

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

*M/s Realtech Development and Infrastructure (India) Private Limited & others*  
Date of decision: 14.12.2022

NAME OF THE BUILDER		RAMPRASTHA PROMOTERS AND DEVELOPERS PRIVATE LIMITED.	
PROJECT NAME		THE SKYZ "MARIA SHARA POVA" <i>✓ 6009</i>	
S. No.	Case No.	Case title	APPEARANCE
1	CR/3171/2019/ /6009/2019	Nitin Thakur and others V/S M/s Realtech Development and Infrastructure (India) Private Limited and others	Shri Nikhil Thakur Advocate and none has appeared on behalf of respondents
2	CR/2917/2021	Shafali Agarwal and others V/S M/s Realtech Development and Infrastructure (India) Private Limited and others	Ms. Shilpi Sharma Advocate and none has appeared on behalf of respondents

**CORAM:**

Shri Ashok Sangwan

Member

Shri Sanjeev Kumar Arora

Member

**ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, the Ballet by "Maria Sharapova" (group housing project) being developed by the same respondent/promoter i.e., M/s Realtech Development and Infrastructure (India) Private Limited. The terms and conditions of the booking application form and receipt of payments against the allotment of units in the upcoming project of the respondent/builder and fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.
  3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	<b>Realtech Development and Infrastructure (India) Private Limited "Maria Sharapova " Sector-73, Gurugram.</b>
<b>Possession Clause: - Cannot be ascertained</b>	

<b>Sr. No</b>	<b>Complaint No., Case Title, and Date of filing of complaint</b>	<b>Reply status</b>	<b>Unit No.</b>	<b>Date of apartment buyer agreement</b>	<b>Due date of possession</b>	<b>Total Consideration / Total Amount paid by the complainants</b>	<b>Relief Sought</b>
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1.	CR/3171/2019/6009/2019 Nitin Thakur and others V/S M/s Realtech Development and Infrastructure (India) Private Limited and others  Date of Filing of complaint 05.08.2019	Reply not received	N. A	N. A	Cannot be ascertained	TSC: - Rs.5 Crore (approx.)  (As alleged by the complainant page 15 of the complaint)  AP: - Rs.54,12,225/-  (As per receipt information page no. 41 to 44 of the complaint)	Refund the entire amount along with interest  Compensation
2.	CR/2917/2021 Shafali Agarwal and others V/S M/s Realtech Development and Infrastructure (India) Private Limited.  Date of Filing of complaint 23.07.2021	Reply not received	N. A	N. A	Cannot be ascertained	TSC: - Rs. Cannot be ascertained  AP: - Rs. 79,01,848/- (As alleged by the complainant page 5 of the complaint)	Refund the entire amount along with interest  Compensation

**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:**

**Abbreviation Full form**

TSC Total Sale consideration

AP Amount paid by the allottee(s)



4. The aforesaid complaints were filed against the promoter on account of violation of the booking application form and receipt of payments against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/3171/2019/6009/2019 Nitin Thakur and others V/S M/s Realtech Development and Infrastructure (India) Private Limited and others*** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.

**A. Project and unit related details**

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

***CR/3171/2019/6009/2019 Nitin Thakur and others V/S M/s Realtech Development and Infrastructure (India) Private Limited and others.***

S. N.	Particulars	Details
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1.	Name of the project	Ballet by "Maria Sharapova" Sector-73, Gurugram
2.	Project area	N. A
3.	Nature of the project	Group housing project
4.	DTCP license no. and validity status	N. A
5.	RERA Registered/ not registered	Not registered
6.	Unit no.	N. A
7.	Unit area admeasuring	3200 sq. ft. (As alleged by the complainant's page 15 of the complaint)
8.	Date of execution of apartment agreement by buyer	N. A
9.	Possession clause	N. A
10.	Due date of possession	Cannot be ascertained
11.	Total sale consideration	Rs.5 Crore (approx.) (As alleged by the complainant page 15 of the complaint)
12.	Amount paid by the complainants	Rs.54,12,225/- (As per receipt information page no. 41 to 44 of the complaint)

**B. Facts of the complaint**

8. The complainants have made the following submissions in the complaint: -
- a. That the complainants vide an application applied for the provisional allotment of the subject unit in the project detailed above and paid an amount of Rs. 54,12,225/- vide 4 (four) pay cheques issued in favour of respondent/promoter.
  - b. That the respondents have miserably failed to comply with the promise to deliver the possession of the flat in question on or before June 2016 and the same has not yet been delivered to the complainants. It is to bring to the notice of this authority that the respondents have violated the provisions of Sections 3 and 12 of the of the Act of 2016.
  - c. That the respondent companies are the developer and the promoter of a group housing project situated at Sector-73, Gurugram by the name and style of 'Ballet by Maria Sharapova' and invited applications for booking of residential units in the said project in the year 2013. The complainants were lured to purchase/book a residential flat in the said project situated at Sector 73, Gurugram. The representatives of the respondent's company made a sugar-coated representation of the said project being located and developed at a breath-taking location with 5 Star facilities with private swimming pool, indoor sports facility, and other luxuries.
  - d. That the complainants being induced by the above-mentioned representation of the entire project by the respondents decided to purchase/book a residential flat/apartment measuring 3200 sq. ft. and paid booking amount of Rs.54,12,225/- i.e., 10% of the total cost of the



- flat as Rupees Five Crore Fifty Lakhs(approx.) vide 4 (four) pay cheques in favour of respondent/promoter.
- e. That as per the terms and conditions as contemplated in the application form filled and submitted by the complainants, the possession of the residential flat had to be delivered within 36 months from the date of execution of the flat buyer agreement. However, the respondents in order to cheat and defraud the complainants have not entered into any flat buyer agreement till date. The representative of respondent No. 2 in furtherance to a telephonic conversation with the complainants have given false assurances vide email dated 12.03.2015 stating that the details of the schedule would be shared by first week of April 2015. They also gave the false assurances pertaining to the fact they would be calling up the complainants for unit selection and allotment process but have not shared any such details till now. Thereafter, the complainants in reply to the above said email dated 12.03.2015 issued an email dated 12.03.2015 to the representative of the respondent no. 2 to confirm the possible options for the exit and timelines of the said project, if the project did not kickstart even by end of March 2015.
- f. That as per the construction linked payment plan, respondent /promoter was under an obligation to begin the construction work at site within sixty days from the date of receipt of basic sale price i.e., by June 2013 and the said apartment was to be delivered to the complainants by June 2016. The entire booking amount was paid by the complainants to the respondents by 02.04.2013, which is clearly evident from the receipts of the booking amount that timely payments

were made by them. Therefore, the respondent no. 1 had absolutely no reason to delay the construction process.

- g. That the respondents assured the complainants that construction of the project would begin in the year 2014 and shall be complete within a short span of time. But to the utter shock of the complainants, it was discovered through a newspaper report of Times of India, New Delhi/ Gurgaon dated in 02.11.2017 quoting that: "Project using Sharapova name a no-show, FIR against her, realtor" that neither the respondent companies had any land for the development of the said project, nor the layout plan of the said project was approved by the competent authority. The respondents with a fraudulent intention had tried to mislead the complainants as there was no meaning of allotment of the flat in question to them. The complainants were in deep shock that the respondents are not the registered owner of the piece of land over which the construction of the said project had to done and had no right or authority to book and sell the land.
- h. That the complainants on various occasions visited the respondent/ promoter site office but the efforts went in vain as they had no plausible reason for the delay in the said project. The complainants finally on 11.04.2015 vide email dated 11.04.2015 addressed to the customer-care of the respondent no. 2 issued a formal note to refund the pre-booking amount paid by them to the respondent no. 1 against the subject unit in the said project.
- i. Thereafter, the representative of the respondent no. 2 addressed to the complainants vide e-mail dated 13.04.2015 stated that the refund process had been initiated. However no refund of the booking amount





paid to the respondent no. 2 has been received by the complainants till date. Multiple e-mails were exchanged between the complainants and respondents in the month of March 2015 to October 2015 dated 12.03.2015, 03.04.2015, 11.04.2015, 13.04.2015, 23.07.2015, 26.04.2015, 24.09.2015, 24.10.2015 where the complainants constantly demanded the refund of the booking amount of Rs. Rs.54,12,225/- paid to the respondents and to which only false assurances for project completion were given to them.

- j. That the complainants were left with no other option, but to issue a notice dated 15.04.2016 claiming refund of the amount of Rs.54,12,225/- along with interest and damages against the subject unit booked in the said project to the directors of respondent no. 2. However, in spite of receiving the said notice dated 15.04.2016 for the refund, the respondent No. 2 has not refunded the amount to the complainants till date.
- k. That on 22.04.2016, the representative of respondent no.2 vide telephonically approached the complainants asking to visit the office for a personal meeting. During the meeting, it was requested by the representative of respondent no. 2 to grant an extension of 30 days for refunding the amount of Rs.54,12,225/-. However again, it was requested by the respondents to grant an extension till 18.07.2016.
- l. That again, the complainants served the directors of the respondents with a legal notice dated 07.01.2017 for the refund of the principal amount of Rs. 54,12,225/- along with an interest at the rate of 24% from the date of booking till the refund is made by 13.01.2017. But there was no response from the respondents.



m. The complainants were constrained to file a consumer complaint bearing Number **CC/113/2017** before the Hon'ble National Consumer Disputes Redressal Commission, for redressal of their grievances. The complaint was admitted, and subsequent notice was issued to the respondents under section 13 (2) of the Consumer Protection Act, 1986 by Hon'ble NCDRC vide order dated 30.01.2017. But thereafter, the service of the notice issued to the respondent no. 1 could not be completed as no one was found at the address of the registered office and the branch office of the respondent no. 1 as supplied by the complainants to the Hon'ble NCDRC. Now, the abovementioned consumer complaint was listed on 25.11.2019. However, on advice of the new counsel of the complainants and for proper adjudication of the subject matter before this authority, the said consumer complaint was withdrawn from Hon'ble NCDRC on 26.06.2019.

n. That a time span of six years has passed since the complainants had booked the subject unit with the respondents, but there has been no construction on the development side and till date they have failed to offer of possession. The respondents are liable for criminal breach of trust and cheating having no intention to develop the group housing project and miserably failed to handover the possession. The respondents never had any authority to develop the group housing project and fraudulently took money from the complainants.

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

9. The complainants have sought following relief(s)

- a. The respondents be directed to refund a sum of Rs.54,12,225/- to the complainants along with interest as prescribed per annum from 05.03.2013 to actual receipt of the same.
  - b. That the respondents be directed to pay an amount of Rs.21,12,000/- as per terms and condition for the application for allotment of the flat in the said project, for the delay caused by the respondents to deliver the possession of the said flat within the stipulated time period.
  - c. Initiate action against the respondents for non-compliance as the project is not registered with the RERA authority as per the provisions of section 3 the Act of 2016, thereby making the respondents guilty contravention of provisions of section 3 of the Act of 2016 and thus consequently hold the respondents liable to the penalty as per section 59 of the Act.
10. The present complaint was filed on 05.08.2019 and registered as complaint no. 3171/2019/6009/2019 of 2019. As per the registry, complainants sent copies of complaint along with annexures through speed post as well as through email. The tracking report of the same has been submitted by the complainant at page no. 100 to 103 of the complaint. The proof regarding the delivery of the complaint along with annexures made to the respondent, has been submitted by the complainants as available in the file. The registry of the authority sent a notice with a copy of the complaint along with annexures through speed post and the same returned as *Not delivered Addressee Left Without Instructions*. The tracking report of the speed post is available in the file.

Registry has also sent the notice along with a copy of the complaint through email and the mail was bounced back.

11. The authority before proceeding ex-parte against the respondents vide order dated 13.09.2022, issued direction with regard to issuance of notice by way of substituted service in the daily newspaper. But despite service of notice through the newspapers i.e., "Dainik Jagran" (Hindi) and "The Tribune" (English) the respondent failed to submit any reply till date and therefore authority is left with no other option but to proceed ex-parte against the respondents.
12. 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 based on these undisputed documents and submission made by the complainants.

#### **D. Jurisdiction of the authority**

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

##### **D. I Territorial jurisdiction**

14. 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.

##### **D. II Subject matter jurisdiction**

15. 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.*

16. 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.
17. 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. 2021-22(1) RCR(C), 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."*

18. 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.

**E. Findings on the relief sought by the complainants**

- E. I The respondents be directed to refund a sum of Rs.54,12,225/- to the complainants along with interest as prescribed per annum from 05.03.2013 to actual receipt of the same.
- E. II That the respondents be directed to pay an amount of Rs.21,12,000/- as per terms and condition for the application for allotment of the flat in the said project, for the delay caused by the respondents to deliver the possession of the said flat within the stipulated time period

19. The complainants submitted that on 06.04.2013, they have paid an amount of Rs.54,12,225/- to the respondent/promoter. The respondent confirmed the amount received and promised the allotment of a unit admeasuring 3200 sq. ft. in any of the project namely Ballet by "Maria Sharapova" located in Gurugram. Thereafter, till date, the respondents have miserably failed to specify the project as well as unit number where



3200 sq. ft. has been allotted. On 07.01.2017, the complainants sent a legal notice for refund the amount paid by him along with interest to which the respondent did not respond. The complainant tired of the neglectful behavior of the respondent filed the present complaint pleading for refund along with interest before this authority.

20. Before coming to the facts of the case, it is to be seen as to the receipt issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of the contract Act, 1872 and which provides that:

*"Every promise and every set of promise forming the consideration for each other is an agreement."*

21. Further, section 10 of the act defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

*"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not herby expressly declared to be void."*

22. There is a large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money and only issued receipt against the allotment of a plot either in the exiting or in its upcoming project at Gurugram. Neither it issued any allotment letter nor executed any builder buyer's agreement. Even in some cases, the builder accepted more than 50 lacs either in cash or through cheque and promising to allot an apartment/plot in the upcoming or existing projects and then vanishing or not taking any further steps with regard to either allotment of the unit of the property in any project or refunding the amount received. The holders of those receipt/allotments are harassed a lot failing to act on

the basis of the documents issued by the developer and to initiate any civil or criminal action against the builder. This position existed in Pre- Rera cases as after Act of 2016, a promoter is obligated to comply with the provisions of the Act and follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.

23. But the document/receipt so issued in favour of a person can be termed as an **agreement for sale** to drag the developer before RERA Authority, compelling him to fulfil his obligations against the holder of that document. It is also pertinent to mention in many cases that the allottee has been sleeping over his rights which is evident from the fact that after payment of an amount, he did not make any effort to get the agreement executed; and having no proof of any request or reminder in this regard made by the allottee to the promoter with the complainant. However, the promoter is duty bound to explain the reasons for which he has kept such a huge amount for so long, considering the fact that the promoter company is not a bank or non- banking financial company (NBFC). In case of failure on the part of promoter to give an explanation, it shall be liable to refund the principal amount deposited by the allottee.
24. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under





section 18(1)(b) of the Act. Sec. 18(1)(b) 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)*

25. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

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

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

26. 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.
27. 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., 14.12.2022 is **8.35%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.35%**.
28. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
29. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainants are well

within their right for seeking refund under section 18(1)(b) of the Act, 2016.

30. The instant matter falls in the category where the promoter has failed to allot a unit in its any of the upcoming project as detailed earlier despite receipt of Rs.54,12,225/- made in the year 2013. So, the case falls under section 18(1)(b) of the Act of 2016.
31. In the instant matter, even after lapse of 6 years from the date of payment till the filling of complaint, no buyer's agreement has been executed inter-se parties. Therefore, the due date of possession cannot be ascertained, and the complainant cannot be expected to wait endlessly for their unit for which they have 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....."*

32. 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 allottees, as they wish 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.

33. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1)(b) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.35% p.a. (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*.

**E.III. Initiate action against the respondents for non-compliance as the project is not registered with the RERA authority as per the provisions of section 3 the Act of 2016, thereby making the respondents guilty contravention of provisions of section 3 of the Act of 2016 and thus consequently hold the respondents liable to the penalty as per section 59 of the Act.**

34. The planning branch of the authority is directed to take immediate action against the promoter for non-registration of the project as per provisions of the Act of 2016.
35. In the complaint bearing no. **CR/2917/2021**, the following additional reliefs have been sought by the complainants.



- E. IV. To direct the respondent to pay to the complainants a sum of Rs.20,00,000/- towards exemplary damages for mental agony and pain and loss for precious time and valuable money;**
- E.V. To pay Rs.1,00,000/- towards the legal expenses;**
36. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**F. Directions of the authority**

37. 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):
- The respondents/promoters are directed to refund the amount received by them from each set of the complainant(s) along with interest at the rate of 10.35% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from


- the date of each payment till the actual date of refund of the 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 planning branch of the authority is directed to take immediate action against the promoter for non-registration of the project as per provisions of the Act of 2016.
38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
39. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
40. Files be consigned to registry.

  
**(Sanjeev Kumar Arora)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.12.2022

  
**(Ashok Sangwan)**

Member