

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

Complaint no. : 5844 of 2022
Date of filing of complaint: 09.09.2022
Date of decision : 25.04.2023

Tesu Singh Chauhan
D/o Sh. Sardar Singh Chauhan
R/o: - A -1005, Sispal Vihar, AWHO Complex, South City-
II, Sohan Road, Sector- 49, Gurugram, Haryana

Complainant

Versus

M/s Revital Reality Private Limited.
Regd. Office at: 1114, 11th Floor, Hemkunt Chamber,
89, Nehru Place, New Delhi- 110019

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Member
Member

APPEARANCE:

Sh. Jainder Kharb (Advocate)
Sh. Bhrigu Dhami (Advocate)

Complainant
Respondent

ORDER

1. This 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 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	"Supertech Basera" sector- 79&79B, Gurugram	
2.	Project area	12.10 area	
3.	Nature of project	Affordable Group Housing Project	
4.	RERA registered/not registered	Registered vide no. 108 of 2017 dated 24.08.2017	
5.	RERA registration valid upto	31.01.2020	
6.	RERA extension no.	14 of 2020 dated 22.06.2020	
7.	RERA extension valid upto	31.01.2021	
8.	DTPC License no.	163 of 2014 dated 12.09.2014	164 of 2014 dated 12.09.2014
	Validity status	11.09.2019	11.09.2019



	Name of licensee	Revital Reality Private Limited and others
9.	Date of approval of building plans	19.12.2014 [as per information obtained by the planning branch]
10.	Date of grant of environment clearance	22.01.2016 [as per information obtained by the planning branch]
11.	Unit no.	303, 3 rd floor, tower/block- 13, (Page no. 21 of the complaint)
12.	Unit measuring	473 sq. ft. (Carpet area) 73 sq. ft. (Balcony area) (Page no. 21 of the complaint)
13.	Date of execution of flat buyer's agreement	18.04.2016 (Page no. 00 of the complaint)
14.	Possession clause	3.1 Possession <i>Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's</i>



		<p><i>Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date") , whichever is later. The Developer also agrees to compensate the Allottee/Buyer @ Rs.5.00/- (Five rupees only) per sq. ft. of the area of the flat per month for any delay in handing over possession of the Flat beyond the given promised period plus the grace period of 6 months and upto offer letter of possession or actual physical possession whichever is earlier.</i></p> <p>(Page no. 24of the complaint).</p>
15.	Grace period	<p>Not allowed</p> <p>The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (19.12.2014) or grant of environment clearance, (22.01.2016) (hereinafter referred to as the "Commencement Date"), whichever is later and has sought further extension of a period of</p>



		6 months (after the expiry of the said time period of 4 year) but there is no provision in relation to grace period in Affordable Group Housing Policy, 2013. As such in absence of any provision related to grace period, the said grace period of six months as sought by the respondent promoter is disallowed in the present case.
16.	Due date of possession	22.01.2020 [Note: - the due date of possession can be calculated by the 4 years from approval of building plans (19.12.2014) or from the date of environment clearance (22.01.2016) whichever is later.]
17.	Total consideration sale	Rs.19,28,500/- (As per payment plan page no. 23 of the complaint)
18.	Total amount paid by the complainant	Rs.20,36,473/- (As per prepossession outstanding statement dated 20.04.2022 at page no. 32 of the complaint)
19.	Occupation certificate	Not obtained and application for OC stand made.
20.	Delay in handing over possession till the date of filing of this complaint i.e., 09.09.2022	2 years 7 months and 18 days

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That, in pursuant to the elaborate advertisements, assurances, representations and promises made by it in the brochure circulated by them about the timely completion of this affordable group housing colony - 'Supertech Basera' with quality standards and believing the same to be correct and true, the complainant booked a flat measuring 546 sq. ft. in the said project, being flat No. 303, tower 13 in Gurugram. It was represented and assured by the respondent that the construction of the said project was initiated in 2014 after receiving the necessary approvals from the concerned authorities, and the said flat would be constructed and handed over to the complainant by 2018, in accordance with the provisions of Affordable Group Housing Policy, 2013 issued by Government of Haryana.
- II. That, relying upon the respondent's representations and being assured that the respondent would abide by their commitments, the complainant being the co-applicant along with his wife, in good faith booked a flat in the said project on 10.03.2016.
- III. That the allotment of the said flat was confirmed to the complainant vide allotment letter dated 26.03.2016. Subsequently, the builder buyer agreement executed between



the parties on 18.04.2016, wherein the respondent mentions the Rs.19,28,500/- as the total sale consideration of the flat and assigned all the rights and benefits under the builder buyer agreement to the complainant, explicitly.

- IV. That the said builder buyer agreement, the respondent promised, assured, represented, and committed to the complainant that the project is under construction and is being developed and would be completed and the possession of flat would be handed over to the buyer by the end of 2018. Also, under clause C of the buyer's agreement, the respondent specifically mentions that the said project is being developed and constructed. Further, under clause D of the said agreement, the respondent projected that the said project has received approvals and sanctions including environmental clearance from the concerned authorities.
- V. Thereafter, several efforts from the complainant were made to seek updates about the status of the possession, but due to the negligence of the respondent, there was no satisfactory response from their end. The agreement entered between the parties provided for the payment plan, and all the payments were paid to the respondent, timely. She had assumed the money collected by the respondent from the complainant would be utilised for timely construction and possession of the flat to her by 2018.

The respondent issued a false outstanding statement dated 20.04.2022, an of Rs.7,72,006/-, and further demanded to make this payment, or else, no dues certificate/possession of the flat will not be given to her. She objected to the frivolous demand of the respondent as the said outstanding statement was against the Affordable Housing policy, 2013. All the efforts of the complainant went in vain, and the respondent managed to extort Rs.58, 210/- on the false pretext of issue of no dues certificate to the complainant. The Respondent has obtained the excess amount of Rs.1,66,277/- over the total sale consideration of Rs.19,28,500/- from the complainant, and stands liable for violation of builder buyer agreement.

- VI. That after obtaining non dues certificate from the respondent, she visited the construction site, but was shocked and appalled to see that the construction of the project has not been completed. In fact, the respondent would be providing the possession of the under constructed flat. Unfortunately, the respondent did not properly utilise the complainant hard earned money and even after the lapse of 6 years of the date of booking, the project is yet to be completed.
- VII. That, it is unambiguously lucid that no force majeure was involved, and the project has been at a standstill since several years, precisely in the end of 2018 and it has been more than 4



years till the present date, therefore it cannot take a plea that the construction was halted due to the Covid-19 pandemic. She has already made the full payment to the respondent towards the flat booked by her. Despite paying such a huge sum towards the unit, the respondent has failed to stand by the terms and conditions of the builder buyer's agreement and the promises, assurances, representations, etc., which the respondent made to her at the time of booking the above said unit.

- VIII. That, the complainant was constrained and left with no option but to file this present complaint seeking withdrawal from the project and refund of the amount paid by the complainant in respect of flat along with the interest as per Act, 2016. Further, the complainant herein reserves their right(s) to ass/supplement/amend/change/alter any submission(s) made in the complainant and further, reserve the right to produce additional document(s) or submissions, as and when necessary or directed by this authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. Direct the respondent to refund the amount of Rs.19,28,500/- in terms of section 18(1)[a] of the Act, 2016 read with rule 15 of the rules 2017.



- ii. Direct the respondent to refund the amount of Rs.1,66,577/- as the excess amount charged by respondent in contrary to builder buyer agreement.
 - iii. To award interest on Rs.20,95,077/- (Rs.19,28,500/- plus Rs.1,66,577/-) @24% from the date of payment.
 - iv. To direct the respondent to pay Rs.1,00,000/- towards mental agony and harassment caused by it.
 - v. To direct the respondent to pay litigation cost of Rs.1,00,000/-.
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 contested the complaint on the following grounds: -
- i. That on 04.09.2015, the complainant in the presence of officials of DGTCP/DC, vide draw was allotted apartment bearing no. Flat#0303, 03rd floor, in tower- 13, having a carpet area of 473 sq. ft. (approx.) and balcony area 73 sq. ft. for a total consideration of Rs.19,28,500/-
 - ii. That consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the flat buyer agreement dated 18.04.2016.



- iii. That the complaint filed by the complainant is not maintainable in the authority and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favor of the complainant and the complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
- iv. That in view of the *force majeure* clause, it is clear that the occurrence of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by the respondent for completion of the project is not a delay on account of the respondent for completion of the project.
- v. That the buyer's agreement, 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. The delivery of a project is a dynamic process and heavily dependent on various circumstances and contingencies. In the present case also, the respondent had endeavored to deliver the property within the stipulated time. The respondent earnestly has endeavored to deliver the properties within the stipulated period but for reasons stated in the reply could not complete the same.



vi. That apart from the defaults on the part of the allottee, like the complainant herein, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the respondent: -

- Shortage of labour/workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/State Government under NREGA and JNNURM Schemes;
- that such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex. The respondent cannot be held solely responsible for things that are not in control of the respondent

vii. The respondent has further submitted that the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. It is no more *res integra* that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the *negligence or malfeasance* of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused



by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, in light of the aforementioned, it is submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the flat buyer's agreement.

- viii. It is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the demonetisation of the Indian economy, on the real estate sector. The real estate sector is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector and whereby the respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the aftereffects of demonetisation, which caused a delay in the completion of the project. The said delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.
- ix. That the project "**Basera**" is registered under the authority vide registration certificate no. 108 of 2017 dated 24.08.2017. The

registration is valid till 31.01.2021 and the respondent has already applied for due extension.

- x. That the possession of the said premises was proposed to be delivered by the respondent to the allottee by 21.07.2020 being 4 years calculated from the date of issuance of environment clearance i.e., 22.01.2016 plus grace period of 6 months. However, the said does not contemplate the force majeure circumstance that have occasioned during the last few years and thus the respondent is entitled to appropriate extension of the said possession date. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent 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.
- xi. 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 their interest in the real estate sector market. The main intention of the respondent is just to complete the project. The project is ongoing project and construction is going on.



- xii. That in today's scenario, the Central Government has also decided to help bonafide Builders to complete the stalled projects which are 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. The respondent/promoter, being a bonafide builder, has also applied for realty stress funds for its Gurgaon based projects.
- xiii. 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. It would be apposite to note that the 'Basera' project was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. Similar stay orders have been passed during winter period in the preceding years as well, i.e., 2017-2018 and 2018-2019. A complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban, the concerned labour is laid off and the travel to their native villages or look for work in other states. Thus, the resumption of work at site becomes a slow process and a steady pace of construction is realized after long period of time.

- xiv. Graded response action plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-2019, 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.
- xv. That the circumstances have worsened for the respondent and the real estate sector in general. The pandemic of Covid 19 has had devastating effect on the world-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. In view of the same the pandemic is clearly a 'Force majeure' event which automatically extends the timelines for handing over possession of the apartment.

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 submissions made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 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.

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. 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, 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 case 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 Objection regarding the project being delayed because of force majeure circumstances and contending to invoke the force majeure clause.

14. From the bare reading of the possession clause of the flat buyer agreement, it becomes very clear that the possession of the apartment was to be delivered by **22.01.2020**. The respondent in its reply



pleaded the force majeure clause on the ground of Covid- 19. The High Court of Delhi in case no. ***O.M.P (I) (COMM.) No. 88/2020 & I.As. 3696-3697/2020 title as M/S HALLIBURTON OFFSHORE SERVICES INC VS VEDANTA LIMITED & ANR. 29.05.2020***, held that *the past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself.* Thus, this means that the respondent/promoter has to complete the construction of the apartment/building by 22.01.2020. The respondent/promoter has not given any reasonable explanation as to why the construction of the project is being delayed and why the possession has not been offered to the complainant/allottee by the promised/committed time. The lockdown due to pandemic in the country began on 25.03.2020. So, the contention of the respondent/promoter to invoke the force majeure clause is to be rejected as it is a well settled law that ***“No one can take benefit out of his own wrong”***. Moreover, there is nothing on record to show that the project is near completion, or the developer applied for obtaining occupation certificate. Thus, in such a situation, the plea with regard to force majeure on ground of Covid- 19 is not sustainable.



G. Findings on the relief sought by the complainant.

- G. I** Direct the respondent to refund the amount of Rs.19,28,500/- in terms of section 18(1)[a] of the Act, 2016 read with rule 15 of the rules 2017.
- G. II** Direct the respondent to refund the amount of Rs.1,66,577/- as the excess amount charged by respondent in contrary to builder buyer agreement.
- G.III** To award interest on Rs.20,95,077/- (Rs.19,28,500/- plus Rs.1,66,577/-) @24% from the date of payment.
15. 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) of the Act. Section. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

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

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

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

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

(Emphasis supplied)

16. As per clause 3.1 of the booking application form provides for handing over of possession and is reproduced below: -

3.1 Possession

Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer



*having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of **4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date")**, whichever is later. The Developer also agrees to compensate the Allottee/Buyer @ Rs.5.00/- (Five rupees only) per sq. ft. of the area of the flat per month for any delay in handing over possession of the Flat beyond the given promised **period plus the grace period of 6 months and upto offer letter of possession or actual physical possession whichever is earlier**".*

17. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer developer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing

after delay in possession. This is just to comment as to how the builder has misused its dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

18. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by her at the rate of 24% interest per annum. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by him 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.

19. 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.
20. 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., 25.04.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.

21. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1)**, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3.1 of the agreement executed between the parties on 18.04.2016, the possession of the subject apartment was to be delivered within stipulated time within 4 years from the date of approval of building plan i.e. (19.12.2014) or grant of environment clearance i.e. (22.01.2016) whichever is later. Therefore, the due date of handing over possession is calculated by the receipt of environment clearance dated 22.01.2016 which comes out to be 22.01.2020. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 22.01.2020.
22. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.



23. The due date of possession as per agreement for sale as mentioned in the table above is 22.01.2020 and there is delay of 2 years 7 months and 18 days till the date of filing of the present complaint. The due date of possession as per clause 3.1 of the flat buyer's agreement i.e., 4 years from the date of approval of building plans (19.12.2014) or grant of environment clearance, (22.01.2016) (hereinafter referred to as the "Commencement Date"), whichever is later which comes out to be 22.01.2020. It is pertinent to mention over here that even after a passage of more than 2.7 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observed that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project.
24. Moreover, 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 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....."

25. 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. and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others (supra)*** 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."

26. 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 is 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 he 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.

27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) 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. IV. To direct the respondent to pay Rs.1,00,000/- towards mental agony and harassment caused by it.

G.V. To direct the respondent to pay litigation cost of Rs.1,00,000/-.

28. 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

29. 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.20,36,473/- 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.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant and even if, any transfer is initiated with respect to subject unit, the



receivables shall be first utilized for clearing dues of allottee/
complainant.

30. Complaint stands disposed of.
31. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.04.2023



HARERA
GURUGRAM