

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

Complaint no. :	6115 of 2019
Date of filing complaint:	02.12.2019
First date of hearing:	02.12.2019
Date of decision	31.03.2023

NAME OF THE BUILDER		VSR Infratech Private Limited	
PROJECT NAME		68 Avenue	
S. No.	Case No.	Case title	APPEARANCE
1	CR/6115/2019 (Old complaint No. 229 of 2018)	Raj Bhoshan Chopra V/S M/s VSR Infratech Pvt. Ltd.	Complainant in Person Ms. Shriya Takkar
2	CR/6118/2019 (Old complaint no. 231 of 2018)	Roop Chand Chopra V/S M/s VSR Infratech Pvt. Ltd.	Complainant in Person Ms. Shriya Takkar
3	CR/6120/2019 (Old complaint no. 232 of 2018)	Behari Lal Bakshi V/S M/s VSR Infratech Pvt. Ltd.	Complainant in Person Ms. Shriya Takkar

CORAM:

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Shri Sanjeev Kumar Arora

Member

Member

Member

ORDER

1. This order shall dispose of all the 3 complaints titled as above filed before this authority in form CRA 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 complaint has been received on 02.12.2019 and reply has been filed by the respondent. The complainant generated proforma B. Hence the old complaint no. is clubbed with the new generated no.
3. 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, 68 Avenue (commercial colony) being developed by the same respondent/promoter i.e., M/s VSR Infratech Private Limited. The terms and conditions of the buyer's agreements fulcrum of the issue 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.
4. The details of the complaints, reply to 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:

Project Name and Location	VSR Infratech Private Limited "68 Avenue" Sector-68,, Gurugram.
Possession Clause: - 31 Time of handing over the Possession <i>"The Company will, based on its present plans and estimates, contemplates to entitled possession of Said Unit to the Allottee(s) within 36 months of signing of this Agreement advertise or within 36 months from the date of start of construction of</i>	

the said Building whichever is later with a grace period of 3 months, subject to force majeure events .." **(Emphasis supplied)**

Occupation certificate: -

➤ OC received dated 15.01.2019

Note: Grace period is included while computing due date of possession.

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of apartment buyer agreement	Due date of possession	Total Consideration / Total Amount paid by the complainant(s)	Relief Sought	Date of withdrawal
1.	CR/6115/2019 Raj Bhoshan Chopra V/S M/s VSR Infratech Pvt. Ltd. Date of Filing of complaint 02.12.2019	Reply Received on 11.07.2018	GA-18 tower A (Page no. 26 of complaint)	09.05.2013 (Page no. 29 of the complaint)	09.08.2016 (Calculated from date of execution of the agreement being later plus three months grace period)	TSC: - Rs.34,11,983/- AP: - Rs.28,62,535/-	- Refund the entire amount along with interest - Details of EDC/IDC - Compensation	24.08.2017 (As per page 69 of complaint)
2.	CR/6118/2019 Roop Chand Chopra V/S M/s VSR Infratech Pvt. Ltd. Date of Filing of complaint 02.12.2019	Reply Received on 11.07.2018	GA-17 tower A (Page no. 26 of complaint)	09.05.2013 (Page no. 18 of the complaint)	09.08.2016 (Calculated from date of execution of the agreement being later plus three months grace period))	TSC: - Rs.23,44,629/- AP: - Rs.19,67,061/-	- Refund the entire amount along with interest - Details of EDC/IDC	24.08.2017 (As per page 69 of complaint)

							Compe nsation	
4.	CR/6120/2 019 Behari Lal Bakshi V/S M/s VSR Infratech Pvt. Ltd. Filing of complaint 02.12.2019	Reply Received on 11.07.20 18	GA- 24 tower A (Anne xure P-2- page no. 18 of compl aint)	22.11.2013	22.02.2017 (Calculated from date of execution of the agreement being later plus three months grace period)	TSC: - Rs.26,67,2 58/- AP: - Rs. 24,96,431 /-	Refund the entire amoun t along with interes t - Details of EDC/I DC - Compe nsation	10.06.2 017
<p>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)</p>								

- The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
- 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.

7. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/6115/2019 Raj Bhoshan Chopra V/S M/s VSR Infratech Pvt. Ltd.**

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

8. 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/6115/2019

Raj Bhoshan Chopra V/S M/s VSR Infratech Pvt. Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	"68 Avenue", Sector 68, Gurgaon
2.	Nature of the project	Commercial Colony
3.	DTCP License no. & validity status	04 of 2012 dated 23.01.2012
4.	Acres	3.231
5.	RERA Registered / not registered	119 of 2017 dated 28.08.2017 upto 30.06.2018
6.	Unit No.	GA-18 tower A (Page no. 26 of complaint)
7.	Unit admeasuring	332 sq.ft.

		(Page no. 26 of complaint)
8.	Allotment Letter	27.07.2012 (Page no. 26 of complaint)
9.	Date of Excavation	26.07.2012 (Page 15 of written submissions)
10.	Date of execution of buyer's agreement	09.05.2013
11.	Possession clause	31 The Company will, based on its present plans and estimates, contemplates to entitled possession of Said Unit to the Allottee(s) within 36 months of signing of this Agreement advertise or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events .
12.	Due date of delivery of possession	09.08.2016 (Calculated from date of execution of the agreement being later plus three months grace period)
13.	Total sale consideration	Rs.34,11,983/- (Page 32 of complaint)
14.	Total amount paid by the complainant	Rs.28,62,535/- (As alleged by the complainant)
15.	Partial Occupation Certificate	28.07.2017 (Page 68 of reply)
16.	Occupation certificate	15.01.2019

17.	Offer of possession	Not offered
18.	Date of withdrawal	24.08.2017 (As per on page 68 of complaint)

B. Facts of the complaint

9. The complainant has made the following submissions in the complaint: -
- I. The complainant booked a commercial unit in the project namely "68 Avenue" located in sector 68, Gurgaon and vide allotment letter 27.07.2012 was allotted a unit bearing GA-18 tower A admeasuring 500 sq. ft. for a total sale consideration of Rs. Rs.34,11,983/-.
 - II. It is pertinent to mention that vide allotment letter dated 27.07.2012, the respondent increased the area of the unit from 500 sq. ft. to 560.480 sq. ft. and the allotted unit was even divided into two units admeasuring 332.39 sq. ft. and 228.410 sq. ft. On 09.05.2013, space buyers' agreement was executed between parties and was allotted unit bearing GA-18 admeasuring 332.390 sq. ft. The execution of the agreement was consciously delayed by the respondent and this conduct of the respondent amounts to unfair trade practice, as the booking amount of the complainant was accepted on 10.01.2012 and the agreement was executed on 09.05.2013.
 - III. The complainant till 26.05.2014 paid an amount of Rs.28,62,535/- which is almost 85% of the total sale consideration, however, the construction was not even halfway completed. The complainant visited the site for almost three years, to check the status of the

construction but from December 2014 to June 2017, no construction work was taking place and even no demand was raised from the respondent side.

- IV. It is further contended by the complainant that the builder buyer agreement is silent about the actual carpet area allotted to the complainant and even the respondent is taking undue advantage of its position by reducing the carpet area drastically. The carpet area allotted to the complainant is useless and cannot be put to use for any commercial use. Even, the complainants have been fraudulently charged excess consideration by calculating the tentative super area whereas the actual usable area is much less as compared to the consideration paid.
- V. The complainants have further visited the respondent office and vide email dated 07.06.2017, 17.06.2017 and 20.06.2017 has taken up the issues regarding change in unit and delay in possession, while the respondent replied in vague and casual manner without clarifying the issues raised by the complainants.
- VI. The complainant has further pleaded that the respondent has contended that there was delay in obtaining occupation certificate was due to stay order of the Hon'ble High Court due to non-installation of water connection, where else this is a misleading statement as the respondent through submitted application stated that, the occupation certificate was not granted as the project was not fully completed till December 2018.

VII. That the complainant requested several times by sending emails and also personally visiting the office of the respondent to refund the amount along with interest @ 18% per annum on the amount deposited by him, but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned amount and wrongfully gained itself and caused wrongful loss to him.

C. Relief sought by the complainant: -

10. The complainant has sought following relief(s):

- I. Direct the respondent to place on record all statutory approvals and sanctions of the project.
- II. Direct the respondent to provide complete details of EDC/IDC and statutory dues paid to the competent authority.
- III. To direct the respondent to refund the entire amount with interest.
- IV. To direct the respondent to pay compensation of Rs. 5,00,000/- on account of harassment, mental agony and hardship caused to the complainant and cost of litigation of Rs. 75,000/-.

D. Reply by the respondent

11. The respondent by way of written reply made following submissions:

- I. The complainant booked a unit bearing no. GA-18 on ground floor, Tower-A on 10.01.2012 by paying an amount of Rs. 3,00,000/-. Thereafter, parties entered into space buyer agreement on 09.05.2013, wherein tentative super area of the unit was 332.390 sq. ft., for a total sale consideration of Rs. 34,11,983/-.

- II. It is further submitted that the complainant booked another unit bearing no. GA-17 admeasuring 228.410 sq. ft. vide allotment dated 27.07.2012. It is submitted that all the demands were raised in accordance with the space buyer's agreement signed between the parties. As per clause 31 of the agreement the possession of the unit was to be handed over within 36 months of signing of this agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events.
- III. It is pleaded by the respondent that the project is completed, and the possession is being offered to the allottees in systematic manner. Further, the delay caused in the construction of the project was not due to the acts of the respondent but due to the factors beyond its control. The following factors caused the delay in the construction of the project, not within the control of the respondent and are force majeure events.
- IV. That such force majeure events are time and again various orders passed by the NGT staying the construction. The respondent stated that this further resulted in increasing the cost of construction to a great extent. In addition the current government has on 08.11.2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash. National green tribunal thereby stopping / regulating the mining activities.
- V. It is humbly submitted that the respondent had applied to for occupation certificate on 31.07.2017. The fire NOC for the said tower received on 07.03.2018. The part occupation certificate was granted by the

competent authorities after due inspection and verification on 15.01.2019. It is pertinent to mention here that delay has also been caused as the OC could not be issued since Hon'ble Punjab and Haryana vide order dated 16.07.2015 had issued the following direction in the matter titled as: Mukesh Sharma vs. State of Haryana and Ors.

no Occupation Certificate be issued in the sector/area or for building where water supply connection has not been made available by HUDA. It is clarified that these directions are in relation to Sectors 68-80, Gurgaon only

- VI. Further, on 19th February 2013 the office of the executive engineer, Huda Division No. II, Gurgaon vide Memo No. 3008-3181 had issued instruction to all developers to lift tertiary treated effluent for construction purpose for sewage treatment plant, Berhampur. Due to this instruction, the company faced the problem of water supply for a period of 6 months.
- VII. Moreover, Orders passed Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available seaweed treatment plants. That however there was no sewage treatment plant available which led to scarcity of water and further delayed the project. That said order coincided with launch of project and caused a huge delay in starting project itself.
- VIII. Even, there was lot of delay on part of government agencies in providing relevant permissions, licenses approvals and sanctions for project which resulted in inadvertent delay in the project which constitute a force majeure condition, as delay caused in these permissions cannot be

attributed to respondent, for very reason that respondent, has been very prompt in making applications and replying to objections if any raised for obtaining such permissions.

IX. That the delay in the construction of the project due to the force majeure events, do not go against the provisions of the flat buyer's agreement and the agreement itself allows the delays caused by the factors beyond the control of the respondent.

X. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

12. The application 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. I Territorial jurisdiction

13. 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

14. 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.

15. 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.
16. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others*

SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

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

F. Objections raised by the respondent due to delay in constructing the project

F.1 Objection regarding force majeure.

18. The respondent stated that the part occupation certificate was granted by the competent authorities after due inspection and verification on 15.01.2019. It is pertinent to mention here that delay has also been caused as the OC could not be issued since Hon'ble Punjab and Haryana vide order

dated 16.07.2015. The authority is of the considered view that if there is lapse on the part of any competent authority concerned in granting the occupation certificate within reasonable time then the respondent should approach the competent authority for getting the time period be declared as 'zero time period' for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for the delay in handing over possession as per provisions of the Act.

19. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, water supply for a period of 6 months, Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available seaweed treatment plants, stay of construction by order of National Green Tribunal, and non-payment of instalment by different allottee of the project but all the pleas advanced in this regard are devoid of merit. First of all the unit in question was allotted in the year 2012. These periods were for very short duration of time. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants

G.1 Direct the respondent to place on record all statutory approvals and sanctions of the project.

20. The respondent – builder has already filed all the statutory approvals and sanctions of the project.

G.II Direct the respondent to provide complete details of EDC/IDC and statutory dues paid to the competent authority.

21. In view of the relief no. III wherein complainant is seeking withdrawal from the project of the respondent, the aforesaid relief has become redundant.

G.III Direct the respondent to refund the paid-up amount with interest.

22. In the present case the complainant approached the Authority in year 2018 to seek refund of the amount paid by him, while the authority vide order dated 22.11.2018 directed the respondent to pay interest of every month of delay from due date of possession i.e., 09.08.2016 to 07.03.2018. Thereafter, the complainant approached the Appellate Tribunal against the order passed by the authority dated 22.11.2012, seeking refund of the amount paid by him along with compensation on account of mental agony, harassment, and unfair trade practices. The same appeal was allowed and set aside the order passed by authority dated 22.11.2018. Later, the Appellate Tribunal remanded back before the Learned Adjudicating officer on 16.09.2019 to file fresh complainants for further proceedings.

23. Thereafter, vide order 15.02.2021 the Adjudicating officer in view of judgment dated 11.11.2021 in title **M/s Newtech Promoters and Developers Pvt. Ltd. Vs Sate of UP & Ors. Etc** passed by the Apex Court

stated that the AO has no jurisdiction to adjudicate this complaint and transferred the complaint to the Authority. However, on 31.05.2022 the authority decided that the authority cannot review its own order, hence the doctrine of functus officio will apply.

24. However, the complainant again approached the Appellate tribunal and vide order dated 15.11.2022 the Tribunal decided that the order dated 31.05.2022 passed by the authority is set aside and remanded back to the authority for disposal of the complaint. Hence, the parties were directed to approach the authority on 21.11.2022 for further proceedings.
25. That now the situation is that the complainant- allottee has asked for refund after the due date i.e 24.08.2017.
26. 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) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,-

- (a). in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b). due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

27. Clause 15(a) of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"31. POSSESSION

(a). Time of handing over the possession

"The Company will, based on its present plans and estimates, contemplates to entitled possession of Said Unit to the Allottee(s) within 36 months of signing of this Agreement advertise or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events.."

28. **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. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate 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.

29. 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.

30. 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., 31.03.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
31. The definition of term 'interest' as defined under section 2(za) 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;"*
32. Keeping in view the fact that the allottee complainant wishes to withdraw from the project after the due date and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

33. The due date of possession as per agreement for sale as mentioned in the table above .
34. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is received after filing of application by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate
35. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the

amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

36. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as 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 the unit with interest at such rate as may be prescribed.
37. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under section 71 read with section 31(1) of the Act of 2016.
38. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.70% 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 deposited amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. II Compensation

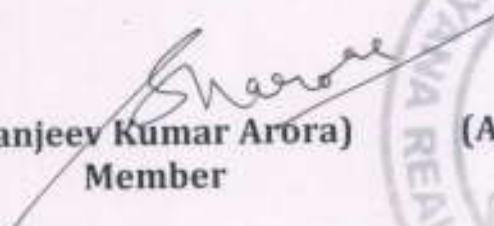
46. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation 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 complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.


H. Directions of the authority


47. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount 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 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.
48. This decision shall mutatis mutandis apply to cases mentioned in para 4 of this order.
49. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
50. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.03.2023

HARERA
GURUGRAM