

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

Complaint no.:	2963 of 2021
First date of hearing:	25.08.2021
Date of decision:	10.05.2023

Rajan Monga

R/o M-14/29, DLF City Phase-II, Gurugram

Complainant

Versus

Ansal Housing & Construction Ltd.

Office address: 606, 6th floor, Indraprakash, 21, Barkhamba Road, New Delhi- 110001

Respondent

CORAM:

Shri Ashok Sangwan

Member

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri. Naveen Yogia (Advocate)

Complainant

Smt. Meena Hooda (Advocate)

Respondent

ORDER

1. The present complaint dated 10.11.2021 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Heights 92", Sector 92, Gurugram.
2.	Total area of the project	10.563 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	76 of 2010 dated 01.10.2010 valid up to 30.09.2020
5.	Name of licensee	JSG Builders Pvt. Ltd. & anr.
6.	Registered/not registered	Not registered
7.	Unit no.	A-1105 [pg. 3 of additional documents]
8.	Area of the unit	1938 sq. ft. [pg. 3 of additional documents]
9.	Date of execution of buyer's agreement with original allottee	17.07.2012 [pg. 2 of additional documents]



10.	Date of transfer of unit in name of complainant	04.06.2015 [pg. 21 of additional documents]
11.	Possession clause	29. <i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 30. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit."</i> (Emphasis supplied) [pg. 11 of additional documents]
12.	Due date of possession	17.01.2016 (Note: 36 months from date of agreement i.e., 17.07.2012 being later + 6 months grace period allowed being unqualified)
13.	Basic sale consideration as per BBA dated 17.07.2012 on pg. 5 of additional documents	₹ 51,85,800/-
14.	Total amount paid as per sum of receipts	₹ 75,24,832.2/-
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- a. That the complainant is a simpleton and Law-abiding citizen. That, complainant with his hard earned and honest money bought a residential unit in the project of the respondent.
 - b. That, in year 2012, the original buyer namely Mr. Karan Sehgal S/o Y.D. Sehgal R/o 40/55, West Punjabi Bagh, New Delhi booked a residential unit in one of the project being developed by the respondent company bearing license no. 76 of 2010 in the name of "**Ansal Heights**" at Sector - 92, Gurugram, Haryana, which was not transferable without the AHCL i.e., respondent company's permission on a total sale consideration of ₹ 51,85,800/- (including PLC, if any but excluding EDC, IDC, Club membership fees, Power Back up charges, External Electrification, Fire Fighting charges, IFMS, Common maintenance, Stamp duty, registration charges, service tax, any other Government levies/taxes and other allied charges which are payable additionally as per the terms of allotment). That, the original buyer was subsequently allotted with a 3BHK + SQR residential unit bearing no. A-1105, admeasuring 1935 sq. ft. (179.77 sq. mtrs.) and a builder buyer agreement for the same was executed on 17.07.2012.
 - c. That, in 2013, based on the representations of the respondent, the complainant, through his company Monga Developers Pvt. Ltd., agreed to purchase the above stated residential unit in the project purely upon an assurance of quality infrastructure & time bound delivery promise. And subsequently, on 18.12.2013, with due permission of AHCL, the said unit got endorsed in the name of the Monga Developers Pvt. Ltd.

- and the respective company started making payments of the demands as and when raised, by the respondent company.
- d. That, in year 2016, subsequent to the payments, the complainant got the said unit transferred in his own name from his company and started making the payments duly from his personal end to the respondent company. That subsequently, complainant made a total payment of ₹ 76,87,894/-
- e. That, the due date of possession as per BBA, was 17.01.2016, but the respondent company failed to deliver the possession of the said unit, even after multiple follow-ups and continuous chase by the complainant, the respondent company did not progress the construction, and kept delaying the delivery of the said unit.
- f. That subsequent to the due date of possession, the complainant further observed discrepancies in the dealings of the respondent company and further realised that the respondent has no intentions to develop and handover the project which was presented before the complainant and thus the complainant, having lost its faith in the respondent, requested them to the refund the entire amount paid on account of allotment of the units along with interest and compensation. And also requested for refund of the excess amount taken for which units were not even allotted.
- g. That, as per the mutual agreement, i.e., builder buyer agreement (clause 40) between the complainant and the respondent dated 17.07.2012, the respondent was bound to pay an interest @24% p.a. to the complainant on the payments made against the allotted unit but the respondent acted in malafide nature and has not paid any interest till

date due to which the complainant have suffered humongous losses and mental agony.

- h. That, the respondent is not in a position to offer the possession of the said unit as they have abandoned the project site and thus, the complainant seeks refund of the entire amount paid against allotment along with interest as per the Act, as the respondent has acted in default.
- i. That the complainant has on numerous occasions tried to contact the above-named respondent, for assured return, cancellation and refund of entire money given by the complainant but the respondent has maintained their silence for best of the reasons known to them.
- j. That, furthermore, the respondent has acted in violation to the terms & conditions as imposed upon the respondent by RERA at the time of registration and thus has acted in default with its statutory obligations also. Thus, it is prayed that adequate action be taken against the respondent.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s)
 - a. Direct the respondent to refund the amount paid along with interest @24% per annum.
 - b. Compensation of ₹ 10,00,000/- for mental agony.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.

- a. That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this Hon'ble Authority. The complainant has filed the present complaint seeking refund, interest and compensation. It is respectfully submitted that complaints pertaining to interest, compensation and refund are to be decided by the Adjudicating Officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "Act" for short) read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as the "Rules") and not by this Hon'ble Authority. The present complaint is liable to be dismissed on this ground alone.
- b. That even otherwise, the complainant has no locus-standi and 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 17.07.2012, which is evidentiary from the submissions made in the following paragraphs of the present reply.
- c. That the respondent is a public limited company registered under the Companies Act, 1956 having its registered office at 606, Indraprakash, 21 Barakhamba Road, New Delhi - 110001. The present reply is being filed by the respondent through its duly authorized representative

named Mr. Vaibhav Chaudhary whose authority letter is appended hereto with this reply. The above said project relates and pertains to licence no.76 of 2010 dated 01.10.2010, which was received from the Director General, Town & Country Planning, Chandigarh over the land measuring 10.563 acres details of the same are given in builder buyer agreement, situated within the revenue estate of Village Wazirpur, Gurugram, which falls within the area of Sector-92, Gurugram-Manesar Urban Development Plan. The building plan of the project has been approved by the DTCP; Haryana vide memo No. ZP-671/JD (BS)/2012/7441 dated 03.05.2012. Thereafter, the respondent herein was granted the approval of firefighting scheme from the fire safety point of view of the housing colony measuring 10.563 acres by the Director, Haryana Fire Service, Haryana, Chandigarh.

- d. That the relief sought in the complaint by the complainant is based on false and frivolous grounds and he is not entitled to have any discretionary relief from this Hon'ble Authority as the person not coming with clean hands should be thrown out forthwith without going onto the merits of the case. However, the true facts of the case are that the land of the project is owned by M/s JSG Builders Pvt. Ltd., having its registered office at 297-A/4, Mehrauli, New Delhi which owns a part of land of 43 Kanal 14 Marla bearing rectangle no.81, Killa No.3/2 Min (2-10), 3/1/2 Min (1-9), 7 (7-7), 8/1 (6-8), 13/2 (7-0), 14/1 (4-0),

16/2 (3-0)17 (8-0), 14/2 (4-0) and M/s NCC Urban Infrastructure Ltd., having its registered office at 41, Nagarjuna Hills, Hyderabad -500082 which owns the remaining/balance area of 40 Kanal and 16 Marla comprising in rectangle no.81, Killa Nos.6 (7-7), 16/1 (5-0), 25/1 (5-2), 15 (8-0) and rectangle no.82, Killa Nos.10 (7-7) and 11 (8-0) failing in Village Wazirpur of Gurugram. The landowners have under an agreement agreed to grant, convey and transfer all their rights, entitlements and interests in development, construction and ownership of the total permissible FSI on the land aforesaid to M/s Samyak Projects Pvt. Ltd., having its registered office at 111, 1st Floor, Antriksh Bhawan, 22, Kasturba Gandhi Marg, New Delhi.

- e. That since the Real Estate (Regulation of Development) Act, 2016 and the Haryana Real Estate (Regulation of Development) Rules, 2016 came into force, the respondents have decided and have already been applied for the registration of the project named Ansals Heights with the Hon'ble Authority.
- f. That the complainants approached the respondent sometime in the year 2013 for the purchase of an independent unit in its upcoming residential project "ANSAL HEIGHTS" (hereinafter be referred to as the "project") situated in Sector-92, Village Wazirpur, Gurugram. It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the

project and it was only after the complainant was being fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same. The complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.

- g. The complainant, in pursuant to the aforesaid application form, was allotted an independent unit bearing no. A-1105, type of unit – 3 BHK, sales area 1935 sq. ft., (179.77 Sq. mtrs.) in the project named ANSALS HEIGHTS situated at Sector-92, Gurugram. 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 should remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant. The complainant further undertaken to be bound by the terms and conditions of the builder buyer's agreement.
- h. It is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period had there been no force majeure.

- i. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal thereby restraining the excavation work causing air quality index being worst, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only by liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana Government.



- j. That, it is submitted that the complaint is not maintainable or tenable under the eyes of law as the complainant has not approached this Hon'ble Authority with clean hands and has not disclosed the true and material facts relates to this case of complaint. The complainant, thus, has approached the Hon'ble Authority with unclean hands and also has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as **S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page-1** in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the Hon'ble Authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as **Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012 decided on 25.09.2013.**
- k. 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 registered with the Authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant seeking refund, interest and compensation cannot be called into aid in derogation and ignorance of the provisions of the builder buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the builder buyer's agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298*, the liberty to the promoter /developer has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of Section 3 of RERA Act as it was opined that the said Act named RERA is having prospective effect instead of retrospective. Para no.86 and 119 of the above said citation are very much relevant in this regard.

1. That without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by limitation. The complainant has alleged that due date of possession in respect of the

said unit was in June 2015; therefore, no cause of action is arisen in favour of the complainant, if any, the same was in the month of June 2015; thus, the present complaint is barred by law of limitation and the Hon'ble Authority lacks jurisdiction.

- m. It is submitted that several allottees, including the complainant, have defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is further submitted that the respondent had applied for registration with the Authority of the said project by giving afresh date for offering of possession, and complainant would be offered for the possession soon. 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 complaint deserves to be dismissed at the very threshold.

- n. It would be relevant to mention here in case titled as **Mr. Abhishek Mohan Gupta Vs. M/s Ireo Grace Realtech (Pvt.) Ltd., Complaint No.2044 of 2018, date of first hearing 12.03.2019, decided on 12.03.2019** by the Hon'ble Authority, in para no.36, it was held by the Hon'ble Authority that *the authority came across that as per clause 13.3 the respondent has agreed to offer the possession of the said apartment within a period of 42 months from the date of approval of building plans and/or fulfillment of preconditions imposed thereunder + 180 days grace period. The building plan for the project in question was approved on 23.07.2013 which contained a precondition under clause 17(iv) that respondent should obtained clearance from Ministry of Environment and Forest, Government of India before starting construction of project. The said environment clearance for the project in question was granted on 12.12.2013 containing a pre-condition of obtaining fire safety plan duly approved by fire department before starting construction. The respondent obtained the said approval on 27.11.2014. Therefore, the due date of possession comes out to be **27.11.2018** and the possession has been delayed by **3 months and 13 days** till the date of decision...."*
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

8. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

F.I Refund entire amount paid by the complainant along with the interest @24% p.a.

14. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest @24% 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)

n accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b)

ue 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 29 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"29.

*The developer shall offer possession of the unit any time, **within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later** subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 30. Further, there shall be **a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit.**"*

16. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements 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 allottees and the commitment date 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.
17. **Due date of handing over possession and 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 or the date of commencement of construction whichever is later. The authority calculated due date of possession from the date of agreement i.e., 17.07.2012 as the date of construction is not known. The period of 36 months expired on 17.07.2015. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.

18. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them along with interest at 24% p.a. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

20. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 10.05.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
21. 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;"*

31. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 29 of the agreement executed between the parties on 17.07.2012, the possession of the subject apartment was to be delivered within stipulated time i.e., by July 2015. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 17.01.2016.



32. Keeping in view the fact that the allottee/complainant wish to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.
33. The due date of possession as per agreement for sale as mentioned in the table above is **17.01.2016** and there is delay of almost 5 years on the date of filing of the complaint.
34. 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 allottees 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....."*
35. Further, 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. observed as under: -



“25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

36. 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 allottees 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 he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
37. 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 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 amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II Compensation of ₹ 10,00,000/-

The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant may approach the adjudicating officer for seeking the relief of litigation expenses.

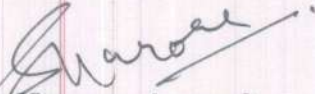
G. Directions of the authority

46. 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.

47. The complaint stand disposed of.

48. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.05.2023

HARERA
GURUGRAM