BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**1348 of 2022**
Date of filing complaint	**31.03.2022**
First date of hearing	**10.06.2022**
Date of decision	**17.01.2023**

1. Shashank Gaur 2. Adarsh Gaur **both R/o:** 642, Chirag Delhi, Near Shiv Mandir, Malviya Nagar, South Delhi, Delhi-110017	**Complainants**
Versus	
M/s Neo Developers Pvt. Ltd. **Regd. Office at:** 32B, Pusa Road, Delhi-110005	**Respondent**

CORAM:	
Shri Ashok Sangwan	**Member**
Shri Sanjeev Kumar Arora	**Member**
APPEARANCE:	
Ms. Daggar Malhotra Advocate	Complainant
Shri Pankaj Chandola Advocate	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 provision of the Act or the rules and regulations

made thereunder or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Neo Square", Sector 109, Gurugram
2.	Nature of the project	Commercial
3.	Project area	8.24 acres
4.	DTCP License and validity	102 of 2008 dated 15.05.2008
5.	RERA Registered/ not registered	Registered vide 109 of 2017 dated 24.08.2017 valid upto 23.08.2021
6.	Allotment Letter	N/A
7.	Plot no.	Retail space 33, 2nd floor (As per payment plan annexed at page 47 of the Complaint)
8.	Unit area admeasuring (super area)	269 sq. ft. (As per payment plan annexed at page 47 of the Complaint)
9.	Date of buyer's agreement	04.12.2018 (Page 28 of complaint)
10.	Date of MoU	04.12.2018 (Page 15 of complaint)
11.	Possession clause	Clause 3 of MoU: The company shall complete the construction of the said building/complex, within the said space is located within **36 months from date of**

		execution of this agreement or from the start of construction, whichever is later and apply for grant of completion/occupancy certificate.
12.	Due date of possession	04.06.2022 ✓ (Calculated as 36 months from date of execution of MoU plus 6 months of grace period for COVID-19 in lieu of notification of the Authority dated 26.05.2020)
12.	Date of MoU for lease rental	04.12.2018 (Page 15 of complaint)
13.	Lease Rental provision	Clause 7(a) of MoU: That the company takes responsibility of the first lease of the said unit whereupon the allottee(s) shall be entitled to receive the lease rentals at assured lease of Rs. 78.75/- per sq. ft. per month.
14.	Total sale consideration	Rs. 26,51,231.72 /- (As per payment plan annexed at page 46 of complaint)
15.	Amount paid by the complainant	Rs. 26,51,246/- (As per clause 4 MoU)
13.	Occupation Certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint:

3. That, on 04.12.2018, the complainants entered into a MoU with the respondent whereby the respondent allotted a commercial unit to the complainants in the respondent's project - Neo Square on the 2nd floor tower measuring 269 sq. ft. super built up area. The unit number bearing unit 33. The basic sale price being Rs.21,85,625/-, and payment plan opted and agreed upon being down payment plan, wherein, 10% of the basic sale price was to be paid on application for booking and 90% of the

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basic sale price was to be paid within 45 days of booking. The complainants and the respondent also entered into a BBA on 04.12.2018.

4. The allottees/complainants paid Rs. 26,51,246/- the receipt of which was acknowledged in clause 4 of the MoU as well as in clause 4 of the BBA. The respondent had also undertaken and promised to pay to the complainants assured returns @12% i.e., Rs.28,245/- per month vide email dated 29.06.2018. That, no such assured returns have ever been paid by the respondent to the complainants till date. And later, on 19.10.2020, the respondent sent a written correspondence regarding a construction update and status of monthly interest cheques (being the assured returns). It is pertinent to mention here that, at the time of booking, the respondent, in order to lure the complainants into booking a unit in the respondent's project had sent an email dated 07.06.2018 regarding the benefits and advantages of booking a unit in the respondent's project wherein it had mentioned assured monthly returns as a lucrative attraction. That believing such false and misleading representations of the respondent, the complainants have been made to part away with their hard-earned money.

5. Furthermore, as per clause 3 of the MoU, the respondent bound itself to complete the construction of the said unit within a period of 36 months from the date of execution of the MoU or from the date of start of construction, whichever is later. Therefore, the due date of possession being 04.12.2021. Till date, there is not even 10% construction of the respective building in which the complainant was allotted a unit. The respondent has failed to live up to its obligation under clause 3 of the MoU even after taking more than 100% of basic sale price from the complainant even before signing of the MoU or the BBA.

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6. The complainants had been following up with the respondents regarding the possession and assured returns and instead of making efforts to construct and give timely possession of the unit to the complainant, the respondent most arbitrarily sent a fresh BBA with modified /lop-sided terms, not in compliance with the RERA Act, to the complainants. The same has not been signed by the complainants till date due to the various illegal and lop-sided clauses. Some of the many illegalities in the fresh BBA are being enumerated below:

   i. No specific clause dealing with possession date was mentioned in the BBA.

   ii. As per Clause 5.4: On taking possession, the allottee shall have no claim against the respondent in respect of any item or work alleged not to have been carried out.

   iii. Clause 10.2: The liability of the allottee towards total maintenance charges shall be 1.2 times of the actual cost.

   Therefore, in view of the above, the complainants have not signed the fresh BBA as of now.

7. It is also pertinent to point out here that, both as per the signed MoU as well as the signed BBA, the MoU has been agreed upon to have an overriding effect on any other signed document/agreement entered between the parties. The contents of the MoU shall prevail over the contents of BBA. The same is also reiterated in clause 13 of the MoU and clause 20 of the BBA and therefore the present complaint has been based on the obligations undertaken by the parties in the MoU. However, till date only 10% of the construction is complete and the respondent with malafide intention sent across to the complainants a completely lopsided BBA and accordingly the complainants are compelled to file this present complaint.

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8. In the present case, there has not only been failure on the part of the respondent to carry out its obligations mentioned in the MoU but also false representations, statements made by the respondents to the complainant at the time of booking regarding the advantages/benefits of booking the unit. Thus, on account of failure of the respondent to carry out its obligations as per section 11(4) (a) and in line with sec-12, 18, 19(4) of the RERA act, 2016, the Complainants wish to withdraw from the project and humbly pray for their hard earned to be returned to them with interest.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):

a) Direct the Respondent to refund the principal amount of Rs.26,51,246/- paid by the complainants alongwith interest from the date of payment.

b) Award litigation costs to the tune of Rs.1,00,000/- or such amount as the Hon'ble Authority may deem fit, in the favour of the complainant and against the respondents.

D. Reply by respondent:

The respondent by way of written reply made following submissions:

10. That at the very outset, it is humbly submitted that the complainants have booked a shop bearing no. 33 located on 2nd floor in the project "NEO SQUARE" being developed by the respondent. That the complainants have opted for a down payment plan and the sale price of the unit as agreed in the memorandum of understanding and the buyer's agreement is Rs. 2,651,231/-.

11. That the instant complaint has been preferred by the complainant on frivolous and unsustainable grounds and the complainant has not approached this hon'ble authority with clean hands and is trying to suppress material facts relevant to the matter. The complainant is making false, misleading. fatuous, baseless, unsubstantiated allegations against the respondent with malicious intent and the sole purpose of extracting unlawful gains from the respondent.

12. At the very outset, it is submitted that before deciding the case on merits this Hon'ble Authority ought to decide the question of its own jurisdiction to decide upon the present complaint. That admittedly, the "Memorandum of Understanding" (hereinafter referred to as the "MOU") one the basis which the complainant has preferred the present complaint and which is the foundation for seeking relief in the present case, is a separate and stand-alone agreement and it is not an agreement of sale for the commercial unit, which is distinct and separate. There is no dispute asserted with regard to the agreement of sale in the complaint. That the MOU was executed between the respondent and the complainant to record the terms and conditions pertaining to leasing of the unit only.

13. It was submitted that the transaction between the complainant and the respondent was with respect to generating rental income for the complainant by leasing the allotted unit of the respondent. It is noteworthy to mention here that a mere perusal of the MOU clearly depicts that the said MOU only contains understanding pertaining to leasing of the unit. Hence the MOU is a separate agreement and in the present case, it is not an agreement to sell. That, in view of the aforementioned submissions the complaint filed by the complainant is

not tenable in the eyes of law for want of jurisdiction and therefore, the same deserves to be dismissed at the threshold.

14. It was submitted that the complainants were in search of making an investment in the real estate sector and came to know about the project of the respondent, thus the complainants approached the representatives of the respondent and showed their willingness of investing in the project of the respondent. That the complainants after verifying all the necessary approvals/ sanctions/documents and after being completely satisfied with the competency and capacity of the respondent, invested their money in the project of the respondent, accordingly a unit was allotted to the complainants by the respondent. It is noteworthy to mention here that the complainants did not purchase the commercial space for their personal use, they have purchased the unit for earning a return on the same. That the complainants are not the user of the unit but are merely an investor.

15. It was submitted that the transaction between the complainant and the respondent was with respect to generating rental income for the complainant by leasing the unit through the respondent. That the respondent adhering to the terms and conditions of the MOU has sent a letter dated 08.12.2020 inviting the complaints to examine the terms and conditions of the lease agreement relating to the time period of the lease, renewal option, rent etc. However, the complainants despite receiving the said letter never visited the office of the respondent and nor has made correspondence with respect to the same.

16. That upon failure of the complainants in finalising the lease, the respondent in accordance with clause 8 (a) and clause 9 (b) of the MoU wherein the complainants have given authority to the respondents to execute the lease agreement on their behalf, signed the lease agreement

with Ayan Foods. That the respondent being a responsible developer has executed the lease with Ayan Foods for the benefit of the complainants. Therefore, if the refund is allowed at this juncture then it will not only adversely impact the respondent but the lessee of the unit also.

17. That the construction of the project was hampered due to force majeure situations beyond the control of the respondent. That some of the force majeure situations faced by the respondent which affected or led to stoppage of the work for a brief period of time are being reiterated for the sake of the clarity:

A. Bans imposed on construction by various Courts/Tribunals/Authorities: It is pertinent to mention herein that in the past few years construction activities have also been affected by repeated bans by the Courts/Tribunals/Authorities to curb pollution in the region of Delhi-NCR. That the Environment Pollution (Prevention and Control) Authority, NCR (hereinafter referred to as the "EPCA") vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned all construction activities in the NCR region during night hours (6 p.m. to 6 a.m.) from 26.10.2019 to 30.10.2019. further, the EPCA vide its notification dated 01.11.2019 imposed a complete ban on construction activities from 01.11.2019 to 05.11.2019. Thereafter, the Hon'ble Apex Court vide its order dated 04.11.2019 passed in Writ Petition bearing no. 13029/1985 titled as "M C Mehta Vs Union of India" completely banned all construction activities in Delhi-NCR region. That the ban imposed by the Hon'ble Apex court was lifted on 14.02.2019. The aforementioned bans imposed by the Apex Court and the EPCA forced the migrant labourers to return to their native place, which led to shortage of labourers in the NCR region which hampered the construction activities at the project site.

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B. Covid-19 pandemic and subsequent Lockdowns: It is pertinent to mention that in March 2019 the Covid-19 pandemic hit the world. The Covid – 19 pandemic affected the nation's human resources, with the construction industry being hit harder than other sectors. That to restrict the Covid-19 from spreading the Ministry of Home Affairs, GOI has imposed a nationwide lockdown, which forced the migrant labourers to return to their hometowns. That when the lockdown was lifted the Developer has to face new sets of challenges such as:

i. Shortage of labourers

ii. New safety requirements and protocols including PPE, reduction in work crews, limitations on work hours

iii. Disruption in supply chain

iv. Shortage of materials

It is clear from the aforementioned submissions that the project was delayed unintentionally due to force majeure situations beyond the control of the respondent. It is noteworthy to mention that the representatives of the respondent duly apprised the complainant in one of their visits to the project site about the difficulties being faced by the respondent in completing the construction of the project due to the above-mentioned force majeure situations.

18. That the complaint at hand is not maintainable before the Hon'ble Authority as the respondent and the complainants have specifically agreed to resolve their dispute through arbitration proceedings through courts at New Delhi and the same is also recorded in buyer's agreement and MOU. That it was mutually agreed between the complainants and the respondent in clause 17, 18 of MOU and clause 22, 23 of the buyer's agreement dated 04.12.2018, that in case of any dispute arising out of the said agreements, the parties shall refer the matter for arbitration or the

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courts at New Delhi shall alone have the jurisdiction to entertain the dispute arose between the parties. Thus, this Hon'ble Authority is barred from entertaining the present complaint by the presence of the arbitration and jurisdiction clause.

19. It was also submitted that the complainant has prior to the filing of the complaint has not sought any refund from the respondent, therefore, as per agreed terms the payment made by the complainant is liable to forfeiture of earnest money and other non-refundable charges. It was also submitted that in the present case the complainant is seeking cancellation, therefore, in order to protect the interest of the respondent, the amounts deposited are liable to deductions.

20. 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 those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

E. Jurisdiction of the authority:

21. The plea of respondent regarding lack of jurisdiction with the Authority stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this

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authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding complaint not being maintainable due to presence of arbitration clause in the agreement between the parties:

22. The respondents submitted that the complaint is not maintainable for the reason that the agreement as well as MoU contain arbitration clause

which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

*"**Clause 22 of BBA- Arbitration:** That in case any dispute/difference between the parties, including in respect of interpretation of the present Agreement, the same shall be referred to arbitration of a sole arbitrator appointed by the parties mutually. The venue of Arbitration shall be New Delhi and the language of arbitration shall be English. The Costs of arbitration shall be borne jointly by parties. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996".*

*"**Clause 17 of MoU**: That in case of dispute and differences between the parties arising out of or in relation to this MOU, the matter shall be referred for arbitration to a sole arbitrator to be appointed in terms of Arbitration and Conciliation Act, 2015. The award tendered by the arbitrator shall be final and binding upon the parties. The fee of the arbitrator and expenses of the arbitration shall be equally divided between the parties. The proceedings shall be governed by Arbitration and Conciliation Act, 1996. The venue of Arbitration shall be New Delhi alone and the language of arbitration shall be English. The award given by the arbitrator shall be final and binding between the parties."*

23. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, followed in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017**, by the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws

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in force. Consequently, the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. It was also held in the latter case that the arbitration clause in agreements between the complainant and builder could not circumscribe the jurisdiction of a consumer forum.

24. While considering the issue of maintainability of a complaint before a consumer forum/commission in the face of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as **M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

25. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondents stands rejected.

F.II. Objections regarding the complainants being investors:

26. It is pleaded on behalf of respondent that complainants are investors and not consumers. So, they are not entitled to any protection under the Act and the complaint filed by them under Section 31 of the Act, 2016 is not

maintainable. It is pleaded that the preamble of the Act, states that the Act is enacted to protect the interest of consumers of the real estate sector. The Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are buyers and paid considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of term allottee under the Act, and the same is reproduced below for ready reference:

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

27. In view of above-mentioned definition of allottee as well as the terms and conditions of the flat buyer's agreement executed between the parties, it is crystal clear that the complainants are allottees as the subject unit allotted to them by the respondents/promoters. The concept of investor is not defined or referred in the Act of 2016. As per definition under section 2 of the Act, there will be 'promoter' and 'allottee' and there cannot be a party having a status of 'investor'. The Maharashtra Real

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

F.III. Objection regarding force majeure

28. A grace period of six months has already been granted to the respondent in lieu of force majeure event and hence, the objection becomes infructuous.

G. Findings of the Authority:

G.I Direct the Respondent to refund the principal amount of Rs.26,51,246/- paid by the complainants along with interest from the date of payment.

29. In the instant case, the complainants booked a unit in respondent's project A BBA was also executed between the parties on 04.12.2018. A MoU was also executed inter se the parties for first lease on 04.12.2018 only and according to the clause 3 of MoU, the due date of possession comes out to be 04.06.2022. It is also pertinent to highlight that the complainants have till now paid an amount of Rs. 26,51,246/- out of sale consideration of Rs. 26,51,231.72/-. However, even before the due date expired the complainant filed a complaint before the Authority for refund. Hence, it is a case of surrender of unit.

30. The respondent has submitted that it can forfeit an amount exceeding 10% in lieu of marketing charges and advertisement charges. However, the surrender of unit was made by the complainant after the Act, of 2016

came into force. The plea of the respondent regarding forfeiture of an amount exceeding 10% of the basic sale price of the unit, is devoid of merit. In fact the respondent can only forfeit 10% of the basic sale price and not more than that. Even the Hon'ble Apex court of land in case of **Maula Bux Vs. Union of India, (1970) 1 SCR 928** and **Sirdar K.B Ram Chandra Raj Urs. Vs. Sarah C. Urs, (2015) 4 SCC 136,** held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of Section-74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damage. The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

> ***5. AMOUNT OF EARNEST MONEY***
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> *Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

31. Keeping in view the above-mentioned facts and since the allottee filed the present complaint on 31.03.2022, so the respondent was bound to act upon the same. Hence the authority hereby directs the promoter to return the deposited amount i.e., Rs. 26,51,246/- after forfeiture of 10% of sale consideration 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 filing of

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complaint i.e., 31.03.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

G.II. Award litigation costs to the tune of Rs.1,00,000/- or such amount as the Hon'ble Authority may deem fit, in the favour of the complainant and against the respondents.

32. The complainant in the aforesaid head is seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority:

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

i. The respondent-promoter is directed to refund the paid up amount of Rs.26,51,246/- to the complainant after deduction of 10% of sale consideration of the subject unit being earnest money as per Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with interest @ 10.60% p.a. on the refundable amount, from the date of

filing of complaint i.e., 31.03.2022 till the date of realization of amount.

ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

34. Complaint stands disposed of.

35. File be consigned to the registry.

Sanjeev Kumar Arora
Member

Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.01.2023