

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

Complaint no. :	380 of 2019
Date of filing complaint:	21.02.2019
First date of hearing:	07.11.2019
Date of decision :	06.01.2023

1. Sh. Anand Kumar Gupta S/o Sh. OP Gupta 2. Smt. Sonal Katoch W/o Sh. Anand Kumar Gupta <b>Both R/O:</b> Eden A- 513, Lodha Casa Paradiso, Sanath Nagar, Hyderabad( Karnataka)- 500018	<b>Complainants</b>
Versus	
M/s ALM Infotech City Private Limited <b>Regd. office:</b> B-418, New Friends Colony, New Delhi -110065	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Nitin Jaspal (Advocate)	Complainants
Sh. Venket Rao (Advocate)	Respondent

**ORDER**

- The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed

that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S. no.	Particulars	Details	
1.	Name of the project	"ILD Grand", Sector-37C, Gurgaon	
2.	Nature of project	Group housing project	
3.	<b>RERA registered/not registered</b>	Registered vide registration no. 386 of 2017 dated 18.12.2017	
	Validity status	17.09.2019	
	Licensed area	41223.953 sqm.	
4.	<b>DTPC License no.</b>	96 of 2010 dated 03.11.2010	118 of 2011 dated 26.12.2011
	Validity status	02.11.2025	25.12.2024
	Licensed area	21.1804 acres	
	Name of licensee	M/s Jubilant Malls Pvt. Ltd.	
5.	Allotment letter	29.03.2012 [As alleged by the respondent on page no. 02 of reply]	



6.	Unit no.	5C on 5 <sup>th</sup> floor of tower B [As per page no. 30 of complaint]
7.	Unit area admeasuring	1789 sq. ft. [As per page no. 24 of complaint]
8.	Date of apartment buyer agreement	13.02.2014 [As per page no. 23 of complaint] [Executed between original allottee i.e. Anil Kumar and respondent]
9.	MOU dated	15.01.2015 [As per page no. 30 of complaint] [Acknowledging the transfer of unit in favour of subsequent allottees i.e. the complainants]
10.	Possession clause	<b>Clause 9(i) of similar BBA (as complete BBA has not been placed on record by the parties.)</b> <i>Subject to Force Majeure circumstances as defined herein and subject to timely grant of all approvals, permissions, NOCs, etc. and further subject to the Allottee(s) having complied with all his obligations under the terms and conditions of this Agreement and the Allottee(s) not being in default under any part of this Agreement including but not limited to the timely payment of the total Sale Consideration and other charges/fees/taxes/levies and also subject to the Allottee(s) having complied with all formalities or documentation as prescribed by the Developer the Developer proposes to complete the construction <u>within a period of 36 months computed from the</u></i>

		<u><i>date of execution of this agreement with further grace period of 180 days under normal circumstances.</i></u>	
11.	Due date of possession	13.08.2017 [Calculated from date of agreement dated 13.02.2014] <b><i>Grace period of 180 days is allowed.</i></b>	
12.	Payment plan	Construction linked payment plan	
13.	Total sale consideration	Rs. 57,85,656/- (BSP) Rs. 69,63,841/- (TSC) [As per page no. 24-25 of complaint]	
14.	Amount paid by the complainants	Rs. 72,09,911/- [As alleged by the complainant on page no. 09 of complaint]	Rs. 68,87,293.91/- [As per customer ledger dated 31.05.2022 on page no. 36 of reply ]
		<i>There was dispute w.r.t amount paid by the complainant. Thus, reliance has been made on customer ledger dated 31.05.2022.</i>	
15.	Demand letters & reminders dated	10.10.2013, 26.10.2013, 28.01.2014, 21.02.2014, 25.02.2014, 07.04.2014, , 26.05.2014, 18.12.2014 (As per page no. 26-33 of reply) <i>However, there is nothing on record to show that the respondent has proceeded with cancellation of subject unit.</i>	



16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. That the complainants were in dire need of a residential accommodation at Gurugram which may have good infrastructure and all basic facilities/amenities for residing therein with their family members for better future prospectus of their children.
4. That on respondent's representation and personation that it would provide state-of-the-art infrastructure with all basic facilities/amenities in his residential apartment situated at Sector - 37C, Gurugram, Haryana and further assured that the construction of the said project would be completed and it would deliver the physical possession of the individual units by the end of 2015.
5. That believing, trusting and on the basis of respondent's representation, persuasions & assurances of the respondent, the complainants applied for allotment of unit in the project of the respondent.
6. That a builder buyer agreement dated 13.02.2014 was executed between the original allottee and the respondent for 3BR unit bearing no. 5C on 5th floor of tower/block B1, having super area of 1789 sq. ft.

7. That the complainants paid all the installment in time to the respondent as and when demanded by it but has failed to handover the physical possession of the said unit till today.
8. That the complainants till date have already paid an amount of Rs. 72,09,911/- to the respondent and the same was duly acknowledged by it vide various receipts. The last payment was made by the complainants on 14.01.2015 through HDFC Bank bearing cheque no. 529564. But it has failed to communicate about the possession of the said unit as promised at the time of booking. The complainants have been living on rent due to delay in possession of the said unit.
9. That the complainants visited the site several time, but no work was going at the project site. Now the respondent has verbally promised all the buyers that the possession will be delivered by 19.09.2019. But looking at the pace of work at the project site, it does not look like that it would be able to deliver the possession by 19.09.2019. The respondent has been lingering around this matter for long time and has been making false promises and the act and conduct of the respondent have caused a lot of physical harassment, mental agony and huge financial loss to the complainants.

**C. Relief sought by the complainants:**

10. The complainants have sought following relief(s):



- i. Direct the respondent to refund the aforesaid amount of Rs. 72,09,911/- to complainants along with an interest as prescribed by the authority since the booking of the apartment till its full and final realization, as the respondent has violated or contravened the provisions of the act, rules or regulations made thereunder or aforesaid application or agreement dated 13.02.2014 and failed to complete the construction of the aforesaid project and to handover the physical possession of the aforesaid apartment / flat to the complainants within three years from the date of aforesaid application as well as aforesaid apartment buyer's agreement dated 13.02.2014.

**D. Reply by respondent:**

Vide proceedings dated 12.05.2022, 13.07.2022, 06.10.2022 and 06.01.2023, the respondent was specifically directed to file written reply. However, despite number of opportunities it has failed to file written reply in the registry of the Authority. During the course of proceedings dated 06.01.2023, the respondent submitted the copy of written reply and to avoid any further delay, the same was taken on record.

The respondent by way of written reply made following submissions

11. That the complainants are making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent.

12. That in year 2011, the original allottee i.e. Mr. Anil Kumar approached the respondent and made inquiry about the specifications and veracity of the project. The complainants were satisfied with the with every proposal deemed necessary for the development of the project and vide application dated 23.11.2021 applied for allotment in the project of the respondent and paid booking amount of RS. 3,00,000/-.
13. That the respondent subsequently issued allotment letter dated 29.03.2012, to the original allottee wherein unit bearing no. 5C admeasuring 1789 sq. ft. was allotted to him for a total sale consideration of Rs. 69,63,841/- and a buyer's agreement dated 13.02.2014 was executed between the parties in this regard. The said allotment was endorsed in favour of the complainants i.e. Mr. Anand Gupta & Mrs. Sonal Katoch on 23.02.2015. It is submitted that it has received the "SWAMIH Investment Fund" on 29.09.2020.
14. That as per agreement dated 16.07.2013, the complainants were bound to make timely payments of dues in accordance with the demands raised by the respondent. It is to be noted that they have not paid the total sale consideration amount that is why it is quite hard for the respondent to handover the possession of the unit within time bound and the same is evident through bare reading of statement of account that they have failed to comply with the schedule of payments issued by the respondent within the said BBA.



15. That the respondent was committed to complete the development of the project. However, the developmental work of the said project was slightly delayed due to the reasons which were beyond its the control.
16. That the project was hindered majorly due to lack of infrastructure in the said area as the twenty-four-meter sector road was not completed on time. Due to non-construction of the sector road, it faced many hurdles to complete the project. For completion of road, the respondent was totally dependent upon the Govt. Department/machinery.
17. That the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent as mentioned under clause 9 (7) of the agreement. Such circumstances includes interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction and to prevent emission of dust in the month of April, 2015 and again in November, 2016. This adversely affected the progress of the project.
18. That the construction at the project site was again hampered due to orders dated 10.11.2016, 09.11.2017 and 18.12.2017 in **Vardhaman Kaushik vs Union of India & Ors.** That due to the impact of the Goods and Services Act, 2017 (herein referred to as "GST") which came into

force after the effect of demonetisation in the last quarter of 2016, which left long lasting effect on various real estate and development sector even in 2019. It is a matter of fact that the respondent has to undergo huge obstacle due to adverse effect of demonetisation and implementation of GST.

19. That in the recent years, construction activities in the real estate sector was stayed due to constant ban levied by various Courts/Tribunals/Authorities to curb pollution in Delhi-NCR region. It is pertinent to mention, that recent years the Environment (Pollution and Control) Authority, NCR (hereinafter, "EPCA") vide its notification dated 25.10.2019, bearing no. EPCA-R/2019/L-49 banned the construction activities in NCR during night hours (6:00 PM to 6:00 AM) from 26.10.2019 to 30.10.2019. Subsequently, the EPCA vide its notification bearing no. R/2019/L-53, dated 01.11.2019, converted the same into a complete ban on 01.11.2019 to 05.11.2019.
20. That the Hon'ble Apex Court in the writ petition vide its order dated 04.11.2019 passed in *writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India"* has completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and were completely lifted by the Hon'ble Court vide its order dated 14.02.2020.



21. That due to the ban levied by the competent authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Even after lifting of ban by the Hon'ble Court the construction activities could not resume at full throttle due to such acute shortage.
22. That despite, such obstacles on the construction activity in the real estate sector and before the normalcy could resume, the entire nation was hit by the worldwide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the period shall be excluded while computing the delay.
23. That the current Covid-19 pandemic resulted in serious challenges for the respondent with no available labourers; contractors etc. for the construction of the project. That on 24.03.2020, the Ministry of Home Affairs, GOI vide notification bearing no. 40-3/2020-DM-I (A) recognised that entire nation was threatened with Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. Subsequently, the Ministry of Home Affairs extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. It is to be noted that various state governments, including the Government of Haryana have also imposed strict measures to prevent the pandemic

including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated 13.05.2020 regarding extension of registrations of real estate projects under the provisions of the Act of 2016 due to "Force Majeure", the Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after 25.03.2020.

24. That after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was halted in the state due to the adverse effect of the pandemic.
25. That despite after lifting the restrictions the respondent was bound to resume with the construction activity in a hybrid mode i.e., only with the labours available within the region and nearby to the construction site. And, due to such acute shortage of labour the project was deemed to be delayed, due to above said circumstances which were neither in control of the respondent nor complainant.



26. That, it is evident that the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent.
27. They have not approached the Authority with clean hands and suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds to mislead the Authority.
28. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Authority and thus, is an utter abuse of the process of law, and deserves to be dismissed.
29. Copies of all the relevant documents have been filed and placed on 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:**

30. The plea 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.1 Territorial jurisdiction**

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**

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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

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.

31. 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.” SCC Online SC 1044 decided on 11.11.2021 and followed in M/s Sana Realtors Private Limited & others V/s 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.”*

32. Hence, in view of the authoritative pronouncement of the Hon’ble Supreme Court in the matter of ***M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)***, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him

**F. Findings on the objections raised by the respondent:**

**F.I Objection regarding jurisdiction of authority w.r.t. buyer’s agreement executed prior to coming into force of the Act.**

Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-



se in accordance with the buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

*119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*

*122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*



33. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

34. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

**F.II Objection regarding force majeure conditions:**

35. The respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond its control such as delay in project due to lack of construction of 24-meter road by the Government Authorities, stay on construction vide orders of NGT &



EPCA, implementation of GST and Covid-19 outbreak. The respondent requested that the delay was due to uncertain circumstances which were beyond its the control and same cannot be made liable for such delay.

36. The Authority is of considered view that the plea w.r.t delay in construction of project due to its dependency on construction of 24 meter road is devoid of merits as the fact that such road is under construction or is going to be constructed was already known to the respondent-builder while launching the said project and it would have been considered the same while providing date of completion of project.
37. The respondent also contended that the pace of work at project site was hampered due stay on construction vide orders of NGT & EPCA and implementation of GST. The plea w.r.t. ban on construction vide orders of NGT & EPCA is not tenable as the same were for shorter period of time. Moreover, the plea that the construction at project site was hampered due to introduction of GST, it is observed that the due date of handing over of project was 13.08.2017 and the GST was introduced on 01.07.2017. therefore, by that time the project would have been completed, but the same was not done. It is a well settled principle that one cannot take advantage of his own wrong and thus, no leniency in this regard can be given to the respondent.
38. As far as plea w.r.t. COVID-19 is concerned, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 which has observed that-



*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."*

In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 13.08.2017. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession

**G. Findings on relief sought by the complainants:**

- G.I Direct the respondent to refund the aforesaid amount of Rs. 72,09,911/- to complainants along with an interest as prescribed by the authority since the booking of the apartment till its full and final realization, as the respondent has violated or contravened the provisions of the act, rules or regulations made thereunder or aforesaid application or agreement dated 13.02.2014 and failed to complete the construction of the aforesaid project and to handover the physical possession of the aforesaid apartment / flat to the complainants within three years from the date of aforesaid application as well as aforesaid apartment buyer's agreement dated 13.02.2014..**

39. The project detailed above was launched by the respondent as group housing complex and predecessor-in-interest of the complainant was allotted the subject unit vide allotment letter dated 29.03.2012 for a total sale consideration of Rs. 69,63,841/-. It led to execution of apartment buyer's agreement between the them on 13.02.2014, detailing the terms and conditions of allotment, total sale consideration of the allotted unit, its dimensions, due date of possession, etc. The subject unit was endorsed in favour of the complainants vide memorandum of understanding dated 13.02.2014. As per agreement dated 13.02.2014, a period of 36 months with a grace period of 180 days from date of execution of agreement, for completion of the project was allowed to the respondent and that period has admittedly expired on 05.08.2015. It has come on record that against the total sale consideration of Rs. 69,63,841/- the complainants have paid a sum of Rs. 68,87,294/- to the respondent. Despite payment of more than 98.90% of total consideration, the respondent-builder has failed to handover the possession of the allotted unit and thus, the complainants-allottees wishes to withdraw from the project. Keeping in view the fact that the allottees-complainants wish to withdraw from the project and are 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.

40. The due date of possession as per agreement for sale as mentioned in the table above is 13.08.2017. There is delay of 1 years 6 months 08 days on the date of filing of the complaint i.e. 21.02.2019. The occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. Vide proceedings dated 06.01.2023, the respondent through its counsel confirmed that the occupation certificate has yet not applied for as the construction work is still incomplete and it has recently been granted financial assistance under SWAMIH fund to complete the project. It was further submitted that as per timeline given under SWAMIH fund, the project would be completed by December 2023.
41. Despite aforesaid circumstances, the complainants during the course of proceedings dated 06.01.2023, shows their willingness to withdraw from the project on the ground that there is delay of more than five years in completing and handing over the possession of the allotted unit.
42. 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 they have 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 allottee 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....."*

43. 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 (Supra)*** 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*

44. 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 allottees, as they wish 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.

45. This is without prejudice to any other remedy available to the allottees including compensation for which they 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.

The authority hereby directs the promoter to return the amount received by him i.e., Rs. 68,87,294/- with interest at the rate of 10.60% (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*.

**H. Directions of the Authority:**

46. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) The respondent /promoter is directed to refund the amount i.e. **Rs. 68,87,294/-** received by him from the complainants along with



interest at the rate of 10.60% 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 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 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 allottees-complainants.

47. Complaint stands disposed of.

48. File be consigned to the registry.

  
(Sanjeev Kumar Arora)

Member

  
(Ashok Sangwan)

Member

  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 06.01.2023**