

# BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 27.04.2023

NAME OF THE BUILDER PROJECT NAME S. No. Case No.		M/S REVITAL REALITY PRIVATE LIMITED.				
		"THE VALLEY"				
		Case title	Appearance			
1.	CR/4796/2021	Deepika Nahar VS Revital Reality Private Limited	Shri Sukhbir Yadav Advocate and Shri Bhrigu Dhami Advocate			
2.	CR/1052/2022	Saksham Gupta VS Revital Reality Private Limited	Shri Ajay Gupta Father of the complainant in person and Shri Bhrigu Dhami Advocate			

#### CORAM:

Shri Vijay Kumar Goyal

Member

#### ORDER

- 1. This order shall dispose of both the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,



namely, "The Valley" (affordable group housing colony) being developed by the same respondent/promoter i.e., M/s Revital Reality 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 intertest and the compensation.

3. 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:

Possession clause 8. POSSESSION OF THE	25 / There is a construction of the constructi
8.1 Schedule for possess 8.1.1. The Promoter agree Apartment along with Areas to the Associat	
Parking Space (if any plans or grant of en there is delay or fail but not limited to tin Plan, or any of the co under this Agreemen the Force Majeure co	tres to hand over possession of the Apartment along with (four) years from the date of approval of building vironmental clearance certificate, whichever is later, unless ure due to any causes attributable to the Allottee, including mely payment against the said Apartment as per the Payment auses covered under the Force Majeure conditions as defined at. If, however, the completion of the Project is delayed due to onditions, then the Allottee agrees that the Promoter shall be sion of time for delivery of possession of the Apartment. <b>(Emphasis supplied</b> )
Occupation certificate: -	



Due date of possession	<b>29.01.2024</b> [Note: - Calculated from date of approval of environment clearance i.e., 29.07.2019 as per policy, of 2013, which comes out to be 11.10.2022 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having
	completion date on or after 25.03.2020.]

S No	Complaint No.	Reply Status	Unit No.	Date of allotment	Date of execution of flat buyer's agreement	Total Consideration (TC), Basic sale price (BSP) & Total Amount paid by the complainant (AP)
1.	CR/4796/ 2021	20.06.20 22	1002, 10 <sup>th</sup> floor, tower/ block- K, (Page no. 30 of the complai nt)	02.03.2019 (Page no. 30 of the complaint)	Not Executed	TC: Rs.18,99,500/- (As per offer of allotment letter page 30 of the complaint) AP: Rs.1,89,950/- (As per outstanding statement dated 03.09.2019, at page no. 32 of the complaint)
2.	CR/1052/ 2022	22.06.20 22	0002, ground floor, tower/ block- G, (Page no. 7 of the agreem ent for sale)	02.03.2019	06.06.2019	TC: Rs.22,09,500/- AP: Rs.8,36,899/- (As per statement of payment received dated 13.12.2021, at page no. 25 of the complaint)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the flat buyer's agreement executed



between the parties in respect of said units for not handing over the possession by the due date, seeking award of refund the entire amount along with interest.

- 5. It has been decided to treat the said complaints as an application for noncompliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
- 6. The facts of both the complaints filed by the complainant(s)/allottee(s)are also similar. Out of the above-mentioned case, the particulars of lead case CR/4796/2021 Deepika Nahar VS Revital Reality Private Limited are being taken into consideration for determining the rights of the allottee(s) qua refund of the entire amount along with interest and compensation.

# A. Project and unit related details

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

S.N.	Particulars	Details
1.	Name of the project	"The Valley" Sector- 78, Gurugram
2.	Project area	9.0625 area
3.	Nature of project	Affordable Group Housing Project

# CR/4796/2021 Deepika Nahar VS Revital Reality Private Limited.



4.	RERA registered/not registered	Registered vide no. 20 of 2018 dated 23.10.2018
5.	RERA registration valid upto	31.10.2022
6.	DTPC License no.	45 of 2018 dated 29.06.2018 valid upto 28.06.2023
7.	Name of licensee	Revital Reality Pvt. Ltd. & others
8.	Unit no.	1002, 10 <sup>th</sup> floor, tower/block- K, (Page no. 30 of the complaint)
9.	Unit measuring	551 sq. ft [carpet area]
10.	Date of execution of flat buyer's agreement	Not executed
11.	Offer of allotment letter	02.03.2019 (Page no. 30 of the complaint)
12.	Possession clause	1(IV) of the Affordable Housing Policy, 2013
	GUR	All such projects shall be required to be necessarily completed <i>within 4 years</i> <i>from the approval of building plans or</i> <i>grant of environmental clearance,</i> <i>whichever is later.</i> This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licences shall not be renewed beyond the said 4 years



x

		period from the date of commencement of project.
13.	Due date of possession	29.01.2024
		[Note: - As per clause 1(IV) "commencement period" shall mean the date of obtainment of all the government sanctions and permissions including environmental clearance.
	ARE	Calculated from date of approval of environment clearance i.e., 29.07.2023 as per policy, of 2013, which comes out to be 29.07.2023 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]
14.	Date of approval of building plans	11.10.2018 [as per information obtained by the planning branch]
15.	Date of approval of environment clearance	29.07.2019 (Page no. 22 of the reply)
16.	Total sale consideration	Rs.18,99,500/- (As per offer of allotment letter page 30 of the complaint)
17.	Total amount paid by the complainant	Rs.1,89,950/- (As per outstanding statement dated 03.09.2019, at page no. 32 of the complaint)



18.	Occupation certificate		ate	Not obtained
19.	Surrender allottee	by	the	22.12.2019 (Page no. 33 of the complaint)

#### B. Facts of the complaint

- 8. The complainant has made the following submissions in the complaint:
  - a. That in January 2013 complainant/allottee, received a marketing call from the office of a real estate agent and who represented himself as an authorized agent of the respondent and marketed for booking in a residential project "The Vally" situated at Sector 78 Gurugram. The complainant visited the local office and project site and consulted with the marketing staff/office bearers of the respondent. The marketing staff showed a rosy picture of the project through glitzy advertisements and colourful brochures, proposing to develop and construct an integrated residential project with features like, at the prime location of Sector 78, Gurugram and claiming the same to be space and luxury and a perfect example of modem-day residential complexes at an affordable rate under Affordable Group Housing Policy, 2013.
  - b. That believing on representation and assurance of respondent, the complainant applied for a 2BHK flat in the project and issued a cheque of Rs.94,975/- along with the application form.
  - c. That vide draw dated 27.02.2019, the complainant was successful to become an allottee in the project and the respondent issued an allotment letter on 02.03.2019, confirming the allotment of the unit no. 1002, in tower– K for tentative size admeasuring 551 sq. ft. in the said



project for a total sale consideration of Rs.18,99,500/-. Thereafter, the complainant again issued a cheque of Rs.94,975/- on 26.03.2019 against the demand cum allotment letter.

- d. That at the time of receiving the application money, the respondent represented that the project is approved by leading banks for housing finance and the allottee can avail home loan facility from the leading banks. But when the complainant/allottee approached the SBI, ICICI, HDFC, and other leading banks, they refused to grant the loan by saying that project was not approved by them. The complainant and her father visited several times to the local office of the respondent to know the status of project approval from the leading banks but there was no satisfactory answer from it although, the respondent suggested that the project is approved by Two NBFC namely L&T finance and IIFL. Therefore, under the given circumstances, the complainant wishes to withdraw from the project.
- e. That on 03.09.2019, the respondent sent an outstanding statement letter to the complainant and asked her to pay Rs.5,29,486/-. As per the said statement of account, the respondent acknowledged that Rs. 1,89,950/- has been paid by the complainant.
- f. That the complainant sent an email to the respondent on 22.12.2019 and informed that she wants to withdraw from the project and asked for the procedure for cancelation of allotment. Thereafter on 26.01.2020, the complainant again sent an email and requested to refund the paid amount and shared the bank account details with the respondent. Thereafter, she submitted all original documents in the prescribed form for the cancelation of the allotment and requested for



the refund of the paid amount. The complainant again sent an email to the respondent on 04.02.2020 stating that "*This is in reference with below mail, I have sent to revoke our allotted flat. Kindly suggest further for next step and we have submitted all the required details*".

- g. That as per Affordable Group Housing Policy, 2013, the respondent can deduct Rs. 25, 000/- on withdrawal by the allottee. The complainant is ready for deduction of Rs. 25,000/-.
- h. That the main grievance of the complainant is that despite the complainant having withdrawn from the project vide email dated 22.12.2019 and submitting all original documents to the respondent, it is not repaying the balance amount.
- i. That, since 2020 the complainant is contacting the respondent and has sent emails to it and asked to refund the paid amount. Despite several requests by the complainant, the respondent till today has neither cancelled the unit & nor refunded the total paid amount.
- j. That the facts and circumstances as enumerated above would lead to the only conclusion that service is deficient on the part of the respondent and as such, he is liable to be punished and compensate the complainant. Due to the acts of the above and the terms and conditions of the Affordable Group Housing Policy, 2013, the complainant has been unnecessarily harassed mentally as well as financially. So, the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
- k. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondent and much more a smell of



playing fraud with the complainant and others and is prima facie clear it which makes it liable to answer this authority.

# C. Relief sought by the complainant: -

- 9. The complainant has sought following relief(s)
  - Direct the respondent to refund the paid-up amount after a deduction of Rs.25,000/- along with interest from 22.12.2019, till realization of money.
- 10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

# D. Reply by the respondent.

- 11. The respondent has contested the complaint on the following grounds:
  - i. That the respondent is one of the leading real estate developers in the State of Haryana and NCR. It has several projects across the state, and such has built a great reputation for having the highest quality of real estate developments.
  - ii. That one of its marquee projects is the "The Valley", located in sector 78, Gurugram, Haryana. The complainant approached the respondent, making enquiries about the project, and after thorough due diligence and complete information being provided sought to book an apartment in the said project.
  - iii. That on 02.03.2019, the complainant was allotted an apartment bearing no. 1002, in tower- K, having super area of 551 sq. ft. for a total consideration of Rs.18,99,500/- vide a booking form.



- iv. That consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the flat buyer's agreement dated 02.03.2019.
- v. That the 'Possession' clause itself provided a 'Commencement Date' from which point the respondent herein had to deliver possession of the apartment within 4 years, thereof. It would be apposite to note that the respondent received the sanctions for its building plans on 29.06.2018 by Directorate of Town and County Planning, Haryana, and environmental clearance on 29.07.2019. Therefore, the commencement date as per the agreement is 29.07.2019 and 4 years from that date would mean that the respondent has to give possession of the apartment by 28.07.2023. Accordingly, since the contractual period for handing over possession of the apartment still subsists, the instant complaint is premature and vexatious and merits dismissal.
- vi. That the time stipulated for delivering the possession of the unit was on or before 4 years after obtaining the requisite approval of the building plans or environmental clearance, whichever is later. However, the buyer's agreement duly provides for extension period of 6 months over and above the said date.
- vii. That the complainant has not come with clean hands before this authority and has suppressed the true and material facts from this authority. The complainant is a mere speculative investor who has no interest in taking



possession of the apartment. Therefore, in view of the factual matrix, this complaint is liable to be dismissed.

- viii. That the possession of the said project is proposed to be delivered by the respondent to the allottee by 28.07.2023. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention to get the delivery of project, delayed, to the allottees. Due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was/has been stopped for a considerable period day due to high rise in Pollution in Delhi NCR.
  - ix. That the enactment of the Act of 2016, is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate sector market. The main intention of the respondent is just to complete the project within stipulated time submitted before the authority. The project is ongoing project and construction is going on.
  - x. That the respondent further submits that the Central Government has also decided to help bonafide builders to complete the stalled projects which were not constructed due to scarcity of funds. The Central Government announced Rs.25,000 Crore to help the bonafide builders for completing the stalled/ unconstructed projects and deliver the homes to the homebuyers. It is submitted that the respondent/ promoter, being a



bonafide builder, has also applied for realty stress funds for its Gurgaon based projects.

- xi. That compounding all these extraneous considerations, the *Hon'ble Supreme Court vide order dated 04.11.2019*, imposed a blanket stay on all construction activity in the Delhi- NCR region. The 'Basera' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay orders have been passed during winter period in the preceding years as well, i.e., 2017-2018 and 2018-2019. Further, a complete ban on construction activities at site invariably results in a long-term halt in construction activities. As with a complete ban, the concerned labor was let off and they travelled to their native villages or look for work in other states, the resumption of work at site became a slow process and a steady pace of construction as realized after long period of time.
- xii. The respondent has further submits that graded response action plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.



- That the pandemic of covid-19 has had devastating effect on the worldxiii. wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially, the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July 2020. In fact, the entire labour force employed by the respondent was forced to return to their hometowns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such, the respondent has not been able to employ the requisite labour necessary for completion of its projects. The Hon'ble Supreme Court in the seminal case of Gajendra Sharma v. UOI & Ors, as well Credai MCHI & Anr. V. UOI & Ors has taken cognizance of the devastating conditions of the real estate sector and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector.
- xiv. That the project is an ongoing project and orders of refund at a time when the real estate sector is at its lowest point, would severally prejudice the development of the project which in turn would lead to transfer of funds necessary for timely completion of the project. Any refund order at this stage would severally prejudice the interest of the other allottees of the project as the diversion of funds would severally impact the project development. Thus, no order of refund may be passed by the authority in



lieu of the present prevailing economic crisis and to safeguard the interest of the other allottees at large.

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

## E. Jurisdiction of the authority

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

## E. I Territorial jurisdiction

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

# E. II Subject matter jurisdiction

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

## Section 11

(4) The promoter shall-



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

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

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

- 16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
- 17. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (Civil), 357* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on* 12.05.2022 and wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory



authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

- 18. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.
  - F. Findings on the objections raised by the respondent
    - F.I. Objections regarding the complainant being investor.
- 19. The respondent has taken a stand that the complainant is the investor and not consumer, therefore, she is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if it contravenes or violates any provisions



of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is buyer and paid total price of **Rs.1,89,950/-** to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

20. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that she is an allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 000600000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of



promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

## F. II Objection regarding force majeure conditions:

- 21. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as delay in shortage of labour, implementation of various social schemes by Government of India, demonetisation, lockdown due to covid-19 various orders passed by NGT, weather conditions in Gurugram and non-payment of instalment by different allottees of the project. The respondent has taken a plea that there was a delay in construction of the project on account of NGT orders, orders by EPCA, orders by Hon'ble Supreme Court of India, etc but did not particularly specify for which period such orders has been made operative. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.
- 22. The respondent also took a plea that the construction at the project site was delayed due to Covid-19 outbreak. In the instant complaint, the due date of handing over of possession comes out to be 29.07.2023 and grace



period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builders.

## G. Findings on the relief sought by the complainants.

- G. I Direct the respondent to refund the paid-up amount after a deduction of Rs.25,000/- along with interest from 22.12.2019, till realization of money.
- 23. The complainant was allotted a unit no. 1002 on 10th floor, in tower/block-K, in the project "The Valley" by the respondent/builder for a total consideration of Rs.18,99,500/- under the Affordable Group Housing Policy 2013 vide offer of allotment letter dated 02.03.2019. No buyer's agreement was executed between the parties. The possession of the unit was to be offered with 4 years from approval of building plans (11.10.2018) or from the date of environment clearance 29.07.2019 and whichever is later. The due date of possession was calculated from date of approval of environment clearance i.e., 29.07.2019, as per policy, of 2013. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, the extension of 6 months for the projects having completion date on or after 25.03.2020 which comes out to be 29.01.2024. The complainant paid a sum of Rs.1,89,950/- out of the total sale. Further, the complainant has placed an email dated 22.12.2019 on page no. 33 of the complaint which is reproduced as under for a ready reference: -

"I Would like to cancel my unit. Request to you kindly suggest the procedure for same as



I already paid around 2 lakhs till now."

24. As per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019, the relevant provision is reproduced as under:

## Clause 5(iii) (h) of the affordable housing policy

"A waiting list for a maximum of 25% of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottees are not able to remove the deficiencies in their application within the prescribed period of 15 days. [On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -

Sr. No.	Particulars	Amount to be forfeited	
(aa)	In case of surrender of flat before commencement of project	Nil	
(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat	
(cc)	Upto 2 year from the date of commencement of the project	3% of the cost of flat	
(dd)	After 2 years from the date of commencement of the project	5% of the cost of flat	

Such flats may be considered by the committee for offer to those applicants falling in the waiting list. However, non-removal of deficiencies by any successful applicant shall not be considered as surrender of flat, and no such deduction of Rs 25,000 shall be applicable on such cases. If any wait listed candidate does not want to continue in the waiting list, he may seek withdrawal and the licencee shall refund the booking amount within 30 days, without imposing any penalty. The waiting list shall be maintained for a period of 2 years, after which the booking amount shall be refunded back to the waitlisted applicants, without any interest. All non-successful applicants shall be refunded back the booking amount within 15 days of holding the draw of lots".



- 25. Since the surrender of the unit by the complainant was done after commencement of construction, hence the respondent is entitled to forfeit amount in accordance with as per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019. The date of commencement of project has been defined under clause1(iv) to mean the date of approval of building plan or grant of environmental clearance, whichever is later. In the instant case, the date of grant of environment clearance i.e., 29.07.2019 is later and hence, the same would be considered as date of commencement of project.
- 26. Accordingly, the details of the amount to be refunded as per the policy in each case is as under:

Complaint no.	Date of surrender	Forfeiture of amount in addition to Rs.25,000/-
CR/4796/2021	22.12.2019	Respondent is entitled to forfeit 1% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 and the request for surrender is within 1 year from the date of commencement of project.
CR/1052/2022	01.01.2022	Respondent is entitled to forfeit 5% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 and the request for surrender is after 3 year from the date of commencement of project.



27. The respondent/promoter is directed to refund the paid-up amount after deduction of 1% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the of Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.70% per annum from the date surrender/withdraw of allotment till the actual realization of the amount.

## F. II. Compensation & litigation expenses.

- 28. The complainant in the aforesaid head is seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP &Ors*. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.
- H. Directions of the authority
- 29. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
  - i. The respondent is directed to refund the paid-up amount each of the complainant(s) along with interest at the rate 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 surrender till the date of actual realization of the amount within the timelines



provided in rule 16 of the Haryana Rules 2017 (ibid) after making statutory deductions as mentioned in table annexed to para 24 of this order.

- 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.
- 30. This decision shall mutatis mutandis apply to both the cases mentioned in para 3 of this order.
- 31. The complaints stand disposed of. True certified copy of this order be placed on the case file of each matter.
- 32. Files be consigned to registry.

Dated: 27.04.2023

V.L.

(Vijay Kumar Goyal) Member Haryana Real Estate Regulatory Authority, Gurugram