

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

Complaint no. : 1632 of 2022  
Complaint filed on : 15.04.2022  
Date of decision : 17.05.2023

Niru Setia Kapoor  
R/o: - 38-L, Model Town, Ludhiana, Punjab- 141002

**Complainant**

Versus

M/s Ramprashtha Developers Private Limited.  
**Regd. Office at:** - Plot No. 114, Sector-44, Gurugram-  
122002

**Respondent**

**CORAM:**

Shri Ashok Sangwan

Member

**APPEARANCE:**

Sh. Suprateek Neogi (Advocate)  
Ms. R. Gayathri Mansa (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 to the allottee as per the agreement for sale executed *inter se* them.



**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name of the project	Cannot be ascertained
2.	Project area	Cannot be ascertained
3.	plot no.	N.A.
4.	Unit area admeasuring	1700 sq. ft. (Page no. 26 of the complaint)
5.	Date of booking application	N.A.
6.	Welcome letter	N.A.
7.	Allotment letter	N.A.
8.	Date of execution of plot buyer's agreement	N.A.
9.	Possession clause	N.A.
10.	Due date of possession	Cannot be ascertained
11.	Basic price of the plot	N.A.
12.	Amount paid by the complainant	Rs.15,63,000/- [As per alleged by the complainant at page no. 14 of the complaint]

**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- a. The present complaint pertains to the failure of the respondent/promotor to discharge his duties and obligations under Sections 11, 12, 13 and 18 of the Act and violating the rights of the complainant herein under section 19 of the Act of 2016. The respondent has failed to furnish details regarding the developments in the construction of the project. Furthermore, it has failed to refund the amount paid by her towards the purchase/booking of the flat.
- b. That the complainant had made a payment of Rs.15,63,000/- towards the booking/purchase of a flat in the residential project launched by it and as such is an "allottee" within the meaning of section 2(d) of the Act of 2016. She had booked the flat for her own personal use and for the use of her family members. The complainant is not engaged in the business of purchasing/selling houses. She spent her hard-earned money for booking the flat in the project proposed to be developed by it.
- c. The facts leading to the filing of the complaint are as follows: -
  - In the year 2012, the respondent invited applications from the general public for the allotment of flats/apartments in one of its upcoming housing projects.



- The representatives of the respondent approached the complainant to invest money in the upcoming project and, based on these representations, he got lured to book a flat in the upcoming project.
- The complainant, believing the assurances regarding the upcoming project applied for booking a flat/apartment in the said project by paying the booking amount of Rs.5,00,000/- to the respondent vide cheque no. 357270 dated 19.10.2012. Thereafter, the respondent vide its undated letter/form confirmed the booking of the flat in the aforesaid project. Thereafter, he has additionally paid an amount of Rs.6,63,000/- and Rs.4,00,000/- vide cheques no. 357274 and 357271 dated 12.11.2012 respectively towards the purchase of the flat/apartment in the upcoming project.
- The complainant wrote a letter dated 05.07.2013 to the respondent with regards to the recently launched project i.e., "Primera" in Ramprastha City, Sector 37-D, Gurgaon and asking it to adjust the above paid amount of Rs.15,63,000/- towards the booking of flat no. C-901 in project i.e., Primera.
- That after the said letter was written, no response or any kind of update was provided by the respondent regarding the allotment of the said flat or the status of the development of the upcoming project.



- The complainant contacted the respondent and even visited their office on numerous occasions to inquire about the allotment of her flat and the progress and status of the project. However, the respondent refused to provide any details or information regarding the same.
- The respondent owed a duty towards the complainant to inform her whether the said flat had been allotted to her or not and furnish regular developments regarding the construction and status of the project. The respondent miserably failed in performing these obvious duties.
- Despite repeated reminders and inquiries by her, respondent failed to provide any information regarding the status of the allotment of the flat that was to be provided to the complainant for which the booking amount had already been deposited and the status of the construction of the Project.
- The complainant was kept in the dark by it without any reasonable cause indicating the respondent's malafide intent to deceive and dupe her.
- On 14.01.2020, she was constrained to send a legal notice to the respondent for the refund of the amount deposited with it towards the booking amount and purchase of the flat. However, despite receiving the said legal notice, the respondent neither replied nor refunded the amount.





- d. That the respondent has completely failed in its duty as a promoter by not responding to the requests and inquiries her. The complainant has time and again sought answers from the respondent about the status of the construction of the project after paying the booking amount. However, the respondent has no heed to the numerous requests placed by her.
- e. Till date she has been kept in the dark about the progress of the construction work. The complainant has an apprehension that the respondent is deceiving the complainant by diverting the money paid by her for some other purpose. The respondent with malafide intention is using the hard-earned money of the complainant to earn undue profit and cause undue loss to her. The respondent cannot be allowed to act arbitrarily and fraudulently simply because it is in a dominant position.
- f. That there is absolutely no reason or justification for the said non-compliance and disregard with respect to the complainant pleas seeking clarity and information. The hope of the complainant has turned into anxiety and despair. The respondent wilful denial to provide basic details regarding the allotment of the flat and the status of the project is indicative of its blatant laxity and unprofessionalism. The respondent has illegally enriched itself at the cost of the complainant.



g. That the respondent has violated his obligations as to the veracity of the advertisements and prospectus as under section 12 of the Act of 2016. She had made an advance payment aggregating to Rs.15,63,000/- on the basis of the advertisements and prospectus of the respondent and which contained false statements. The respondent has firstly, callously not informed the complainant about the status of the project and secondly, the development of the project has been indefinitely stalled.

h. That the respondent is guilty of non-fulfilment of its duties as a promoter under enumerated under section 18 of the Act of 2016. The respondent has not, firstly, informed the complainant of the status of the project despite her repeated requests; and secondly, the respondent has ignored the repeated demands of the complainant to withdraw from the project by demanding a return of the investment of Rs.15,63,000/- with interest. As per section 18 of the Act, the respondent/promoter is liable to return the amount received by her with interest and pay compensation as per the provisions of the Act.

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

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

- I. Direct the respondent to refund the amount of Rs. 15,63,000/- along with interest @18% per annum.
- II. Direct the respondent to pay a sum of Rs.5,00,000/- towards the legal cost incurred by the complainant in the legal proceedings.



- III. Direct the respondent to pay a sum of Rs.1,00,000/- towards immense mental agony and harassment suffered by the complainant due to the respondent negligence.
5. 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.**

6. The respondent has contested the complaint on the following grounds.
- I. That the present complaint is not maintainable in its present form and the complaint is liable to be dismissed on the grounds hereunder mentioned by the respondent. The authority has no jurisdiction to entertain the present complaint. Therefore, this reply is without prejudice to the rights and contentions of the respondent contained in the said application.
- II. The complaint is not maintainable since the present allottee does not fall under the definition of a complainant as defined under the Consumer Protection Act, 2019.
- III. That the allottee has executed an apartment buyer agreement in the residential project named 'Primera', being developed by the respondent/promoter located at Ramprastha City, Sector 37-D Gurugram. She had applied for the provisional allotment of one of the residential units along with an exclusive right to use the one parking space in the said project.



- IV. That, pursuant to the said application, an allotment letter was issued to the allottee confirming the allotment of flat no. C-901 located on 9<sup>th</sup> floor along with one parking space in block - C for a total consideration of Rs. 87,25,860/- in the said project. However, the complainant never showed up despite several reminders to approach the respondent with necessary documents for execution of builder buyer agreement. In fact, it is entirely due to the lackadaisical attitude of the complainant that the builder buyer agreement could not be executed till date and she by way of the present complaint is attempting to mislead this authority by representing itself as a genuine buyer.
- V. That without prejudice to the objections raised on the grounds that the agreement between both the parties was not executed for rendering of any service, it is further submitted that the allottee has also not discharged the onus of satisfying the authority that she did not purchase the said apartment for commercial purposes. The allottee has not disclosed the details of ownership of residential properties within the NCT Region and has thus clearly not approached this authority with clean hand.
- VI. That the allottee does not fall under any of the categories of persons/association of persons covered by the definition of Consumer as defined under section 2(5) of the Consumer Protection Act, 2019 including a consumer. Under section 2(7) of the Consumer Protection Act, 2019, "Consumer" refers to a person who has purchased goods or availed services and further has been defined to oust any transaction with commercial

purposes. This authority has held in catena of cases that a person whose sole objective is to make a profit in relation to its claim and not to redress any alleged injury or the one who obtains an apartment not for his/her own residence, does not fall under the ambit of the definition of "consumer". The object of the Act is to provide better protection to a consumer who avails the services for his own use and further to redress the injury suffered by such persons. The Act clearly keeps out those services which are availed for commercial purposes. Therefore, the act of the complainant clearly keeps her out from the ambit of the protection given to the consumers. It is further submitted that the respondent reserves its rights to further argue this issue at the time of hearing, if necessary.

- VII. The position of a "consumer" within the lines of the Act can only be assigned to a person when certain criteria as envisaged in the said Act have been complied. As per the facts and circumstances of the case, the complainant position run counter to the classification of a person as "Consumers" within the meaning of the Act. Hence, in this regard the status of a consumer cannot be by any bounds labeled onto the complainant.
- VIII. That the complainant has nowhere stated that the said flat is the only flat and hence an adverse inference can be drawn that she is in possession of multiple flats and the sole intent of purchasing the said flat was for investment purpose and for gaining illegal commercial profits. The commercial intent of the complainant is manifest from the prayer of the complaint wherein she claimed

exorbitant amounts by way of compensation and inflated rate of interest without any basis and over and above the actual amount invested by her which clearly shows her intention to utilize the said flat commercially.

IX. That due the lackadaisical attitude of the complainant along with several other reasons beyond the control of the respondent as cited by it caused the present delay. If any objections to the same was to be raised the same should have been done in a time bound manner while exercising time restrictions very cautiously to not cause prejudice to any other party. The complainant cannot now suddenly show up and thoughtlessly file a complaint against the respondent on her own whims and fancies by putting the interest of the builder and the several other genuine allottees at stake. If at all, the complainant had any doubts about the project, it is only reasonable to express so at much earlier stage. Further, filing such complaint after lapse of several years at such an internal only raises suspicions that the present complaint is only made with an intention to arm twist the respondent. The entire intention of the complainant is made crystal clear with the present complaint and concretes her status of the complainant as an investor who merely invested in the project with an intention to draw back the amount as an escalated and exaggerated amount later.

X. Despite the best efforts by the promoter to hand over timely possession of the said flat booked by the complainant, the promoter could not do so due to reasons and circumstances beyond its control. It was only on account of the following





reasons/circumstances that the project got delayed and timely possession could not be handed over to the complainant: -

- The project faced various roadblocks and hindrances including approvals from different authorities which were beyond the control of the promoter and which in turn lead to unforeseeable delay in the construction/completion of the project and hence handing over of the possession of the flat to the complainant.
- Active implementation by the Government of alluring and promising social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), further led to sudden shortage of labour/ workforce in the real estate market as the available labour was tempted to return to their respective States due to the guaranteed employment under the said NREGA and JNNURM Schemes. The said factor further created a vacuum and shortage of labour force in the NCR region. A large numbers of real estate projects, including the present project of the respondent, were struggling hard to cope with the construction schedules, but all in vain.
- The promoter faced extreme water shortage, completely unforeseen by any of the real estate companies, including the promoter, in the NCR region. The respondent, who was already trying hard to cope up with the shortage of labour, as mentioned above, also faced with the acute shortage of water in the NCR region. The said factor of shortage of water directly affected the construction of the project at the site. To make the

conditions worse, the **Hon'ble High Court of Punjab and Haryana** vide Order dated 16.07.2012 restrained the usage of ground water and directed to use only treated water from available Sewerage Treatment Plants (hereinafter referred to as "STP"). As the availability of STP, basic infrastructure and availability of water from STP was very limited in comparison to the requirement of water in the ongoing constructions activities in Gurugram District. It became difficult to timely complete the construction activities as per the schedule. The availability of treated water to be used at construction site was very limited and against the total requirement of water only 10-15% of required quantity was available at construction sites. In furtherance to the directions of **Hon'ble High Court of Punjab and Haryana**, the respondent company received a Letter bearing memo no 2524 dated 01.09.2012 from the Deputy Commissioner, Gurugram, Haryana, informing to it about the complete ban on the use of underground water for construction purposes and use of only recycled water being permitted for the said purposes.

- The respondent neither had any control over the said directions/orders from the Hon'ble High Court nor had any control over the shortage of water in the NCR region which in turn led to the delay in the completion and hence, the handing over of the possession of the flat to the complainant.
- There has been a heavy shortage of supply of construction material i.e., river sand and bricks etc. through out of Haryana,

pursuant to order of *Hon'ble Supreme Court of India in the case Deepak Kumar etc. v. State of Haryana* (I.A. No. 12-13 of 2011 in SLPs (C) nos. 19628-29 of 2009 with SLPs (C) No. 729-731/2011, 21833/2009, 12498-499/2010, SLP(C) CC... 16157/2011 & CC 18235/2011 dated 27 February 2012) and correspondingly, the construction progress slackened. This also caused considerable increase in cost of materials. It is noteworthy that while multiple project developers passed on such incremental costs attributable to the above reasons to the buyers, the management of the promoter assured its customers that it would not and held fast on its promise by not passing on any of such costs to the buyers.

- XI. The below table shows the project name, its size, and the current status of the project. It can be seen that the respondent has been diligent in completing its entire project and would be completing the remaining projects in phased manner. The respondent has completed major projects mentioned below and has been able to provide occupancy to the allottees.

S. No	Project Name	No. of Apartments	Status
1.	Atrium	336	OC received
2.	View	280	OC received
3.	Edge		
	Tower I, J, K, L, M	400	OC received
	Tower H, N	160	OC received



	Tower-O (Nomenclature-P) (Tower A, B, C, D, E, F, G)	80 640	OC received OC to be applied
4.	EWS	534	OC received
5.	Skyz	684	OC to be applied
6.	Rise	322	OC to be applied

7. 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 as well as the written submission of the complainant.
8. Through a perusal of the complaint, it is pleaded that the complainant was allotted a unit in the upcoming futuristic project Gurugram but while filing written reply the respondent on 06.09.2022, it referred to allotment of a plot and that too with incorrect particulars of dates of buyer's agreement and the unit details etc.

**E. Jurisdiction of the authority**

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**

9. 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**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.





11. 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.
12. 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."*



13. 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.1 Objections regarding the complainant being investor.**

14. The respondent has taken a stand that the complainant is the investor and not consumer and 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 consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the 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 he 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 a buyer and paid total price of **Rs.15,63,000/-** to the promoter towards purchase of a unit in the project of the promoter. At

this stage, it is important to stress upon the definition of the 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;"*

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the provisional receipt, it is crystal clear that the complainant is an allottee as the subject unit was allotted to her 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. 0006000000010557 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 is being an investor is not entitled to protection of this Act also stands rejected.

**G. Findings on the relief sought by the complainant**

**G.1 Direct the respondent to refund the entire amount of Rs.15,63,000/- paid by the complainant along with 18% interest per annum.**



15. The complainant submits that she paid an amount of Rs.15,63,000/- to the respondent/promoter in the year 2012. The respondent confirmed the amount received and promised the allotment of a unit admeasuring 1700 sq. ft. in any of its future upcoming project located in Gurugram. Thereafter, till date, the respondent has miserably failed to specify the project as well as unit number where 1700 sq. ft. has been allotted. On 14.01.2020, the complainant sent a legal notice that neither the allotment letter and nor the plot buyer's agreement has been executed till date and to which the respondent did not respond. The complainant tired of the neglectful behavior of the respondent filed the present complaint pleading for refund along with interest before this authority.
16. The respondent vide reply dated 06.09.2022 submitted that the complaint is time barred by limitation as the complainant made the payment in the year 2012, and thereafter she never came forward for filling up booking application form and buyer's agreement. Accordingly, the complaint is liable to be rejected. Moreover, the complainant was aware from the very inception that she was making payment w.r.t. future project which was not yet launched.
17. Before coming to the facts of the case, it is to be seen as to the receipt issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of the contract Act, 1872 and which provides that:



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

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

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

19. There is a large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money and only issued receipt against the allotment of a plot either in the exiting or in its upcoming project at Gurugram. Neither it issued any allotment letter nor executed any builder buyer's agreement. Even in some cases, the builder accepted more than 50 lacs either in cash or through cheque and promising to allot an apartment/plot in the upcoming or existing projects and then vanishing or not taking any further steps with regard to either allotment of the unit of the property in any project or refunding the amount received. The holders of those receipt/allotments are harassed lot failing to act on the basis of the documents issued by the developer and to initiate any civil or criminal action against the builder. This position existed in Pre- Rera cases as after Act of 2016, a promoter is obligated to comply with the provisions of the Act and follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.



20. But the document/receipt so issued in favour of a person can be termed as an **agreement for sale** to drag the developer before RERA Authority and compelling him to fulfil his obligations against the holder of that document. It is also pertinent to mention in many cases that the allottee has been sleeping over his rights which is evident from the fact that after payment of an amount, he did not make any effort to get the agreement executed; and having no proof of any request or reminder in this regard made by the allottee to the promoter. However, the promoter is duty bound to explain the reasons for which he has kept such a huge amount for so long, considering the fact that the promoter company is not a bank or non-banking financial company (NBFC). In case of failure on the part of promoter to give an explanation, it shall be liable to refund the principal amount deposited by the allottee.
21. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest at the prescribed rate as provided under section 18(1)(b) of the Act. Sec. 18(1)(b) of the Act is reproduced below for ready reference.

***“Section 18: - Return of amount and compensation***

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

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under **this Act or for any other reason,***

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

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

22. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by her at the prescribed rate of interest 18%. However, the allottee is seeking refund of the amount paid by her 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.*

23. 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.
24. 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., 17.05.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.

25. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

26. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainant is well within her right for seeking refund under section 18(1)(b) of the Act, 2016.
27. The instant matter falls in the category where the promoter has failed to allot a plot/unit in its any of the upcoming project as detailed earlier despite receipt of Rs.15,63,000/- made in the year 2012. So, the case falls under section 18(1)(b) of the Act of 2016.
28. In the instant matter, even after lapse of 10 years from the date of payment till the filling of complaint, no buyer's agreement has been



executed inter- se parties. Therefore, the due date of possession cannot be ascertained, and the complainant cannot be expected to wait endlessly for her unit/plot 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....."*

29. 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 she 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.
30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1)(b) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by her 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 amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G. II Cost of litigation**

31. 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.

**H. Directions of the authority**

32. 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 i.e., Rs.15,63,000/- 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.
33. Complaint stands disposed of.
34. File be consigned to registry

Dated: 17.05.2023

**HARERA**  
**GURUGRAM**



**(Ashok Sangwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram