

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

Complaint no. :	607 of 2020
Date of filing complaint:	10.02.2020
First date of hearing:	25.03.2020
Date of decision	10.05.2023

NAME OF THE BUILDER		Cosmos Infra Engineering India Pvt Ltd	
PROJECT NAME		Cosmos Express 99	
S. No.	Case No.	Case title	APPEARANCE
1	CR/607/2020	COL R S Dhull And Anr.V/S M/S Cosmos Infra Engineering India Pvt Ltd	Sh. Arpit Saini Proxy counsel for Sh. Arvind Chaudhary  Sh. Virender Singh Proxy Counsel
2	CR/3235/2021	Rajendra Mittal V/S M/S Cosmos Infra Engineering India Pvt Ltd	Sh. Naresh Khatana Proxy Counsel  Sh. Virender Singh Proxy Counsel
3	CR/3808/2021	Saurabh Sharma And Pratima Hans V/S M/S Cosmos Infra Engineering India Pvt Ltd	Sh. Sanjeev Dhingra  Sh. Virender Singh Proxy Counsel

**CORAM:**

Shri Ashok Sangwan

**Member****ORDER**

1. This order shall dispose of all the 3 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation

- and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
- 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, Cosmos Express 99 being developed by the same respondent/promoter i.e., M/s Cosmos Infra Engineering India Pvt Ltd. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of Refund the entire amount along with interest and the compensation.
  - 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:

<b>Project Name and Location</b>	<b>Cosmos Infra Engineering India Pvt Ltd</b> Cosmos Express 99 Sector 99, Village Dhankot, Tehsil and Distt., Gurugram
<b>Possession Clause: - 3.1</b> That the Developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said Flat is to be located, in 04 Years from the start of construction or execution of this Agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee(s) (with additional floors for residential units if permissible) with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area or change of entire scheme the Developer may consider necessary or may be required by any competent authority to be made in them or any of them. To implement all or any of these changes, supplementary sale deed(s)/agreement(s), if necessary will be got executed and registered by the Developer which the Flat Allottee(s) undertakes to execute. If as a result of the above alteration etc., there is either reduction or increase in	



the superarea of the said Flat or its location, no claim, monetary or otherwise will be raised or accepted except that the original agreed rate per sq.mtr./sq.ft, and other charges will be applicable for the changed area i.e. at the same rate at which the said Flat was registered/booked or as the Developer may decide, and as a consequence of such reduction or increase in the super area, the Developer shall be liable to refund without interest only the extra basic price and other pro-rate charges recovered or shall be entitled to recover the additional basic price and other proportionate charges without interest as the case may be. If for any reason, the Developer is not in a position to allot the said Flat applied for, the Developer, at its sole discretion, shall consider for any alternative property or refund the amount deposited with simple interest @ 10% per annum.

**(Emphasis supplied)**

**Occupation certificate: -**

➤ OC not obtained

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of apartment buyer agreement	Due date of possession	Total Consideration / Total Amount paid by the complainant(s)	Relief Sought
1.	CR/607/2020  Date of filing complaint 10.02.2020	Date is not mentioned but the reply is received	C-1103 Tower C 11 <sup>th</sup> floor  (Annexure 1 page no. 18 of the agreement)	01.12.2012  (Page no. 20 of the complaint)	01.01.2017 (Calculated from date of from the date of excavation i.e 01.01.2013) (Inadvertently mentioned in the proceedings of the day as 01.07.2017)	TSC: - Rs.81,42,000/-  AP: - Rs.49,37,626/-	-Refund the entire amount along with interest  - compensatory cost
2.	CR/3235/2021  Date of filing complaint	Reply Received on 01.10.2018	Type gold 702 tower C 7 <sup>th</sup> floor	21.01.2013  (Page no. 1 of the agreement)	21.01.2017 (Calculated from date of from the date of execution of the agreement)	TSC: - Rs.1,03,33,250 /-  AP: - Rs.51,43,400/-	Refund the entire amount along with interest



	02.09.2021		(Page no. 03 of the agreement)		i.e 21.01.2013) (Inadvertently mentioned in the proceedings of the day as 01.07.2017) grace period)		-Litigation of Rs. 55,000/-
3.	CR/3808/2021  Date of filing complaint 17.09.2021	Reply Received on 01.10.2021	C - 102 1st floor tower C  (Page no. 10 of the complaint)	25.06.2013	25.06.2017 (Calculated from date of execution of the agreement being later i.e 25.06.2013)	TSC: - Rs.1,03,76,125  AP: - Rs. 58,10,382/-	Refund the entire amount along with interest - - Compensation Rs. 1,00,000/- towards litigation and mental harassment

**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:**

**Abbreviation Full form**

TSC Total Sale consideration

AP Amount paid by the allottee(s)

- The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the



authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/607/2020 COL R S Dhull And Anr. V/S M/S Cosmos Infra Engineering India Pvt Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.

**A. Project and unit related details**

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

**CR/607/2020**

**COL R S Dhull and Anr. V/S M/S Cosmos Infra Engineering India Pvt Ltd**

Sr. No.	Particulars	Details
1.	Name of the project	Cosmos Express 99 Sector 99, Village Dhankot , Tehsil and Distt., Gurugram
2.	Project area	10.025 acres
3.	Nature of the project	Residential Unit
4.	DTCP License no. & validity status	70 of 2011 dated 22.07.2011 upto 21.07.2024
5.	Name of Licensee	Shivnandan Buildtech Pvt Ltd
6.	RERA Registered / not registered	Registered bearing no. 62 of 2019 dated 14.10.2019 upto 30.09.2021
7.	Unit no.	C-1103 Tower C 11 <sup>th</sup> floor

		(Annexure 1 page no. 18 of the agreement)
8.	Unit admeasuring	1770 sq. ft. (Annexure 1 page no. 18 of the agreement)
9.	Date of excavation	01.01.2013 (As per promoter information)
10.	Allotment Letter	02.06.2012 (Page 18 of complaint)
11.	Date of execution of Flat buyer agreement	01.12.2012 (Page no. 20 of the complaint)
12.	Possession clause	<p><b>3.1</b></p> <p>That the Developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said Flat is to be located, in 04 Years from the start of construction or execution of this Agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee(s) (with additional floors for residential units if permissible) with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area or change of entire scheme the Developer may consider necessary or may be required by any competent authority to be made in them or any of them. To implement all or any of these changes, supplementary sale deed(s)/agreement(s), if necessary will be got executed and registered by the Developer which the Flat Allottee(s) undertakes to execute. If as a result of the above alteration etc., there is either reduction or increase in the superarea of the said Flat or its location, no claim,</p>



		monetary or otherwise will be raised or accepted except that the original agreed rate per sq.mtr./sq.ft, and other charges will be applicable for the changed area i.e. at the same rate at which the said Flat was registered/booked or as the Developer may decide, and as a consequence of such reduction or increase in the super area, the Developer shall be liable to refund without interest only the extra basic price and other pro-rate charges recovered or shall be entitled to recover the additional basic price and other proportionate charges without interest as the case may be. If for any reason, the Developer is not in a position to allot the said Flat applied for, the Developer, at its sole discretion, shall consider for any alternative property or refund the amount deposited with simple interest @ 10% per annum. <b>(Emphasis supplied).</b>
13.	Due date of delivery of possession	01.01.2017 (Calculated from date of from the date of excavation i.e 01.01.2013) (Inadvertently mentioned in the proceedings of the day as 01.07.2017)
14.	Basic Sale Price	Rs 81,42,000/- (Page no. 23 of the complaint)
15.	Total amount paid by the complainant	Rs 49,37,626/- (As alleged by the complainant)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

**B. Facts of the complaint**

8. The complainant has made the following submissions in the complaint: -
- I. That the complainants had booked a residential apartment in the project being launched and developed by the project respondent in April 2012 under the name of Cosmos Express 99, situated at Sector 99, Village Dhankot Badha, Gurugram, Haryana.
  - II. That the project was also supposed to have a number of blocks and the complainant booked a residential apartment No. C-1103, in Tower No. C, 11<sup>th</sup> Floor, admeasuring 1770 sq. ft. (super area) in the said project. At the time of booking, the complainants were informed that the project shall be completed in a period of four years of the execution of the flat buyer's agreement or the start of construction, whichever was later. At the time of the booking, the complainants had already paid a sum of Rs. 8,00,000/- to the developer. Thereafter, payments were made by the complainants to the developer from time to time. However, the flat buyers' agreement was only sent to the complainants by the developer in December 2012. The said flat buyers' agreement was sent after receiving substantial payments from the complainants. To the complainant's great astonishment and surprise, all the terms in the buyer's agreement were one sided and the other terms and conditions were heavy loaded in favour of the builder and against the complainants. Once the complainants received the buyer's agreement , they were left with no option but to sign on dotted line and continue making payment as per buyer's agreement because it read that if allottee(s) failed to execute and deliver the



agreement within thirty days from the date of dispatch of its dispatch by the company, then the allottee(s) authorizes the company to cancel the allotment and on such cancellation, the allottee(s) consents and authorizes the Company to forfeit the earnest money along with non-refundable amounts. By doing so, the respondent had now extended the possession time period by another over six months. The allotment of the unit was done on 02.06.2012.

- III. That the developer has charged the complainants three preferential location charges besides charging for car parking, Club Membership charges, External Development charges, Internal Development charges, Fire-fighting charges, Interest Free Maintenance charges all on super area. However, the complainants have now come to know that the carpet area of the apartment is only 50-55% of the super area of 1770 sq. ft. All the additional charges have been charged by the Developer on super area, whereas, the actual carpet area of the apartment is much less.
- IV. That since the possession of the apartment has been considerably delayed for long duration therefore the complainants approached the respondent sometime in the year 2018-19. The complainants were informed that since there had been a slump in the real estate market, therefore, the project had been delayed. Based on the assurances and representations made by the builder, the complainants continued to make all payments as and when demanded by developer in accordance with the milestone laid in the agreement. However, the progress of construction at the site was also slow as despite a lapse of 91 months from the date of booking, the possession has not been

delivered to the complainants. It is noteworthy that the payment terms were front loaded and till date the complainants have paid over 50%+ of the payment whilst the construction activity at site, even according to the developer as in July 2019 was only 25%, which is far less than this milestone.

- V. That the complainants had booked the apartment to shift in the same, as the complainant no. 1 is getting old and is living alongwith his wife in Gurugram. Since the possession of the apartment was being delayed, the complainant no. 1 had to sell his residential house and buy another apartment as it become difficult for him to manage an independent house as he is getting old. The complainant No. 1 has now sold his residential house and shifted to the apartment recently bought by him.
- VI. That the respondent had only completed 25% of the construction at site till the state of its application for RERA registration. The respondent has though given the tentative date of completion of the project in its RERA registration as 30.09.2021, but when the Developer has taken over seven years to carry out only 25% work at site, the date of completing the remaining 27% work within the next two years seems to be too ambitious and unrealistic.
- VII. That the builder has failed to complete the project as per stipulated timelines and has itself stated that it shall not be able to complete the same before September 2021. The complainants are therefore not interested in taking possession of the apartment as they have already made alternative arrangements and have bought another apartment and have also shifted in the same.



- VIII. That the complainants have thus exercised their right to withdraw from the project and seek their refund as contemplated in Section 18 of Real Estate (Regulation & Development) Act, 2016. The said option was exercised by the complainants vide their letter dated 18.06.2019. A copy of the said letter was sent to the developer by speed post and courier and the same had been duly received by the respondent. After the receipt of the said letter by the complainants, the representative of the developer/respondent called up the complainant No. 1 to discuss the matter. However, no formal response has been received by the complainants from the respondent till date.
- IX. That the complainants have therefore, rightfully exercised their right to seek refund created in their favour as per the statute i.e. RERA, as the respondent has failed to deliver possession to the complainants in terms of the FBA, executed between the parties. The complainants could not be forced to take possession when they have cancelled the FBA as the respondent failed to deliver possession within time, as promised in it under the agreement.
- X. That the developer has also failed to refund the amounts paid by the complainants alongwith interest as demanded by them vide their notice dated 18.06.2019. The Developer has also failed to complete the project as per stipulated timeline thus, the complainants have cancelled the agreement and have sought refund of the amounts paid by them. The respondent has failed to refund the amount to the complainants, therefore they are left with no alternative except to approach this Authority to seek refund of the amounts paid by them alongwith statutory interest, as per Rules.

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

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

9. The complainant has sought following relief(s):
- I. To direct the respondent to refund the entire amount with interest.
  - II. To direct the respondent to award compensatory cost to the complainants.

**D. Reply by the respondent**

10. The respondent by way of written reply made following submissions:
- I. That the RERA Act allows for refund of money and compensation when the developer fails to hand over the possession of the property as per the terms and conditions of the agreement for sale. In the present case the delay caused in the construction of the project was not due to the acts of the respondent but due to the factors beyond the control of the respondent. The following factors caused the delay in the construction of the project, which are not within the control of the respondent and are force majeure events:
  - II. That since basic infrastructure and facilities like road, water, electricity supply and sewer were not available, the respondent could not continue with the construction.



- III. That the project is located on the Dwarka Expressway which was proposed in the year 2006 and was supposed to be completed by 2010-11. But, however due to the unfortunate delay in the construction of the Expressway, the construction of the project got delayed as well since there was no road for commuting. The respondent even filed an RTI application with the NHAI in 2017 inquiring about the estimate time of completion of the Dwarka Expressway to which no date of completion was informed in the reply given by the authority. The respondent had even filed an RTI with the HUDA asking information on water supply to the project, in reply of which it was stated that it would take another 2-3 years for supplying water to the project which again delayed the project as the respondent could not have handed over the possession without basic amenities like water.
- IV. That in July 2017, the RERA Act came into force which barred the developers from accepting the bookings or receiving any payments from the buyers unless and until the project was registered with the Haryana RERA. The application for registration was immediately filed with the HRERA by the respondent on 31/07/2017 at the Panchkula Office. However, on 03/01/2018 an order was received by the respondent wherein it was stated that a copy of duly renewed license by the Director Town & Country Planning (DTCP) Haryana, was to be filed for the registration. That on 16/03/2018 the renewed license was submitted with the concerned authority but however no registration was granted by HARERA for reasons not known to the Respondent. Thereafter, the respondent came to the knowledge that Haryana Real Estate (Regulation & Development) Rules 2017 were superseded by Haryana Real Estate

regulatory authority Gurgaon (Registration of projects) Regulation 2018 & had to submit a fresh application that required many permissions from DTCP Haryana which took up a lot of time of the Respondent. Furthermore, the Respondent even sent a reminder dated 23/03/2018 to the principal secretary cum DRA to Government of Haryana Chandigarh to register the project as soon as possible as all the conditions under the Act and application had been met. On 15/03/2018 the Respondent received the reply to the said reminder, in which it was stated that as per the new regulation of 2018, the Gurgaon office had the authority to register the project rather than the Panchkula office and a fresh application to be filed with the Gurgaon Office. That a fresh application was again filed with the Gurgaon office on 23/04/2018 and the registration was granted only on 14/10/2019 which is almost 27 months after the very first application was filed.

- V. That the construction of the project was in full swing and the respondent expected it be completed within the timeframe promised to the buyers but however due to the changes in law, the construction of the project suffered an unfortunate delay. On top of that, when the respondent tried to mobilize the construction of the Project after receiving the registration, the world was struck by the pandemic in the year 2020 and a nationwide lockdown was imposed due to which many workers went back to their hometowns and have not returned till date.
- VI. That the bank accounts of the respondent were blocked due to the RBI circular RBr12020-21/20D0R.No.BP.BC/7/21.04.048/2020-21 dated August 6, 2020 and hence the respondent could not use the funds for the development of the project.



- VII. That as per the notification dated 26.05.2020, issued by HARERA Gurugram, an extension period of 6 months has been granted to projects that are expiring in 25.05.2020 or after. Since, the date of completion for the subject project is 30.09.2021, thus the extension is available for the respondent as well. Therefore, the construction of the project will be completed well within the time frame.
- VIII. That the delay in the construction of the project due to the force majeure events, does not go against the provisions of the flat buyer's agreement and the agreement itself allows the delays that are caused by the factors beyond the control of the respondent. The present complaint is liable to be dismissed as the complainant have failed to show that the delay caused was due to the acts of the respondent that are against the provisions of the flat buyer's agreement and hence, the present complaint is liable to be dismissed.
- IX. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

11. 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**

12. 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**

13. 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.*

14. 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.





15. 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."*

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

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

**F.1 Objection regarding force majeure.**

17. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as basic infrastructure and facilities like road, water, electricity supply and sewer were not available, the respondent could not continue with the construction. That the project is located on the Dwarka Expressway which was proposed in the year 2006 and was supposed to be completed by 2010-11. But, however due to the unfortunate delay in the construction of the Expressway, the construction of the project got delayed as well since there was no road for commuting, but all the pleas advanced in this regard are devoid of merit. First of all, the unit in question was allotted in the year 2012. These periods were for very short duration of time. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

**G. Findings on the relief sought by the complainants****G.I Direct the respondent to refund the paid-up amount with interest.**

18. In the present case the complainant was allotted the unit vide allotment letter dated 02.06.2012. The buyer's agreement was executed between the parties on 01.12.2012 and according to the clause 3.1 of the agreement the respondent was supposed to handover the possession of the allotted unit from four years from the start of construction or execution of this agreement whichever is later. The due date was calculated from 04 Years from the start of construction or execution of this Agreement whichever is later. Hence the due date is calculated from date of from the date of excavation i.e 01.01.2013 which comes out to be 01.01.2017.



19. The proxy counsel for the respondent stated at bar that occupation certificate of the project has not been received and also states that the certain NCLT proceedings have been initiated w.r.t the respondent but no moratorium has been announced. The possession has not been offered till date.
20. The complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

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

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

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

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

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

21. Clause 3.1 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

***"3.1***

*That the Developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said Flat is to be located, in 04 Years from the start of construction or execution of this Agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee(s) (with*

additional floors for residential units if permissible) with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area or change of entire scheme the Developer may consider necessary or may be required by any competent authority to be made in them or any of them. To implement all or any of these changes, supplementary sale deed(s)/agreement(s), if necessary will be got executed and registered by the Developer which the Flat Allottee(s) undertakes to execute. If as a result of the above alteration etc., there is either reduction or increase in the superarea of the said Flat or its location, no claim, monetary or otherwise will be raised or accepted except that the original agreed rate per sq.mtr./sq.ft, and other charges will be applicable for the changed area i.e. at the same rate at which the said Flat was registered/booked or as the Developer may decide, and as a consequence of such reduction or increase in the super area, the Developer shall be liable to refund without interest only the extra basic price and other pro-rate charges recovered or shall be entitled to recover the additional basic price and other proportionate charges without interest as the case may be. If for any reason, the Developer is not in a position to allot the said Flat applied for, the Developer, at its sole discretion, shall consider for any alternative property or refund the amount deposited with simple interest @ 10% per annum.

22. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.



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., 31.03.2023 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(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*  
*Explanation. — For the purpose of this clause—*
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
  - (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
26. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the

terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

27. The due date of possession as per agreement for sale as mentioned in the table above.
28. 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 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. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed:

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



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

30. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
31. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.70% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G. II To direct the respondent to award compensatory cost to the complainants**

46. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of*

*Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**H. Directions of the authority**

47. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent/promoter is directed to refund the amount received by it from the complainant along with interest at the rate of 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
  - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
48. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.



49. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
50. Files be consigned to registry.

  
(Ashok Sangwan)  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**  
**Dated: 10.05.2023**



**HARERA**  
**GURUGRAM**