



HARERA
GURUGRAM

Created vide order dated 04.05.2023 passed
by the Authority

Complaint No. 1169 of 2019

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

Complaint no. : 1169 of 2019
First date of hearing: 17.12.2019
Date of decision: 30.08.2022

Rajeev Gupta

Address: - D-13, First Floor, Vivek Vihar
Delhi-110095

Complainant

Versus

Emaar MGF Land Limited

Address: - ECE House, 28 Kasturba Gandhi Marg,
New Delhi-110001

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Shourya Mehra
Shri J.K. Dang

Advocate for the Complainant
Advocate for the Respondent

ORDER

1. The present complaint dated 11.04.2019 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	Imperial Garden, Sector 102, Gurugram, Haryana
2.	Total area of the project	12 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	107 of 2012 dated 10.10.2012
	Validity of license	09.10.2020
	Licensee	Kamdhenu Projects Pvt. Ltd.
	Area for which license was granted	12 acres
5.	Occupation certificate granted on	17.10.2019 [annexure R18, page 114-116 of reply]
6.	Provisional allotment letter	27.02.2013 [page 28 of reply]
7.	Unit no.	IG-09-1403, 14th floor, Tower-09 IG-04-0402
8.	Unit area	2000 sq. ft. 2025 Sqft
9.	Date of flat buyer agreement	04.04.2013 [page 59 of reply]



10.	Possession clause	<p>14. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p><i>Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 42 (Forty Two) months from the date of start of construction; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 3 (three) months after the expiry of said period of 42 months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</i></p> <p>(Emphasis supplied)</p>
11.	Date of start of construction as per the statement of account dated 11.02.2020 at page 53 of reply	11.11.2013
12.	Due date of possession	11.05.2017 [Note: Grace period is not included]
13.	Total sale consideration as per schedule of payment page 36 of reply	Rs. 1,48,35,638/-



14.	Amount paid by the complainant as per SOA dated 11.02.2020	Rs. 66,47,701/- [page 53 of reply]
15.	Offer of possession	20.11.2019 [annexure R19, page 117 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- i. The complainant signed the buyer's agreement with the Emaar MGF Land Ltd on 4th April 2013 after booking a flat/unit (unit no- IG-04-0402) in the project Imperial Garden on sector -102 Gurugram by paying the booking amount of Rs. 7,50,000/- and Rs. 2,50,000/- on 20.10.2012 and 07.11.2012 respectively. Further the complainant paid Rs. 3,06,7887-, Rs.3,67,572/-, Rs.10,31,566/-, Rs.3,06,788/-, Rs.1855/-, Rs.10,31,567/-, Rs.5,55,000/-, Rs.1,30,000/-, Rs.80,000/-, Rs.3,10,000/-, Rs.2,86,668/-, Rs.13,755/-, Rs.11,00,923/-, Rs.1,00,000/- along with TDS of Rs.12,131/- totalling to Rs. 66,34,613/- inclusive of five instalments. The complainant requested for certain information relating to the project by writing various emails to Emaar MGF Land Ltd. wherein details such as copy of license/ revised building plan, NOC from DTCP Chandigarh stating that all dues are clear, further seeking details of amount received till date and expenses occurred till date on construction along with



the bank certificate stating that the surplus funds are kept in this project Escrow account. Additionally, he asked for the latest calculation of super built area along with clarification with regard to the refund of amount which was illegally taken by the builder company for parking space, in violation of hon'ble Supreme Court Order.

- ii. That the complainant submitted that not a single satisfactory reply was provided by the builder company to the queries raised by the complainant, instead they kept on demanding for the sixth instalment without giving any answer to the genuine concerns of their client who had invested a huge sum of money in their project, which further lead to loss of trust on account of professional inadequacy by the builder company. When the complainant visited the unit, he realised that the place is completely inhabitable state due to ongoing construction in the nearby towers.
- iii. Hence, due to loss of faith and inadequate service, the complainant wanted to cancel the allotment of the said unit by writing to the Emaar MGF Land Limited and demanded a refund of the whole amount. The complainant sent a legal notice (dated 01.12.2018) through his counsel, advocate Sarwar Raza to the builder/promoter to refund the amount as he was not satisfied with the construction of the said building by the builder and felt cheated. Aggrieved by the approach, callous behaviour of the

builder/promoter the complainant is under serious apprehension of being tricked, bamboozled and deceived and does not have any other recourse than to knock the door of this hon'ble authority to get justice.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. Direct the respondent to refund the total amount paid with respect to the allotted unit as the complainant is financially incapable of purchasing and also, he is not satisfied with the quality of construction.
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 the complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 04.04.2013, as shall be evident from the submissions made in the following paragraphs of the present reply. That thereafter the complainant vide an application form applied to the respondent for provisional allotment of a unit in the project.



The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no IG-04-0402, located on the 04th floor, in the project vide provisional allotment letter dated 27.02.2013. The complainant consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant would remit every installment on time as per the payment schedule.

- ii. That however, the complainant consciously and wilfully defaulted in due compliance of the terms and conditions of the application form and the buyer's agreement. The complainant wantonly and without any reason ceased and discontinued to remit instalments after 14.11.2013 as envisaged in the schedule of payment incorporated in the buyer's agreement. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainant to make payment of outstanding amounts payable by the complainant under the payment plan/instalment plan opted by him.
- iii. That it is submitted that the complainant consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and flouted in making payments of the instalments which was an essential, crucial and an indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees default in their



payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent. The complainant chose to ignore all these aspects and wilfully defaulted in making timely payments. It is submitted that the respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainant.

- iv. That it is respectfully submitted that the rights and obligations of complainant as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. It is submitted that as per clause 14 of the buyer's agreement dated 04.04.2013 the time period for delivery of possession was 42 months along with grace period of 3 months from the execution of the buyer's agreement subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement. It has also been provided therein that the date for delivery of possession



of the unit would stand extended in the event of occurrence of the facts/reasons beyond the power and control of the respondent. The complainant has completely misconstrued, misinterpreted and miscalculated the time period as determined in the buyer's agreement. It is pertinent to mention that it was categorically provided in clause 14(b) that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent. Since, the complainant has defaulted in remittance of payments as per schedule of payment the date of delivery of possession is not liable to be determined in the manner sought to be done in the present case by the complainant.

- V. That it is pertinent to mention that an amount of Rs. 1,25,44,934/- is outstanding on the account of the complainant. The respondent had continuously and persistently requested the complainant to remit the outstanding amount. However, the complainant chose to ignore the legitimate and valid requests of the respondent to remit balance payment. It is submitted that the complainant does not have adequate funds to remit the balance payment requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the complainant has preferred the instant complaint. Furthermore, it



is pertinent to take into reckoning that the complainant has admitted that he does not have the financial capacity to purchase the unit in question in the relief sought preferred by him. It is respectfully submitted that the complainant is needlessly avoiding the completion of the transaction with the intent of evading the consequences as enumerated in the buyer's agreement. Therefore, there is no equity in favour of the complainant. The present complaint is nothing but an abuse of process of law.

- vi. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant for seeking refund or interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.
- vii. That without admitting or acknowledging in any manner the truth or legality of the frivolous and false allegations levelled by the



complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the respondent has been prevented from timely implementation of the project by reasons beyond its power and control. It is submitted that the respondent had appointed a contractor operating under the name and style of Capacite Infraprojects Ltd. for construction and implementation of the project in question. The said contractor had represented and claimed that it has the necessary resources, competence, capacity, capability and expertise for undertaking, performing, effectuating and completing the work undertaken by it. The respondent had no reason to suspect the bona fide of the said contractor at the relevant time and awarded the work to the said contractor. However, the said contractor was not able to meet the agreed timeline for construction of the project. The said contractor failed to deploy adequate manpower, shortage of material, etc. The respondent was constrained to issue several notices, requests etc. to the said contractor to expedite progress of the work at the project site but to no avail. The said contractor consciously and deliberately chose to ignore the legitimate and just requests of the respondent on one pretext or the other and defaulted in carrying out the work in a time bound manner. Therefore, no fault or lapse can be attributed to the respondent of the facts and circumstances of the case.



- viii. That it is submitted that all the demands raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement duly executed between the parties. There is no default or lapse on the part of the respondent. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.
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.
8. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement quoted above, the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.5.2022 in **CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP** and it is observed that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.



9. Keeping in view the judgement of Hon'ble Supreme Court in case titled as **M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra)**, the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/ CRA. Both the parties proceeded further in the matter accordingly. The Hon'ble Supreme Court in case of **Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019** has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the facts mentioned in the complaint and the reply received from the respondent and submissions made by both the parties during the proceedings.

E. Jurisdiction of the authority

10. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

11. 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

12. 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.

13. 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.
14. 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."

15. 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 relief sought by the complainant.

- F.I. Direct the respondent to refund the total amount paid with respect to the allotted unit as the complainant is financially incapable of purchasing and also, he is not satisfied with the quality of construction.
16. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by it 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."

17. As per clause 14 of the flat buyer agreement dated 04.04.2013 provides for handing over of possession and is reproduced below:

14. POSSESSION

(a) Time of handing over the Possession

Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 42 (Forty Two) months from the date of start of construction; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 3 (three) months after the expiry of said period of 42 months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.



18. At the outset, it is relevant to comment on the present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, 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 allottee 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 time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's 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 his 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.

19. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 42 (Forty- Two) months from the date of start of construction and further provided in agreement that promoter shall be entitled to a grace period of 3 for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project. The date of execution of buyer's agreement



is 04.04.2013. The period of 42 months expired on 11.05.2017, (as per the date of start of construction) as a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the grace period prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 3 months cannot be allowed to the promoter at this stage.

20. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the prescribed rate interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by it 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.

21. 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.



22. 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., 30.08.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.
23. 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 14 of the agreement to sell dated form executed between the parties on 04.04.2013 the possession of the subject unit was to be delivered within a period of 42 (Forty-Two) months from the date of start of construction i.e. 11.11.2013 which comes out to be 11.05.2017. As far as grace period is concerned, the same is disallowed for the reasons quoted above.
24. 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.
25. The due date of possession as per agreement for sale as mentioned in the table above is **11.05.2017 and there is delay almost 2 years on the due date of possession i.e., 11.05.2017.**

43



26. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is received after filing of complaint by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate.
27. 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*

48



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."

28. 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.
29. 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 him at the prescribed rate of interest i.e., @ 10% 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.*

५७



H. Directions of the authority

30. 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. 66,47,701/- received by it from the complainant along with interest at the rate of 10% 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.

31. Complaint stands disposed of.

32. File be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)

Chairman

Dated: 30.08.2022