



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

Complaint no.:	5709 of 2019
First date of hearing:	31.01.2020
Date of decision:	03.03.2023

Atul Jain
R/o 117, 1st floor, Edmonton Mall, Hotel Bristol, MR
Road, Gurugram

Complainant

Versus

M/s Agrante Realty Ltd.

Office address: DTJ 704, 7th floor, DLF Tower-B, Jasola,
New Delhi-110025

Respondent

CORAM:

Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member

Member

APPEARANCE:

Shri. Jay Nirupam (Advocate)
Shri. Tarun Biswas (Advocate)

Complainant

Respondent

ORDER

1. The present complaint dated 02.12.2019 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 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. Project and unit related details

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

S. N.	Particulars	Details
1.	Name of the project	"Beethoven's 8", Sector- 107, Gurgaon
2.	Nature of project	Group housing complex
3.	RERA registered/not registered	Not Registered
4.	DTPC License no.	23 of 2012 dated 23.03.2012
	Validity status	Not available on record
	Name of licensee	Narendra Kumar Gupta & others
	Licensed area	18.0625 acres
5.	Unit no.	Harmony II L/B/1105 [pg. 38 of complaint]
6.	Unit area admeasuring	1702 sq. ft. [pg. 39 of complaint]
8.	Allotment letter	15.09.2014 [pg. 36 of complaint]



9.	Agreement to sell	15.09.2014 [pg. 37 of complaint]
11.	Total sale consideration	₹ 1,06,07,760/- [pg. 46 of complaint]
12.	Amount paid by the complainant as per agreement to sell dated 15.09.2014 at pg. 46 of complaint	₹ 28,83,363/-
13.	Possession clause	<p>Clause 18(a)</p> <p><i>Subject to other terms of this agreement/agreement, including but not limited to timely payment of the total price, stamp duty and other charges by the vendee(s), the company shall endeavor to complete the construction of the said apartment within 42 (forty-two) months from the date of allotment, which is not the same as date of this agreement. The company will offer possession of the said apartment to the vendee(s) as and when the company receives the occupation certificate from the competent authority(ies). Any delay by the vendee(s) in taking possession of the said apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof.</i></p> <p><i>(Emphasis supplied)</i></p> <p>[pg. 53 of complaint]</p>
15.	Due date of possession	15.03.2018 [Due date calculated from date of allotment i.e., 15.09.2014]
16.	Delay in handing over possession till the date of	1 year 8 months 17 days



	filing of this complaint i.e., 02.12.2019	
17.	Email requesting for cancellation of the unit	10.10.2016 [pg. 60 of complaint]
18.	Legal notice for cancellation	16.03.2017 [pg. 64 of complaint]
19.	Settlement agreement executed between the parties	25.03.2021 [pg. 17 of reply]
20.	Amount refunded by the respondent as per ledger account up till 10.03.2023 annexed with application dated 19.01.2023	₹ 10,33,000/-
21.	Occupation certificate	Not obtained
22.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- a. That the complainant booked a residential flat vide apartment no. Harmony-II, L/B/1105, having an area of approximately 1702 sq. ft. in the Project Beethoven's 8 at Sector-107, Gurgaon. The total consideration of this flat is ₹ 92,67,390/- out of which ₹ 28,83,363/- has been paid by the complainant from his lifetime savings to the respondent and the complainant has been bearing the cost of funds.
 - b. That the allotment was done in the name of the complainant on 15th September 2014. That, thereafter an agreement to sale was entered between the complainant and the respondent on the same date and



accordingly the respondent had received all sanctions from the government as well as the licenses including the environmental clearances. The respondent thus maliciously misrepresented the facts to induce the complainant into buying the said unit.

- c. That, in accordance with the agreement to sale, the apartment was to be handed over to the complainant within 42 months from the date of execution of the said agreement. However, in reality and factual position on ground, neither the construction is taking place nor has respondent asked for any further payments after the initial booking amount and the additional 20% cost of the property which was to be paid to the respondent within 60 days of the booking.
- d. That subsequently the complainant came to know that the said project was not having required sanctions for the environmental clearances and other statutory approvals on the date of the booking and that by fraudulent misrepresentations, the respondent induced complainant to book the said apartment which not only tantamount to cheating but also misrepresentation by the respondent.
- e. That accordingly, an email was sent to the OP dated 20 October 2016 by the complainant raising the query which remain unanswered, regarding the launch of the said project without obtaining requisite permissions and delay of the project beyond reasonable explanations and on 07.12.2016, the complainant was left with no choice but to cancel the unit, in which the respondent had agreed to return the amount paid thereof by the complainant with interest, however respondent did not even revert back to the reminder mail dated 27.12.2016.



- f. That respondent has neither honoured the request of the complainant nor in a position to deliver the said apartment, therefore respondent is at default and is liable for all the consequences arising out of delay, wherein the complainant was forced to bear the cost of the rentals as well as the cost of funds which are given to the respondent. The complainant has been regularly following up via mails and phone calls to no avail with no clear response from the respondent. The intention of the respondent was to cheat and to misrepresent to the complainant from the very beginning and has thereby caused wrongful loss to the complainant.
- g. That the complainant attempted to settle the dispute amicably with the respondent and thus sent a legal notice dated 16.03.2017 but the respondent did not even bother to reply to the said notice. The respondent has pocketed a huge amount of money dishonestly and the project is yet to take shape thereby duping the complainant and defaulting on its assurances for which this complaint is preferred.
- h. That it is humbly submitted that the complainant was hard pressed and was forced to file a consumer complaint i.e., CC/2821/2017 before the hon'ble NCDRC, New Delhi. The complaint is pending for arguments and is now listed for hearing on 12.02.2020.
- i. That the hon'ble authority has territorial jurisdiction over the present complaint and is not barred as the Real Estate (Regulatory and Development) Act, 2016 being a special legislation and has the better jurisdiction of both forum and the authority against the NCDRC in disputes with respect to real estate.
- j. That further on account of the unprofessional behaviour and gross deficiency of services on part of the respondent, the complainant has



suffered mental agony, pain, distress, tension and harassment apart from the legal costs for which the respondent is liable to pay a consolidated amount of ₹. 25,00,000/- to the complainant. This is apart from the mental agony, pain and distress which the family members of the complainant suffered.

- k. That further amount of ₹ 5,00,000/- towards legal costs and expenses. That the present complaint is bonafide and the complainant is not barred from seeking refund along with interest and compensation for the harassment and injury caused.
- l. That the complainant is entitled to get refund of the amount paid to the respondent along with interest as decided by the hon'ble authority. The complainant is also entitled for any other relief which he is found entitled by this authority.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s)
 - a. Direct the respondent to refund the complainant the complete sum of ₹ 28,83,363/- along with appropriate interest as deemed fit by this authority from the date of payment till the realization of the said account.
 - b. Direct the respondent to pay a sum of ₹ 5,00,000/- towards legal expenses and costs.
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 contended the complaint on the following grounds:



- a. At the very outset it is most respectfully submitted to this Hon'ble forum that both the respondent arrayed in the complaint are filing the present reply jointly as both are sister companies and are represented by its authorized representative Shri Satish Kumar duly authorized vide board resolution dated 12.08.2022 to file the present reply to the complaint.
- b. That the complaint admittedly pertains to the project "Beethoven's 8" located at Sector 107, Village Dharampur, Gurugram. It is pertinent to mention here that the answering respondent is not the "promoter" as defined under section 2 the Real Estate Regulatory Authority, 2016. The answering respondent company is not the entity who has or is developing the land for the said project. The answering respondent company is merely a sister company of the promoter company with its separate existence and is engaged in other projects. Further, the agreement to sell dated 15.09.2014 executed by the complainant is not with the answering respondent company. The legal notice dated 16.03.2017 issued by the complainant as annexed in complaint is perhaps sent to the promoter i.e., M/s Agrante Developers Pvt. Ltd. of the project however the complainant seems to inadvertently be arrayed the answering respondent company in the present complaint. It is submitted that the complaint is bad as non-impleadment of a necessary party who is competent to answer the present complaint.



- c. That the parties have settled the matter. The present reply is without prejudice to the terms of settlement. The answering respondent being a sister company is however aware of the facts of the complaint and therefore without prejudice to the aforesaid legal objection has replied to the said complaint.
- d. That the complainant's unit is in Tower-H of the project. It is submitted that the super structure of Tower-H is complete in all necessary respects and works pertaining to electricity and plumbing are also towards completion. As such the promoter is in the process of applying for OC of Tower-H with the competent authority and the same shall in probability will be received. Therefore, the promoter shall offer for possession of the complainant's unit with OC shortly. It is humbly submitted that any order from this hon'ble authority directing refund coupled with compensation to allottees such as the complainant would jeopardize the successful handing over the possession of the unit to the allottees and may also financially cripple the promoter. It is stated that the promoter is agreeable to adjust the amount accruable towards interest in delay of handing over the possession against the balance sale consideration of the complainant's unit.
- a. **FORCE MAJEURE CIRCUMSTANCES:** That M/s RMS Estate Pvt Ltd (now known as "Agrante Developers Pvt Ltd") was granted development license from Director Town and Country Planning, Haryana ("DTCP") for development of land spread over a total area of



18.0625 acre of land on which the present project is being developed. The said license was granted on 27.03.2012 and was valid for 4 years.

b. That subsequent to grant of the above license the promoter had executed a development/collaboration agreement dated 23.05.2013 with M/s Sarvaram Infrastructure Pvt Ltd ("Collaborator"). An area admeasuring 10.218 acres out of the aforesaid total land was handed to the collaborator with absolute and exclusive rights for the purposes of developing the same. It is pertinent to mention here that M/s Sarvaram Infrastructure Pvt Ltd himself or through his nominee had proposed to build a separate project namely "ELACASSA" on that parcel of land with which the promoter has no association whatsoever. Thus, resultantly there were two projects being developed under the same license by two distinct colonizers with rights and liabilities strictly framed under the said collaboration agreement. It would not be out of place to mention here that such agreements were in common practice then.

c. The development/collaboration agreement dated 23.05.2013 stipulated strict liability on M/s Sarvaram Infrastructure Pvt Ltd or his appointed nominee to be in compliance of all statutory compliances, bye-laws applicable as per HUDA, DTCP etc as applicable for his parcel of land. M/s Sarvaram Infrastructure Pvt Ltd was further under the obligation to remit all the dues accrued towards governmental



authorities arising under the agreement for the portion of land with the collaborator under the agreement.

- d. That M/s Sarvaram Infrastructure Pvt Ltd however, started defaulting in his compliance of statutory duties and contractual obligations. The promoter had on several occasions issued written requests and even served legal notices to M/s Sarvaram Infrastructure Pvt Ltd to rectify the said defaults inter-alia payment of EDC and IDC charges. The promoter had taken every step to ensure compliance of statutory obligations as non-compliance by M/s Sarvaram Infrastructure Pvt Ltd would directly prejudice the promoter's project completion having the common license. It is submitted that the license for the land lapsed due to non-renewal, and it cannot be renewed until outstanding EDC & IDC charges along with penalty is not cleared for the total land jointly by the promoter and M/s Sarvaram Infrastructure Pvt Ltd in proportion to their respective projects. Needless to mention here that the promoter is ready and willing to pay its share of EDC and IDC charges for the purposes of renewal of license.
- e. That the bona-fide of the promoter can be further gathered by the fact that the promoter is running post to pillar and has filed a representation before financial commissioner (Haryana) seeking a bifurcation of the license in two parts for two projects respectively and pursuing the same sincerely. It is pertinent to mention that only after renewal of license the promoter will be competent to obtain RERA



registration. The promoter has undertaken every possible measure in his armour to salvage the project and complete the same.

- f. It is submitted that the promoter has filed for HARERA registration vide order letter dated 09.08.2018 of its project on the said land which was to be with the applicant as per the agreement. The fate of the application is dubious and is still pending as the aforesaid license has lapsed and not existing anymore as on date and further, EDC and IDC charges are unpaid which were to be paid by the M/s Sarvarm Infrastructure Pvt Ltd. It is pertinent to mention here that the directors of the Sarvarm Infrastructure Pvt Ltd are lodged in jail presently. The promoter is crippled in the sense that he is unable to correspond with them which could perhaps lead to any fruitful results. Moreover, insolvency proceedings are pending against them before Hon'ble National Company Law Tribunal.
- g. It is submitted that due to non-registration with HARERA, the promoter is unable to sell its proposed units in its project. More particularly the applicant is crippled financially as no demand can be raised from its existing members. It is to be kindly considered by this Hon'ble Court that the promoter has accordingly not raised a single demand from its members and has not collected more than 40% of total sale consideration of a unit from any of its members. On the contrary the promoter has undertaken the tedious task of completing the construction of the project from its own finances and loans so as to



offer possession and is also remitting the interests on subvention scheme on behalf of customers so as to protect them from further loss. The overall conduct of the promoter plays a vital part in deciding the complaint such as the present one. The promoter is faced with peculiar circumstances which would require mutual cooperation of its members.

- h. That, it would be of high importance to mention one similar complaint filed with this Hon'ble Authority wherein similar issues were being adjudicated. The Hon'ble Authority under HARERA had the opportunity to deal with similar complex issues faced by developers in respect of the licensed land wherein the original licensee had further subdivided the land for development purposes on the basis of collaboration agreements. This Hon'ble Authority in complaint no. 826/2018, 1402/2018, 1343/2018, 1344/2018 had passed common orders. The issues in these complaints were similar to the applicant's issues. In this case also the original licensee Triveni Ferrous Infrastructure Pvt Ltd a joint venture comprising of two groups Seth and Mittal Group who had subsequently divided/assigned development/marketing rights into five separate lands holding to be developed separately pursuant to which similar issues arose which are being faced by the applicant. This Hon'ble Authority in that complaint had passed its conclusions and recommendations more particularly the recommendation to Town and Country Planning Department,



Haryana stressing the grave importance that DTCP must divide license in five parts (as there were live assignee developers) and determine liabilities of each party individually and separately (liability on account of overdue License fee, EDC, IDC penal interest and other charges). Once the license is bifurcated separate RERA registration would be permissible besides this Hon'ble Authority had also pertinently recommended that DTCP should defer recovery of their overdue EDC so as to leave some cash flow in the hands of the developers for investing in the project. Therefore, the promoter prays with folded hands to refer the present matter to the Hon'ble Authority in light of the aforementioned case law as cited so that similar recommendations can be issued on behalf of the promoter to Town and Country Planning Department, Haryana. It is submitted that such recommendations would be in parlance with the statutory duty of the Hon'ble Authority in section 32 of the Act which states the functions of the Hon'ble Authority for promotion of the real estate sector.

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.
8. 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 want to proceed 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 pleading and submissions made by both the parties during the proceedings.

E. Jurisdiction of the authority

9. 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

10. 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



11. 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.

12. 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.
13. 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."

14. 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 Direct the respondent to refund the entire amount paid by the complainant along with interest from the date of each payment till realization of the same in view of violation of section 18(1) of the Act.

15. 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 at the prescribed rate. 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)

16. Clause 18(a) of the agreement provides for handing over of possession and is reproduced below:

"18(a).

*Subject to other terms of this agreement/agreement, including but not limited to timely payment of the total price, stamp duty and other charges by the vendee(s), the company shall endeavor to complete the construction of the said apartment **within 42 (forty-two) months from the date of allotment, which is not the same as date of this agreement.** The company will offer possession of the said apartment to the vendee(s) as and when the company receives the occupation certificate from the competent authority(ies). Any delay by the vendee(s) in taking possession of the said apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof."*

17. 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. The due date of possession has been calculated as per clause 18(a) of the BBA, the possession of the subject apartment was to be delivered within a period of 42 months from the date of start of allotment, which is not the same as date of this agreement. Accordingly, the due date calculated from date of allotment i.e., 15.09.2014.
18. The complainant has placed on record an email dated 10.10.2016 on page no. 60 of the complaint. Subsequently a legal notice dated 16.03.2017 was issued to the respondent by the complainant for surrender of unit.



19. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.

20. It is evident from the above-mentioned facts that the complainant had paid a sum of ₹ 28,83,363/- against total sale consideration of ₹ 1,06,07,760/- of the unit allotted to him on 15.09.2014. Though the amount paid by the complainant against the allotted unit is only 27% of the sale consideration, the respondent was bound to act and respond to the pleas for surrender/cancellation and refund.
21. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them along with interest. 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. 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.

22. 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.
23. 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., 03.03.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
24. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainant against the allotted unit and is directed to cancel the same in view of clause 16 of the agreement to sell form for allotment by forfeiting the earnest money which shall not exceed the 10% of the basic sale consideration of the said unit as per payment schedule and shall return the balance amount along 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 surrender i.e., 10.10.2016 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. Further, the amount of ₹ 10,33,000/- already refunded by the respondent shall be taken into account while complying the aforesaid directions.



F.II Cost of litigation

25. 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 is advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

26. 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) of the Act:

- i. The respondent is directed to refund the paid-up amount of ₹ 28,83,363/- after retaining 10% of the basic sale consideration of unit i.e., ₹ 92,67,390/- and that amount should have been made on the date of surrender i.e., 10.10.2016. Accordingly, the interest at the prescribed rate i.e., 10.70% is allowed on the balance amount from the date of surrender till date of actual refund. Further, the amount of ₹ 10,33,000/- already refunded by the respondent shall be taken into account while complying the aforesaid directions.



- 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.

27. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Ashok Sangwan)

Member

Dated: 03.03.2023



HARERA
GURUGRAM