



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

Complaint no. :	192 of 2021
Date of filing complaint:	28.01.2021
First date of hearing:	19.02.2021
Date of decision :	24.03.2023

Sh. Ashish Sharma S/o Sh. Shiv Nandan Sharma R/O: 129, Ground-floor, Nav-Jeevan Cooperative Housing Society, Delhi- 110017	Complainant
Versus	
M/s ALM Infotech City Private Limited Regd. office: B-418, New Friends Colony, New Delhi -110065	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Rishabh Gupta (Advocate)	Complainant
Sh. Aradhya (AR)	Respondent

ORDER

1. The present complaint 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 29 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 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.no.	Particulars	Details	
1.	Name of the project	"ILD Grand", Sector-37C, Gurgaon (Group housing project)	
2.	RERA registered/not registered	Registered vide registration no. 386 of 2017 dated 18.12.2017	
	Validity status	17.09.2019	
	Licensed area	41223.953 sqm.	
3.	DTPC License no.	96 of 2010 dated 03.11.2010	118 of 2011 dated 26.12.2011
	Validity status	02.11.2025	25.12.2024
	Licensed area	21.1804 acres	
	Name of licensee	M/s Jubilant Malls Pvt. Ltd.	
4.	Allotment letter dated	23.08.2012 [As per page no. 22 of complaint]	
5.	Date of apartment buyer agreement	Not executed	
6.	Unit no.	10B on 10 th floor of tower B1/Panaroma [As per page no. 22 of complaint]	



7.	Unit area admeasuring	1819 sq. ft. [Super area] [As per page no. 22 of complaint]
8.	Basic sale price	Rs.69,70,408/- (Rs. 3832 * 1819 sq. ft.) [As per allotment letter on page no. 22 of complaint]
9.	Amount paid by the complainant	Rs.21,55,739/- [As alleged by the complainant on page no. 12 of CRA] Rs. 20,91,123/- [As per customer ledger dated 16.05.2022 on page no. 22 of reply] <i>Since there is dispute w.r.t amount paid by the complainant. Reliance has been made of customer ledger dated 16.05.2022 and thus, amount paid by the complainant shall be taken Rs. 20,91,123/-.</i>
10	Possession clause	Cannot be ascertain as no buyer's agreement has been executed inter-se parties.
11	Due date of possession	23.08.2015 (Calculated as 3 years from date of allotment as decided by Hon'ble Supreme Court in <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>)
12	Demand letter and reminders dated	27.08.2013, 20.11.2013, 03.01.2014, 03.02.2014, 13.03.2014, 08.07.2014 [As per notice of cancellation on page no. 24 of complaint]



13	Notice for cancellation letter dated	13.08.2014 [As per page no. 24 of complaint]
14	Cancellation letter dated	20.01.2015 [As per page no. 26 of complaint]
15	Letter by respondent stating that the unit shall be released for fresh sale	07.04.2016 [As per page no. 27 of complaint]
16	Reply by the complainant to letter dated 07.04.2016 wherein raising objection to such cancellation/resale	16.04.2016 [As per page no. 28 of complaint]
	Legal notice dated	03.06.2017 [As per page no. 29 of complaint]
17	Reminder cum demand notice dated	17.06.2019 [As per page no. 33 of complaint]
18	Occupation certificate	NA
19	Offer of possession	NA

B. Facts of the complaint:

3. That it was in 2012 when the real estate project "ILD GRAND" at Sector-37C, Gurugram, Haryana (hereinafter referred as "Project") came to the knowledge of the complainant, through the authorized marketing representatives of the respondent. The respondent, making tall claims with respect to the project and of the longstanding credentials of respondent, lured the complainant to book a unit in the above said project.



4. That on 02.06.2012, the respondent, through their marketing representatives represented that they are builders and developers of great repute, approached the complainant and invited him to purchase a unit in their project "ILD GRAND" and further represented that the project is one of the finest and is free from all kinds of encumbrances. Tall claims were made regarding the company and the project. The complainant relying on such representations, assurances, brochures and meetings, agreed to purchase one unit admeasuring super area 1819 sq. ft. for an agreed sale consideration of Rs. 69,70,408/- and paid an amount of Rs. 6,00,000/- as booking amount through cheque bearing no. 128094 dated 02.06.2012, which was duly acknowledged vide receipt dated 09.06.2012.
5. That the respondent assured him that the development work of the unit will be completed and handed over within three years from the booking. Therefore, the date of completion of the project and schedule of handing over of the unit was 03.06.2015.
6. That the complainant made a further payment of Rs. 8,37,159/- through cheque bearing no. 424858 dated 01.08.2012, against agreed sale consideration as per payment schedule and demand of the respondent, which was duly acknowledged vide its receipt dated 03.08.2012.
7. That the complainant was provisionally allotted unit bearing no. 10B on 10th floor of tower B1/Panaroma in the said project and made payment

of other Rs. 7,18,582/- through cheque bearing no. 424865 dated 05.11.2012, against agreed sale consideration as per payment schedule and demand of the respondent. He has made total payment of Rs. 21,55,739/- within four months of booking.

8. That till 2013, the respondent did not initiate the execution of builder buyer agreement despite of various requests made by the complainant. The respondent arbitrarily kept on sending demands instead of execution of the builder buyer agreement. He visited the site of the project and found that the development work of the project is standstill and nowhere near of its completion. He was in utter shock and visited its office and raised his concern regarding the delay in development work of the project, however, it does not provide any satisfactory reply.
9. That the complainant received arbitrary notices of cancellation vide letters dated 13.08.2014 & 20.01.2015, stating that the complainant has wilfully avoided the various demand letters sent by the respondent and resisted to clear the outstanding dues towards the allotment. It was further stated that a final opportunity is being provided to him for clearing all dues failing which the allotment will stand cancelled.
10. That it is submitted that even after more than two years of booking the unit, the builder buyer agreement was not executed between the parties. The malafide intentions of the respondent to cheat and dupe the

complainant are abundant due to the decision of respondent to avoid executing the builder buyer agreement with the complainant.

11. That the payment plan opted by the complainant was a construction linked plan, however despite no construction or slow rate of construction, it kept raising demands, without that particular stage of construction being achieved. The cancellation letter was illegal and unlawful as it has failed to execute the agreement and complete the project as per the agreed terms.
12. That the complainant received letter dated 07.04.2016 from the respondent, stating that the allotment has been cancelled and the unit has been released for fresh sale. It was further stated in the letter that re-allotment of alternate unit can be done subject to availability and after clearing the outstanding dues along with the interest of 18% per annum. instead of executing the builder buyer agreement. The respondent kept on raising illegal and unlawful demands without completion of the respective construction stage as mentioned in the demand letters and the date of completion and handing over of possession as per the assurance of the respondent was 03.06.2015, however, the respondent failed to hand over of possession.
13. That the complainant vide email dated 16.04.2016 to the respondent, raised objections against the letter dated 07.04.2016. He raised objections against the unfair trade practices being carried out by it. He

was shocked to see that there has been no concrete progress at the site of the project and the project is nowhere near completion.

14. That the complainant vide legal notice dated 03.06.2017 to the respondent, raising objections against the unreasonable delay caused by it, in paying heed to the requests of the complainant and no concrete progress at the site of the project. The respondent ignored such legal notice and never replied on the same.
15. That the respondent from July 2017 to May 2019, did not provide any update on the development of the project in spite of various requests made by him. The respondent never initiate the execution of the agreement, this it had malafide intention since the very beginning and always acted in very lethargic and non-responsive manner.
16. That on 17.06.2019, the respondent again issued a reminder cum demand notice to the complainant for remitting the payment of Rs. 82,77,706/-. That despite the fact that no construction was being done, but still the demand was being raised by the respondent. It is submitted that the demand notice was illegal and unlawful as the development work of the project is behind from the stage for which demand was being raised. It is apparent from the above that the complainant was forced to make the payment of Rs. 82,77,706/-, however, there was no sign of delivery of possession.

17. That being in a dominant position the respondent always ignored the concern and grievances of the complainant and never bothered to execute the buyer's agreement. It is pertinent to note that the respondent never updated him about the status of the project and during the personal visit at site, it was found that the construction work of the project is standstill and nowhere near of completion.
18. That the respondent is enjoying the fruits of the hard-earned money of the complainant in order to meet wrongful gains, thereby causing substantial damage to the rights and interests of the complainant as well entrusted his funds according to their convenience and hence, breached the trust of the complainant.
19. That the respondent had plans since the very beginning were to deceive the complainant, cheated and defrauded him by misappropriating their money, by not executing the agreement nor handing over the possession. It has acted unreasonably, arbitrarily and fraudulently just to deceive him.
20. That the complainant booked the unit in the respondent's project with many hopes. But due to the respondent's arbitrary and illegal decision, he is facing a great deal of trouble. The difficulties and agony are incomparable and undeniable, hard earned money, everything has been invested by the complainant in the project, which now resulted in perpetual anguish.



21. That the respondent has utterly failed to fulfil his obligations to complete the construction in time and has caused huge losses and mental agony to the complainant and thus violated the terms of Section 18 of the Act of 2016.

C. Relief sought by the complainant:

22. The complainant have sought following relief(s):

- i. Direct the respondent to pay refund the amount paid by complainant along with interest @18% p.a. from date of respective deposit till its actual realization.
- ii. Direct the respondent to pay the compensation of Rs. 2,00,000/- for causing mental agony & harassment to the complainant.
- iii. Direct the respondent to pay the compensation of Rs. 1,00,000/- for the legal cost.
- iv. Direct the respondent to pay the compensation to the complainant, as me deem fit and proper, for causing financial loss due to loss of appreciation and opportunity that has occurred an account on misrepresentation on the value of the unit

D. Reply by respondent:

The respondent by way of written reply made following submissions

23. That the complainant approached the respondent for a unit in the said project through its agents "Investor's Clinics" after detailed and elaborate enquiries with regard to the project and capacity/competency and ability of the respondent to undertake the conceptualization, promotion,

construction, development and implementation of the project and after being completely satisfied and therefore, agreeing to the payment schedule proceeded to book a residential unit in the project for a total price of Rs. 69,70,408/-. It is pertinent to note that after the detailed enquiry on the part of the complainant, he booked a flat in his name on 02.06.2012.

24. That the respondent confirmed the booking of the flat in favour of complainant vide provisional allotment letter dated 23.08.2012. Vide such letter dated 23.08.2012, he was allotted flat bearing no. 10B in tower B1 (Panorama) admeasuring super area 1819 sq. ft.
25. That the said allotment was "provisional" in nature and was subsequently confirmed by way of an "allotment letter" dated 13.08.2014 subject to various terms and conditions. The main condition of the allotment letter was that the complainant was bound to meet with his obligations of timely payment of dues but he has frequently defaulted in the timely payment of dues and did not adhere to the payment plan that was agreed upon at the time of booking.
26. That the project of the respondent got delayed due to reasons beyond its control. The project was hindered majorly due to lack of infrastructure in the said area such as the twenty-four-meter sector road was not completed on time. Due to non-construction of the sector road, it faced many hurdles to complete the project and for completion of road, it was



totally dependent upon the Govt. Department/machinery and thus, the problem was beyond the control of the respondent.

27. That the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent such as demonetization and new tax law i.e. GST, affected the development work of the project. Further, the current Covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated 24.03.2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered complete lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. By virtue of various subsequent notifications of the Ministry of Home Affairs, GOI the lockdown was further extended from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated 13.05.2020 regarding extension of registrations of real estate projects under the provisions of Act of 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority

also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired was supposed to expire on or after 25.03.2020.

28. That in past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past months, the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 01.11.2019 to 05.11.2019 vide its notification dated 01.11.2019 bearing no. R/2019/L-53. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 in *writ petition bearing no. 13029/1985 titled as "MC Mehta vs Union of India"* completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court. Even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force



majeure circumstances and the said period shall not be added while computing the delay.

29. That the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affected the progress of the project.
30. That the complainant has intentionally concealed material facts and filed present complaint with the sole purpose of avoiding the agreed terms of the agreement. It is brought to the knowledge of the Authority that the complainant is guilty of placing untrue facts and are attempting to hide true colour of his intention. The present complaint is devoid of merits and thus liable to be dismissed. He has alleged some baseless allegations without stating as to how they are being aggrieved by the respondent. The complainant be put to the strict proof of the same. He has not come to this court with clean hands and has withheld crucial information and the said complaint is liable to be dismissed on this ground alone. The present complaint is filed with the oblique motive of harassing the

respondent and to extort illegitimate money while making absolutely false and baseless allegations against it.

31. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story, hence, the present complaint deserves to be dismissed with heavy costs. It craves leave of the Authority to refer to and rely upon the terms and conditions set out in the apartment buyer agreement in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainant.
32. 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:

33. The plea of the respondent regarding rejection of complaint on ground of jurisdiction 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.1 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 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee 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 complainant at a later stage.

34. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and*



Developers Private Limited Vs State of U.P. and Ors." SCC Online SC 1044 decided on 11.11.2021 and followed in *M/s Sana Realtors Private Limited & others V/s 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."

35. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in aforesaid matters, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him

F. Findings on the objections raised by the respondent:

F.1 Objection regarding force majeure conditions:

36. The respondent-promoter has raised a contention that the construction of the project was delayed due to reasons beyond its control such as delay in project due to lack of construction of 24-meter road by the Government Authorities, stay on construction vide orders of NGT &



EPCA, implementation of GST and Covid-19 outbreak. The respondent requested that the delay was due to uncertain circumstances which were beyond its the control and same cannot be made liable for such delay.

37. The Authority is of considered view that the plea w.r.t delay in construction of project due to its dependency on construction of 24 meter road is devoid of merits as the fact that such road is under construction or is going to be constructed was already known to the respondent-builder while launching the said project and it would have been considered the same while providing date of completion of project.
38. The respondent also contended that the pace of work at project site was hampered due stay on construction vide orders of Hon'ble Punjab and Haryana High Court and orders of NGT & EPCA and implementation of GST. The plea w.r.t. ban on using ground water vide orders of Hon'ble Punjab and Haryana High Court is not tenable as the same were for shorter period of time. As far as order of NGT & EPCA banning construction to curb the pollution in Delhi NCR were of 2019 whereas as per table above, the due date of handing over of possession was 23.08.2015 i.e. much before such orders of NGT & EPCA. Moreover, the plea that the construction at project site was hampered due to introduction of GST, it is observed that the due date of handing over of project was 23.08.2015 and the GST was introduced on 01.07.2017. Therefore, by that time the project would have been completed, but the same was not done. It is a well settled principle that one cannot take advantage of his own wrong and thus, no leniency in this regard can be given to the respondent.



39. As far as plea w.r.t. COVID-19 is concerned, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of 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 which 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."

In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 23.08.2015. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 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 relief sought by the complainant:

G.I Direct the respondent to pay refund the amount paid by complainant along with interest @18% p.a. from date of respective deposit till its actual realization.



40. The project detailed above was launched by the respondent as group housing complex and the complainant was allotted the subject unit vide allotment letter dated 23.08.2012 for a basic sale consideration of Rs. 69,70,408/- providing the terms and conditions of allotment, total sale consideration of the allotted unit, its dimensions. It has come on record that no buyer's agreement has been executed inter-se parties. Hence, due date of handing over of possession was calculated as per finding of ***Hon'ble Supreme Court in the case of Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018*** observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."*
41. In the instant complaint, no buyer's agreement has been executed between the parties and thus, reliance has been made on the above-stated case for calculating due date of handing over of possession. In view of the above-mentioned reasoning, the date of signing of allotment letter i.e. 23.08.2012 is taken for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 23.08.2015.



42. The complainant has already paid an amount of Rs. 20,91,123/- against basic sale price of Rs. 69,70,408/- constituting 30% of consideration. The complainant requested the respondent to get the buyer's agreement executed, but with no positive results. The respondent issued notice for cancellation letter dated 13.08.2014 followed by cancellation letters dated & letter for release for fresh sale dated 20.01.2015 & 07.04.2016 respectively. To which the complainant raised his concern vide letter dated 16.04.2016 followed by legal notice dated 03.06.2017, but the same was not replied by it. However, it also sent a reminder cum demand letter dated 17.06.2019. The respondent in paragraph wise reply, stated that said letter dated 17.06.2019 was sent to the complainant as a measure of last opportunity to remit the dues and avoid cancelation.
43. Thus, keeping in view principle of *Doctrine of Waiver* which finds its place under Section 63 of the Contract Act, 1872 *qua* relinquishment of rights between the parties. The rights that may be relinquished include obligations as well as claims that had been earlier consented to be performed and exercised by the parties. Thus, the waiver of right under Section 63 of the Contract Act has to be a matter of mutual consensus. It is an act of surrender of benefit or privilege. The waiver of right requires a prior knowledge of an existing right by the person who seeking waiver of such right. As decided in ***Manak Lal v. Dr. Prem Chand Singhvi AIR 1957 SC 425***, a person is required to be fully cognizant of his rights before waiving off such rights. In the present case, the respondent



himself has waived of its right w.r.t. to cancellation letter dated 07.04.2016 by setting aside the same by issuing other letter dated 17.06.2019 wherein providing last and final opportunity to the complainant to make payment towards consideration of allotted unit and it is further pertinent to note that after such letter dated 17.06.2019, the respondent has not proceeded with the cancelation against the unit of the complainant.

44. The complainant submitted that the respondent-builder has failed to handover the possession of the allotted unit and thus, the complainant-allottee wishes to withdraw from the project. Keeping in view the fact that the allottee-complainant wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of allotment or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.
45. The due date of possession as mentioned in the table above is 23.08.2015. There is delay of 5 years 5 months 05 days on the date of filing of the complaint i.e. 28.01.2021. The occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoter.



46. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit 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 allottee 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..... "

47. 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 (Supra)** observed as under:

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

48. 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



(allotment letter in this case) 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 allotment letter or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, 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.

49. This is without prejudice to any other remedy available to the allottee including compensation for which they 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.

The Authority hereby directs the promoter to return the amount received by him i.e., Rs. 20,91,123/- with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.II Direct the respondent to pay the compensation of Rs. 2,00,000/- for causing mental agony & harassment to the complainant.

G.III Direct the respondent to pay the compensation of Rs. 1,00,000/- for the legal cost.

G.IV Direct the respondent to pay the compensation to the complainant, as me deem fit and proper, for causing financial loss due to loss of

appreciation and opportunity that has occurred an account on misrepresentation on the value of the unit.

50. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. *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, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority:

51. 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 of 2016:

- i) The respondent /promoter is directed to refund the amount i.e. **Rs. 20,91,123/-** received by it from the complainant along with interest at the rate of 10.70% p.a. as prescribed under rule 15 of the Haryana



HARERA
GURUGRAM

Complaint No. 192 of 2021

Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the 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.

52. Complaint stands disposed of.

53. File be consigned to the registry.



(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.03.2023

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