and 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, Haryana, the jurisdiction of Haryana Real

Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 complainant 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. 2021-2022 (1) RCR (Civil), 357* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs*

**Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022**, wherein it has been laid down as under:

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

**F.I Objection regarding force majeure conditions:**

14. 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 orders of Hon’ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA and non-payment of instalment by different allottees of the project. But all the pleas advanced in this regard are devoid of merit. As per the flat buyer’s agreement, the due date of handing over of possession comes out to be 16.10.2018. The events such as Hon’ble



Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happenings after due date of handing over of possession. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and plea taken by respondent is devoid of merit.

15. 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 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."*

16. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 16.10.2018 and is claiming benefit of lockdown which came into effect on 24.03.2020 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. Findings on the relief sought by the complainant.**

**G.I Direct to refund the paid money along with interest as per Act, 2016 and the rules and regulations thereunder.**



17. Even though the complainant alleges that she had made requests to the complainant for cancellation of unit but there is nothing on record to prove that the complainant made any such request. She had filed a complaint to the SHO but the same was done in 2021 i.e., after the due date of possession. Hence, a case of refund is made out.
18. The counsel for the complainant stated that the OC has been received by the respondent only on 13.12.2022 i.e. after filing of the complaint as well as filing of the reply while due date of handing over of possession was 16.10.2018. The complainant/allottee is not interested in continuing in project and is seeking refund after 3 years from the due date is over as allottee cannot be expected to wait endlessly and seeking the statutory right under section 18 (1) of the Act of refund along with interest at the prescribed rate.
19. 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.
20. The due date of possession as per agreement for sale as mentioned in the table above is **16.10.2018** and there is delay of 3 years on the date of filing of the complaint.
21. The occupation certificate /part occupation certificate on 13.12.2022 of the buildings/towers where allotted unit of the complainant is situated was received after filing of application by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The



complainant-allottee has already wished to withdraw from the project and has become entitled her right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate.

22. 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"*

23. 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, she 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.

24. This is without prejudice to any other remedy available to the allottee including compensation for which she 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.
25. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 62,14,028/- with interest at the rate of 10.60% (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*.

**G. II Direct the respondent party may kindly be directed to the compensation of Rs. 10,00,000/- for causing mental agony and Rs. 5,10,000/-.**

26. The complainant is also seeking relief w.r.t litigation expenses. 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.


**F. 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):

- i. The respondent is directed to return the amount received by him i.e., Rs. 62,14,028/- from the complainant with interest at the rate of 10.60% (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.
  - 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 is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
28. Complaint stands disposed of.
29. File be consigned to registry.

  
**Sanjeev Kumar Arora)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

  
**(Vijay Kumar Goyal)**  
Member

Dated: 09.02.2023