

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

Complaint no.:	1400 of 2022
First date of hearing:	10.08.2022
Date of decision:	11.04.2023

1. Rajiv Hira
2. Reenu Hira
R/o 241, Dr. Mukherjee Nagar, New Delhi

Complainants

Versus

M/s Ansal Phalak Infrastructure Pvt. Ltd.
Office address: 1202, Antriksh Bhawan 16, Kasturba
Gandhi marg, new delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

Shri Chander Mohan Sharma (Advocate)
Shri Dhurv Gupta (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 07.04.2022 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 as provided 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 and location of the project	"Versalia", Sector 67-A, Gurugram
2.	Nature of the project	Residential Plotted Colony
3.	Project area	38.262 acres
4.	DTCP license no.	81 of 2013 dated 19.09.2013 valid upto 19.09.2019
5.	Name of licensee	Lord Krishna Infra Projects Ltd. and 13 others
6.	RERA registered/ not registered	154 of 2017 dated 28.08.2017 valid up to 31.08.2020
7.	Unit no.	GF4164, Ground Floor, woodwinds residences (Page 30 of complaint)
8.	Unit area admeasuring (Super area)	3333 sq. ft.
9.	Date of floor buyer agreement	07.08.2014 [pg. 29 of complaint]
10.	Possession clause	5. Possession of floor <i>Subject to clause 5.2 infra and further subject to all the buyers of the residential colony making timely payment, the company shall entitled to complete the development of residential colony and the floor possible within 36</i>

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		<p><i>months with an extended period of (6) six months from date of execution of this floor buyer agreement subject to, the receiving of requisite building /revised building plans/ other approvals & permission the concerned authorities, as well as force majeure conditions as the agreement and subject to fulfilment of the terms and conditions allotment, certificate & agreement including but not limited to payments by the buyer(s), in terms hereof. The company shall be entitled for an extension of time for completion of construction of the unit equivalent period of delay caused on account of the reasons stated above. no cl way of damages/compensation shall lie against the company in case of handing over possession of the unit on account of the aforesaid. However, if the buyer(s) opts to pay in advance of schedule, a suitable d may be allowed but the completion schedule shall remain unaffected buyer(s) agrees and understands that the construction will commence on all necessary approvals are received from the concerned authority/competent authorities including but not limited to environment & forest.</i></p> <p><i>[pg. 40 of complaint]</i></p>
11.	Due date of possession	07.08.2017 [Note: Grace period of 6 months not allowed]



12.	Total sale consideration	₹ 1,93,05,000/- [pg. 34 of complaint]
13.	Amount paid by the complainant as confirmed by both parties during hearing dated 11.04.2023	₹ 62,97,000/-
14.	Legal notice for refund	22.01.2022 [pg. 78 of complaint]
15.	Occupation Certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainants pleaded the complaint on the following facts:

- a. That in year 2014, respondent had purportedly launched a residential project under the name "Versalia" situated at Sector-67A, Gurgaon and respondent were publicizing the said project with much pomp & show in and around Gurgaon/ NCR as well.
- b. That in year 2014, through a property agent M/s 360 Realtors Pvt. Ltd., having registered office at 607-time tower, M.G Road, Gurgaon-122002, Haryana along with sales executives of respondent approached to complainant/s and insisted them to book a unit with respondent's said project for residence purpose as complainants were in search of suitable house. Initially complainants did not get interested in respondent's project, but the executive of respondent repeatedly requested to complainants to at-least visit their Gurgaon corporate office and to meet seniors there. Ultimately complainants somehow agreed to visit respondent's Gurgaon office. That complainant/s, went to respondent's corporate office where they made a meeting to

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executive director and other official person of respondent, who praised the said project to the sky and portrayed an extremely rosy picture of the same and they again and again request to complainants to book a unit in said project. They also emphatically stated and assured to complainants that the project will be developed at a fast pace and even the possession shall be handed over to the respective allottees within 36+6 months from the date of agreement. Apparently, all of them were bent upon to virtually brain-wash of our client. At last, having been allured by their persistent efforts, deliberate persuasions and seemingly attractive offer, complainant/s somehow became ready to book a unit in respondent's said project having tentative admeasuring of 3333 sq ft. carpet area.

- c. That accordingly, our client through a property agent M/s 360 Realtors Pvt. Ltd, along with sales/marketing executives of Respondent approached for booking and on 19/06/2014 Neha Jhingan (vide email - neha.jhingan@360realtors.in) intimated to Neha Dhall (Dy. Manager- Sales & Marketing of Ansal API) blocked the unit 3030-GF (being part of corner plot). Subsequent to the same team from 360 Realtors Pvt. Ltd, and addressee approach our client stating that there is change in the layout plan and hence provided revised plan for rebooking the unit from 3030-GF to GF-4164. At the time, complainants were provided with a revised layout, and confirming that this is also a corner plot. Finally, unit was confirmed on 04.08.2014 vide email by Neha Dhall to Neha Jhingan. An agreement was executed. Our client made applications to respondent for /towards booking of a unit in project "Versalia"



dated 25.06.2014 and respondent vide allotment letter dated 30.06.2014 accordingly allotted units/apartment bearing no. GF-4164 admeasuring tentative area of 3333 sq ft. carpet area at total sale consideration of ₹ 1,93,05,000/- including PLC of ₹ 11,70,000/-. The complainants opted construction linked plan for payment of the allotted apartment/unit and as per respondent's last demand raised by respondent total ₹ 62,97,000/- has been paid to respondent towards the allotted unit on demand raised by you time to time by complainant.

- d. That a builder buyer agreement was signed on 07.08.2014 between our client and developer/respondent and according to which the possession period was mentioned as within 36+6 month from the date of agreement, but respondent has failed to deliver the project on time. That respondent made the last demand on dated 26.02.2015 which was duly paid by complainant/s and after this no further demands were made by respondent to complainant.
- e. That when complainants did not received any further demand from respondent went to corporate office of respondent/developer company and to enquire as to why you are not raising further demand and also enquired, through email and contact center number, about the status of project and allotted units but official(s) of you presented that they were not ready to make any commitment at all, rather their behavior was getting remarkably rude, or ignorant to response through the email / calls, towards complainants and they were not even ready to answer any query of complainant.

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- f. That as per layout provided and agreed between complainant and respondent allotted unit was a north-west open "Corner plot" open next to 24-meter road but it is evident that respondent had changed the structure of the defined plot, without any intimation to complainant and this is not acceptable. As per the terms and conditions of the buyer's agreement the respondent was under an obligation to hand over the possession of the flat to the complainant within 36 months, further with the grace period of 6 months. However, the respondent miserably failed to meet up their obligations and assurances to hand over the possession of the flat on time.
- g. That the complainant was ever ready to pay the entire consideration of the said unit and to take over the possession of the said unit and it is the respondents, who are lingering on the matter on the one pretext or the other and the project of the respondent has been scrapped and on demand of refund, the respondent's executive are forcing to get another unit in alteration of the booked unit in different project but after considering the conduct of builder, the complainant has left with no other remedy available with him except to cancellation of the said unit and to get their amount refunded from the respondent.
- h. That on dated 22.01.2022 the complainants to the respondents/developer through his counsel for delivering booked unit and but despite the legal notice respondents/developer failed to deliver the possession of unit and also failed to refund the money of complainants and continue pressuring for change of unit in different project. Hence the complainants wanted to cancel the said



booking in respect of the above-said unit and requesting to refund the entire amount along with the prescribed rate of interest. Hence this complaint.

C. Relief sought by the complainants:

4. The complainant has sought following reliefs:
 - a. Direct the respondent to refund entire amount paid by the complainant along with the interest @ 9.5% p.a.
 - b. Cost of litigation.
5. Any On the date of hearing, the authority explained to the respondents/promoters about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:
 - a. The answering respondent i.e., New Look Builders and Developers Pvt. Ltd. is engaged in the business of construction and development of real estate projects. The instant reply to the captioned complaint on behalf of the answering respondent is being filed through Mr. Anil Kansal who have been duly authorized by the answering respondent vide board resolution dated 26.08.2021, inter alia, to defend the answering respondent in various proceedings initiated against it, verify and sign pleadings and other documents etc. and do all such acts, deeds, things as may be considered necessary to represent and act for and on behalf of the answering respondent.
 - b. It is humbly submitted that the complainants through the captioned complaint have prayed for directions of refund under section 18 of

the Real Estate (Regulation and Development) Act, 2016 of ₹ 62,97,000/- along with interest to the answering respondent, which were allegedly paid by the complainants towards the allotment of unit no. 4164, ground floor, in the project "Avante Floors, Versalia" in Sector 67, Gurugram, Haryana.

- c. At the outset, it is submitted that the complaint is not maintainable as the complainants have not raised any demand notice seeking refund of the amount before filing the captioned complaint which is a requisite for filing the complainants under section 18 of the Real Estate (Regulation and Development) Act, 2016. On the contrary the complainants vide legal notice dated 21.01.2022 had sought possession of the unit which is contrary to the reliefs sought by the complainants in the captioned complaint. In view of the same the captioned complaint is liable to be dismissed.
- d. It is humbly submitted that the captioned complaint has been filed by the complainants with malafide intents and has concealed material facts from this Hon'ble Authority to illegally gain at the cost of the answering respondent. As a matter of fact, the complainants were allotted with the unit in the project at the basic sale price of ₹ 1,93,05,000/- in terms of the floor buyer agreement dated 07.08.2014. It is pertinent to mention that in terms of the FBA, the taxes, external development charges and internal development charges were to be levied upon the complainants separately i.e., over and above the basic sale price.
- e. It is denied that the complainants have paid ₹ 62,97,000/- to the answering respondent towards the unit. As a matter of record, the complainants have made a total payment of ₹ 56,72,641/- till date

toward the allotment of the unit out of basic sale consideration of ₹ 1,93,05,000/- excluding EDC, IDC charges plus club members fee plus interest-free maintenance charges plus service charges. Further, the complainants have also paid ₹ 3,64,015/- towards the preferential location charges and ₹ 2,59,244/- towards the external development charges. It is pertinent to mention that the external development charges have already been deposited by the answering respondent with the appropriate government authorities and the same cannot be refunded to the complainants at this stage.

- f. It is submitted that the timely payment of the consideration in terms of the payment schedule, annexed along with the FBA is the essence of the contract between the complainants and the respondent. That the answering respondent relies upon clause no. 5.2 of the FBA for stating the above. As a matter of fact, the complainants themselves admit that they paid less than 25% of the total sale consideration, when the construction of the unit is in its advanced stages. Therefore, it is crystal clear that the complainant has failed to fulfill his obligation in terms of clause 5 of the FBA and as an allottee for the purpose of section 2(d) of the Act. Hence, the captioned complaint is liable to be rejected with exemplary cost upon the complainant.
- g. That the instant complaint deserves to be dismissed at the threshold in view of the conduct of the complainants. It is the first and foremost principle of law that the party approaching any legal forum/court for dispensation of justice must approach with clean hands. The complaint under reply is not only gross abuse of process

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of law but the same is filed with mala fide intentions of maligning the reputation and goodwill of the answering respondent. The contents of the instant complaint would reveal that the complainants have suppressed material facts that are extremely relevant to the adjudication of the instant complaint. The courts have on all occasions come down heavily on litigants who have approached courts suppressing material facts. That the complainants by way of the present complaint is attempting to mislead this Hon'ble Authority by fabrication and concealment of facts which never existed and trying to unduly gain at the cost of the answering respondent, for which the complainants are not entitled under the law.

- h. Without prejudice to the above, it is humbly submitted that the construction of project of the answering respondent is dependent upon the amount of money being received from the booking made and money received henceforth, in form of installments by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the answering respondent at the time of launch of the project. That, reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the installment or cancelled booking in the project, resulted in less cash flow to the answering respondent henceforth, causing a delay in the construction work of the project.

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- i. Furthermore, it is pertinent to state that the said project of the answering respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the answering respondent. As per clause 5.2 of the floor buyer agreement, the complainants have agreed and duly acknowledged that in case the development of the said dwelling unit is delayed for any reasons beyond the control of the company, then no claim whatsoever by way of any compensation shall lie against the answering respondent. Therefore, the complainants in terms of the FBA have agreed and undertook to waive all their rights and claims in such a situation.
- j. That due to the exponential increase in the cases of 'Covid-19', the Central Govt. had imposed nationwide 'lockdown' w.e.f. 25.03.2020 which has been extended till 30.06.2020, resultantly, the same has caused a serious impact on the economy posing difficult challenges for everyone. It is pertinent to mention that prior, to this unprecedented situation of pandemic 'Covid-19', the respondent no.1 along with the development manager had been carrying out the construction of the project at full pace and was expecting to deliver the units to the buyers by the end of the year 2020, however, due to the sudden outbreak of the pandemic and closure of economic activities, the respondent had to stop the construction work during the 'lockdown', as such, amid this difficult situation of 'force majeure' the answering respondent are not in a position to adhere to the arbitrary demands of the complainants for cancellation of the allotment and refund of the monies along with interest due to the reasons mentioned hereinabove.

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- k. That owing to the present situation, the real estate sector is severely affected due to the implementation of nationwide 'lock-down' w.e.f. 22.03.2020 and amid this prevailing situation of the pandemic the slowing economy is also posing difficult challenges for the answering respondent. Although, considering the seriousness of the situation and prevailing circumstances caused due to implementation nationwide 'lockdown' to contain the spread of 'Covid-19', the Govt. of India has already extended the project completion deadlines of all the projects across the nation, by another six (6) months from the scheduled deadline of completion as per the agreements. Therefore, the answering respondent expects to complete the entire project within the said extended time period and expects to deliver the flat/ unit to the complainants very soon.
- l. The natural life cycle was about to come back on track which was derailed in March 2020 the sudden outbreak of the second wave of the pandemic of COVID in April 2021 in the nation made the situation worst from worse and the country once again was under the grip of COVID and subsequently, a lockdown was imposed in the country all over once again. It is further submitted that the second wave caused severe damage to the economy and the real estate sector, as no exception, was hit the worst.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I. Territorial jurisdiction

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

E.II. Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the 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. (Supra)* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

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

F. Findings on the relief sought by the complainants.

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F.I. Direct the respondent to refund entire amount paid by the complainant along with the interest @ 9.5% p.a.

14. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest @ 9.5% p.a. 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."

(Emphasis supplied)

15. Clause 5 of the BBA dated 07.08.2014 provides for the handing over of possession and is reproduced below for the reference:

*"Subject to clause 5.2 infra and further subject to all the buyers of the residential colony making timely payment, the company shall entitled to complete the development of residential colony and the floor possible **within 36 months with an extended period of (6) six months from date of execution of this floor buyer agreement subject to, the receiving of requisite building /revised building plans/** other approvals & permission the concerned authorities, as well as force majeure conditions as the agreement and subject to fulfilment of the terms and conditions allotment, certificate & agreement including but not limited to payments by the buyer(s), in terms hereof. The company shall be entitled for an extension of time for completion of construction of the unit equivalent period of delay*

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caused on account of the reasons stated above. no cl way of damages/compensation shall lie against the company in case of handing over possession of the unit on account of the aforesaid. However, if the buyer(s) opts to pay in advance of schedule, a suitable d may be allowed but the completion schedule shall remain unaffected buyer(s) agrees and understands that the construction will commence on all necessary approvals are received from the concerned authority/competent authorities including but not limited to environment & forest."

16. At the outset, it is relevant to comment on the pre-set 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 promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters 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 flat buyer agreement by the promoters are 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.

Admissibility of grace period: The promoter has proposed to hand over the possession of the apartment within a period of 36 months plus 6 months from date of agreement i.e., 07.08.2014. The period of 36

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months expired on 07.08.2017. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified.

17. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid along with interest at the prescribed rate. 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.”

18. 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.
19. 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., **11.04.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
20. 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.

21. 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...."

22. 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

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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"

23. 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.
24. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
25. The authority hereby directs the promoter to return the amount received by him i.e., ₹ 62,97,000/- with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II. Cost of litigation.

26. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled



as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

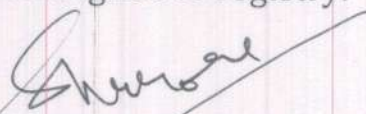
27. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):
- i. The respondent/promoter is directed to refund the entire amount of ₹ 62,97,000/- paid by the complainant along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the 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 the full realization of paid-up



amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

28. Complaint stands disposed of.

29. File be consigned to registry.


(Sanjeev Kumar Arora)

Member


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.04.2023