



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

<b>Complaint no.</b>	:	<b>2967 of 2021</b>
<b>Date of filing complaint:</b>		<b>02.08.2021</b>
<b>Date of Decision:</b>		<b>04.05.2023</b>

<b>Dhiraj Singh</b> <b>R/O:</b> H. no. 208/22, Street No.-6B, Gandhi Nagar, Gurugram, Haryana	<b>Complainant</b>
Versus	
1. M/s International Land Developers Pvt. Ltd. 2. Mr. Alimuddin 3. Mr. Salman Akbar Jalaluddin <b>Regd. office:</b> B-418, New Friends Colony, New Delhi-110065	<b>Respondents</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Ms. Sujata Rao Ayde (Advocate)	Complainant
Sh. Rishabh Gupta (Advocate)	Respondents

**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 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules



and regulations made there under or to the allottee 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. N.	Particulars	Details
1.	Name and location of the project	"Arete" at Sector 33, Sohna Gurugram
2.	Nature of the project	Group Housing Colony
3.	Project area	11.6125 acres
4.	DTCP license no.	44 of 2013 dated 04.06.2013 valid up to 03.06.2019
5.	Name of licensee	International Land Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered Vide no. 06 of 2019 valid up to 02.07.2022
7.	Unit no.	403, 4 <sup>th</sup> floor, Tower G (page no. 119 of complaint)
8.	Unit area admeasuring (super area)	1325 sq. ft. (page no. 30 of complaint)
9.	Allotment letter	02.07.2015 (page no. 110 of complaint)
10.	Date of builder buyer agreement	26.06.2015 (page no. 116 of complaint)

11.	Possession clause	<p><b>10 Possession of apartment</b></p> <p><i>10.1 Subject to timely grant of all approvals (including revisions thereof). permissions. certificates. NOCs, permission to operate, full/part occupation certificate etc. and further subject to the Buyer having complied with all its obligations under the terms and conditions of this Agreement, and subject to all the buyers of the apartments in the Project making timely payments including but not limited to the timely payment of the Total Sale Consideration. stamp duty and other charges, fees, IAC. Levies &amp; Taxes or increase in Levies &amp; Taxes, IFMSD, Escalation Charges, deposits, Additional Charges to the Developer and also subject to the Buyer having complied with all formalities or documentation as prescribed by the Developer, the Developer shall endeavor to complete the construction of the Said Apartment within <b>48(Forty Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months..</b></i></p>
12.	Due date of possession	<p>26.12.2019</p> <p>(Calculated as 48 months from date of execution of BBA plus 6 months grace period as the same is unqualified)</p>
13.	Total sale consideration	<p>Rs. 74,60,925/-</p> <p>[as per agreement on page no. 136 of complaint]</p>
14.	Amount paid by the complainant	<p>Rs. 19,78,744/-</p>

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		[as mentioned by complainant on page no. 14 of CRA]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not obtained

**B. Facts of the complaint:**

3. That the respondent company advertised with different means and channels about their upcoming residential project namely "Arete Luxury Park Residences" at Village Dhunela, sector-33, Sohna, Gurgaon, Haryana.
4. That complainant who was interested to purchase an apartment for their own residential purposes, visited at the office and lured by the respondent company to book a flat in the said project by misleading advertisements and wrongful representation via the brochure of the project while emphasizing upon the high-lighting and key features of their said project including "timely possession" and usage of monolithic aluminium form work technology along with using of building information model(BIM)" for construction. It was their own proclaimed statement that the said project is comparatively better than the other residential project offered by other competitor builders since respondents were: "offering of construction by using monolithic aluminium form work technology along with using of building information model (BIM)".
5. That the complainant while relying upon their said projection regarding the usage of afore-said technology of construction which is much better than conventional technology and further more on their projection of



offer of handing-over the possession of the said flat within 48 months from the date of execution of buyers agreement with additional grace period of 6 months; booked one residential 2BHK flat with tentative super area 1325 sq. ft. on payment of initial booking amount of Rs.3,00,000/- via cheque no.000007 dated-22/03/2014 drawn on HDFC, Gurugram, in the afore-said residential group housing project "ARETE" launched by the respondents situated within the revenue estate of village Dhunela, sector-33, sohna, Gurgaon, Haryana.

6. Thereafter, the respondents issued provisional allotment letter dated-22.12.2014 with detailed payment schedule in response of application for provisional allotment for flat no.-G-403, located on 4th floor in tower-G, in the aforesaid group housing project against the total consideration amount of Rs. 75,10,925/-. However, it was mutually agreed between the parties of the case after negotiation that complainant would be liable to pay a total sum of Rs. 74,60,925/- as total sale consideration amount against the booked flat which is reflected in application for provisional allotment as well as allotment letter on 2.7.2015
7. That the respondents again raised demand of Rs. 6,96,213/- vide demand notice cum invoice dated-21.3.15 in corresponding to the alleged stage of construction: "commencement of excavation" which was also duly paid by the complainant through cheque.
8. That thereafter parties of the case entered into apartment buyer agreement on 26.6.2015.
9. As per the apartment buyer agreement the possession of the unit shall be handed over within 48 months of execution of the apartment buyer agreement with a grace period of 6 months, meaning thereby, the was

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supposed to handover the said unit along with all required amenities and facilities which are promised.

10. That the complainant had deposited a total sum of Rs.19,78,744/- till date. But there was no progress in construction at the site. It appears that respondents with fraudulent intention to cheat, to lure and persuade the public at large to book and invest in the said project, initiated excavation work at the tower site, but after receiving substantial amount, the respondents have abandoned the tower site. Therefore, the complainant is here demanding refund of the paid up amount.

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

11. The complainant has sought following relief(s):
- (i) Direct the respondents to refund the entire amount of Rs. 19,78,744/- along with interest.
  - (ii) Direct the respondents to pay cost of litigation of Rs. 50,000/-.

**D. Reply by respondent/promoter:**

The respondent/promoter by way of written reply made following submissions:

12. That at the outset each and every averment, statement, allegation, contention of the complainant which is contradictory and inconsistent with the reply submitted by the respondent/promoter is hereby denied and no averment, statement, allegation, contention of the complainant shall deem to be admitted save as those specifically admitted being true and correct. It is respectfully submitted that the same be treated as a specific denial of the complaint. The respondent/promoter is a leading

real estate company aiming to provide state of art housing solutions to its customers and have achieved a reputation of excellence for itself in the real estate market.

13. That the present complaint, filed by the complainant, is bundle of lies and hence liable to be dismissed as it is filed on baseless grounds.
14. That the complainant herein, have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainant is raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
15. That the complainant has not approached the Ld. Authority with clean hands and has suppressed relevant material facts. The complaint under reply is devoid of merits and the same should be dismissed with cost.
16. That an affidavit is utmost necessary for filing any complaint before any court or the authority. That no pleadings or documents in the complaint can be relied upon without verifying the same by filing a proper affidavit with the sign and seal of the notary public. The present complaint has been filed without the notarization of an affidavit to verify the truthfulness of the averments made under the complaint. Therefore, for the said reason, the present complaint is liable to be dismissed with heavy cost.
17. At the outset in 2013, the complainant herein, learned about the project launched by the respondent/promoter titled as 'Arete' (herein referred to as 'Project') and approached the respondent/promoter repeatedly to know the details of the said project. The complainant further inquired

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about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.

18. That after having keen interest in the project constructed by the respondent/promoter the complainant herein booked a flat unit i.e., one residential 2BHK flat with tentative super area of 1325 Sq. ft. in the project. Thereafter, the respondents issued the provisional allotment letter to the complainant on 22.12.2014 against their booking in the Arete project and allotting apartment bearing no. G-403, located on the 4th floor in Tower-G, admeasuring super area of 1275 Sq. Ft.
19. That on 26.06.2015, a builder buyer agreement (herein referred to Agreement') as was executed between the complainant and the respondent/promoter wherein the unit admeasuring super Area of 1325 sq. ft. at Village Dhunela, Sector-33, Tehsil Sohna, Gurugram, was allotted to the complainant in the said project of the respondent. The complainant were aware of the project and were also satisfied with every proposal deemed necessary for the development of the project in question.
20. That time was essence in respect to the allottees obligation for making the respective payment. And, as per the agreement so signed and acknowledged the allottee was bound to make the payment of installment as and when demanded by the respondent/promoter. The relevant clause 8 of the said agreement.
21. That the project of the respondent/promoter got delayed due to reasons beyond control of the respondent. It was further submitted that major reason for delay for the construction and possession of project is lack of infrastructure in the said area. The twenty-four- meter sector road was not completed on time. Due to non- construction of the sector





road, the respondent faces many hurdles to complete the project. For completion of road, the respondent the Govt. Department/machinery and the problem is beyond the control of the respondent/promoter. The aforementioned road has been recently constructed.

22. That the building plan has been revised on 16.06.2014 vide Memo No. ZP370/AD(RA)/2014/16 dated 16/06/2014 and further revised on 21.09.2015 vide Memo No. ZP370/AD(RA)/2015/18145 dated 21/09/2015. It is further submitted that the building plan has been changed for the benefit of the purchaser/allottee and due to this reason the project got delayed.
23. That in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to time by the Company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.
24. That due to ban levied by the competent authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Despite, after lifting of ban by the Hon'ble court the construction activity could not resume at full throttle due to such acute shortage.
25. It was submitted 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.

26. 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 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 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L- 53 dated 01.11.2019.
27. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed 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 the Hon'ble Supreme Court vide 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.
28. The demonetization and new tax law i.e., GST, affected the development work of the project. In the view of the facts stated above it is submitted that the respondent/promoter has intention to complete the project

*(Handwritten signature)*



soon for which they are making every possible effort in the interest of allottees of the project.

29. 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 such period shall not be added while computing the delay.
30. The Covid-19 pandemic has resulted in serious challenges for the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020- DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown 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 have 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 May 13, 2020, regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.

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31. After such obstacles in the construction activity and before the normalcy could resume the entire nation was hit by the World wide 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.
32. That the current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. That on 24.03.2020, the Ministry of Home Affairs, GOI vide notification bearing no. 40-3/2020-DM- I (A) recognized that entire nation was threatened with Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. Subsequently, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. It is to note, various State Governments, including the Government of Haryana have also imposed strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities.
33. The respondent/promoter herein had been running behind the complainant for the timely payment of instalment due towards the respective unit in question. That in spite being aware of the payment schedule the complainant herein has failed to pay the instalment on time.
34. That the respondent/promoter is committed to complete the development of the project at the earliest for which every necessary action is being taken by the respondent/promoter. It is further submitted that as the development of the project was delayed due to the



reasons beyond the control of the respondent/promoter, the complainant is not entitled for compensation in any which way and the same was agreed into between the complainant and the respondent/promoter under clause 10.1, 10.2, 10.3, 10.4, and clause 18. Therefore, the complainant is not entitled for compensation for delay.

35. 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/promoter are nothing but an afterthought and a concocted story, hence, the present complaint filed by the complainant deserves to be dismissed with heavy costs. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Ld. Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
36. All other averments made in the complaint were denied in toto.
37. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

**E. Jurisdiction of the authority:**

38. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

39. 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**

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

### **Section 11(4)(a)**

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

### **Section 34-Functions of the Authority:**

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

41. 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.

## **F. Findings on the objections raised by the respondent/promoter:**

### **F.I Objections regarding delay due to force majeure:**

49. The respondent-promoter raised the contention that the construction of the project was delayed due to conditions beyond the control of the

respondent/promoter such as non-construction of sector road by Government, 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 along with demonetization and new tax law i.e., GST, affected the development work of the project. First of all, the orders of High Court in the year 2012 does not have any impact on the project as the same was passed even before the Apartment Buyer's Agreement was executed between the parties. Further, the orders banning construction and extraction of ground water were imposed for a very short duration and thus, a delay of such a long duration cannot be justified by the same. The plea regarding delay due to GST and demonetisation is also devoid of merit and thus, all the pleas stand rejected. 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. Entitlement of the complainant for refund:**

(i) Direct the respondent/promoter to refund the entire amount of Rs. 19,78,744/- along with interest.

42. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by them in respect of subject unit along with interest as per section 18(1) of the Act and the same 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)*

43. Clause 10 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

**10. Possession of apartment**

**"10.1 Subject to timely grant of all approvals (including revisions thereof). permissions. certificates. NOCs, permission to operate, full/part occupation certificate etc. and further subject to the Buyer having complied with all its obligations under the terms and conditions of this Agreement, and subject to all the buyers of the apartments in the Project making timely payments including but not limited to the timely payment of the Total Sale Consideration. stamp duty and other charges, fees, IAC. Levies & Taxes or increase in Levies & Taxes, IFMSD, Escalation Charges, deposits, Additional Charges to the Developer and also subject to the Buyer having complied with all formalities or documentation as prescribed by the Developer, the Developer shall endeavor to complete the construction of the Said Apartment within 48 (Forty-Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months."**

44. The complainant booked a unit in the respondent's project and was allotted unit no. 403, 4<sup>th</sup> floor in tower G vide allotment letter 02.07.2015. The BBA was executed between the parties on 26.06.2015. As per clause 10 of the said BBA, the possession of the unit was to be given within a period of 48 (forty-eight) months from date of execution of the agreement along with a grace period of 6 months. Given the fact





that the grace period was unqualified, the due date of possession comes out to be 26.12.2019.

45. Further, in course of proceedings, the authority vide order dated 15.09.2022, appointed Executive Engineer to check and submit a report w.r.t. physical progress of the tower/block where the unit of the complainant is situated. Engineer Executive Shri Nikhil Sharma submitted its report dated 16.11.2022 and the relevant part of the report is reproduced hereunder: -

*"1. Only structure work and brickwork for towers A, B, C and D is completed upto 14th, 15th, 14th and 13th floors respectively. Further basement floor for tower E has been casted till date.*

*2. The work for complainant towers i.e., Tower G has not been started till date. Further as per site conditions, it seems work at the site has been stopped.*

*3. Internal development works such as construction of roads, sewerage system, water supply and electrical works have not been started till date except a small patch of internal road approximately 20-25 meter has been constructed at site".*

46. As per the report of executive engineer of authority, the unit of the complainant is situated in tower G and the work in that tower has yet not started.

47. In view of aforesaid circumstances, the authority is of considered view that the due date of handing over of possession comes out to be 26.12.2019 has already been passed and as per report of executive engineer of authority, the construction of tower G in which the unit of the complainant is situation is yet not started.

48. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and

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for which he has 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....."*

49. 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. 2021-2022(1) RCR (c ), 357** 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 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."*

50. 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) of the Act. 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.

51. 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 sections 71 & 72 read with section 31(1) of the Act of 2016.
52. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee 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."*

53. 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.



54. 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., 04.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
55. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 19,78,744/- 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 Rules *ibid*.
- (ii) **Direct the respondent/promoter to pay cost of litigation of Rs. 50,000/-.**
56. The complainant in the aforesaid relief is seeking 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.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the Authority:**



57. 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 entire amount of Rs. 19,78,744/- paid by the complainant along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the 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.
58. Complaint stands disposed of.
59. File be consigned to the registry.

**HARERA**  
**GURUGRAM**

v.i -   
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 04.05.2023**