BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 24.01.2023

NAME OF THE BUILDER		SHREE VARDHMAN INFRAHOME PRIVATE LIMITED	
PROJECT NAME		SHREE VARDHMAN FLORA	
S. No.	Case No.	Case title	Appearance
1	CR/913/2018	Neelam Goyal and others V/S M/s Shree Vardhman Infrahome Private Limited	Sh. Rajan Gupta Sh. Shalabh Singhal Sh. Gaurav Rawat
2	CR/2040/2018	Ankur Jain V/S M/s Shree Vardhman Infrahome Private Limited	Sh. Darshan Sharma Sh. Shalabh Singhal Sh. Gaurav Rawat
3	CR/2350/2018	Ashok Bakshi and others V/S M/s Shree Vardhman Infrahome Private Limited	Sh. S.D. Kaushik Sh. Shalabh Singhal Sh. Gaurav Rawat
4	CR/306/2019	Satya Prakash V/S M/s Shree Vardhman Infrahome Private Limited	Sh. Darshan Sharma Sh. Shalabh Singhal Sh. Gaurav Rawat
5	CR/6657/2019	Ravi Kumar Goyal V/S M/s Shree Vardhman Infrahome Private Limited	None Sh. Shalabh Singhal Sh. Gaurav Rawat
6.	CR/6658/2019	Renu Goyal V/S M/s Shree Vardhman Infrahome Private Limited	None Sh. Shalabh Singhal Sh. Gaurav Rawat
7.	CR/1468/2020	Neelam Sharma and Aastha Sharma V/S M/s Shree Vardhman Infrahome Private Limited	Sh. Shashank Sharma Sh. Shalabh Singhal Sh. Gaurav Rawat

CORAM:

Shri Ashok Sangwan	**Member**
Shri Sanjeev Kumar Arora	**Member**

ORDER

1. This order shall dispose of all the 7 complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Shree Vardhman flora (group housing complex) being developed by the same respondent/promoter i.e., Shree Vardhman Infrahome Private Limited. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with intertest.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	**Shree Vardhman Flora, Sector 90, Gurugram**
Possession clause: - 14(a) *The construction of the flat is likely to be completed* ***within a period of thirty six months (36) of commencement of construction of the particular tower/block in which the flat is located*** *with a grace period of 6 months or receipts of*	

sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex. **(Emphasis supplied)**
Occupation certificate: - ➢ OC received dated 02.02.2022 for towers/block- 1-8 and EWS block for ground to 13th floor, 14th floor, and 3rd floor respectively
Note: Grace period is included while computing due date of possession.

Common details: -

DTCP License no. – 23 of 2008 dated 11.02.2008

Occupation certificate- Obtained on 02.02.2022

Offer of possession- Offered, but after due date of possession

Due date of Possession - (It is calculated from the date of commencement of excavation work of particular tower in which unit of the complainant is situated as was mentioned in reply)

RERA registration- 88 of 2017 dated 23.08.2017

S. no	Complaint no./title/ date of filing complaint.	Unit no. and area admeasuring	Date of execution of agreement	Due date of possession	Total sale consideration	Amount paid by the complainant
1	CR/913/2018 Case titled as Neelam Goyal and anr. V/s M/s Shree Vardhman Date of filling- 17.09.2018	Tower no. B-4 – 502 1875 sq. ft. (Page no. 42 of the complaint)	20.01.2012 [Page 40 of the complaint]	30.11.2015 (Calculated from date of commencement of excavation work i.e., 31.05.2012	Rs.44,00,625 /- (Page 43 of the complaint) Rs. 58,28,580/- (Page 49 of reply)	Rs. 58,28,578 /- (Page 2 of the complaint and as per 49 of reply)

				page 50 of reply)		
2	CR/2040/2018 Case titled as Ankur Jain V/s M/s Shree Vardhman Date of filling- 30.11.2018	Tower no. C-2 – 308 1300 sq. ft. (Page 16 of reply)	15.05.2012 (Page 14 of the reply)	20.03.2016 (Calculated from date of commencement of excavation work i.e., 20.09.2012 page 52 of reply)	Rs.42,90,000 /- (Page 17 of reply) Rs. 55,58,702/- (Page 55 of reply)	Rs. 52,90,300 /- (As stated by complainant)
3	CR/2350/2018 Case titled as Ashok Bakshi and others V/s M/s Shree Vardhman Date of filling- 30.11.2018	Tower no. C-2 – 306 1300 sq. ft. (Page 16 of reply)	24.01.2012 [Page 14 of the reply]	10.09.2015 (Calculated from date of commencement of excavation work i.e., 10.03.2012 page 50 of reply)	Rs. 31,13,500 /- Basic sale price (As per page 17 of reply) Rs. 43,76,818/- (As per page 53 of reply)	Rs. 40,15,880 /- (As stated by complainant)

4	CR/306/2019 Case titled as Satya Prakash V/s M/s Shree Vardhman Date of filling- 30.01.2019	805, Tower no. C- 1 1300 sq. ft. (Page no. 16 of the reply)	14.02.2012 (Page no. 14 of the reply)	29.08.2015 (Calculated from date of commencement of excavation work i.e., 29.02.2012 page 54 of reply)	Rs.29,57,825 /- (Page no. 17 of reply) Rs. 41,28,128/- (Page 54 of the reply)	Rs. 36,95,335 /- (As stated by complainant)
5	CR/6657/2019 Case titled as Ravi Kumar Goyal V/s M/s Shree Vardhman Date of filling- 27.12.2019	204, Tower no. B- 3 1875 sq. ft. (Page no. 43 of the complaint)	13.02.2012 (Page no. 41 of the complaint)	14.11.2015 (Calculated from date of commencement of excavation work i.e., 14.05.2012 page 126 of reply)	Rs44,90,625 /- - Basic sale price (As per page 44 of complaint) Rs. 64,63,647/- (As per page 129 of reply)	Rs. 58,64,228 /- (As stated by complaint)
6	CR/6658/2019 Case titled as Renu Goyal V/s M/s Shree Vardhman Date of filling- 27.12.2019	Tower no. B- 3 – 201 1875 sq. ft. (Page no. 38 of the complaint)	20.02.2012 (Page no. 40 of the complaint)	14.11.2015 (Calculated from date of commencement of excavation work i.e., 14.05.2012 page 126 of reply)	Rs.44,00,625 /- (Page no. 39 of the complaint) Rs. 64,63,647/- (Page 129 of reply)	Rs. 57,59,073 /- (As stated by complainant)

7	CR/1468/2020 Case titled as Nishant Sharma and anr. V/s M/s Shree Vardhman Date of filing – 18.11.2019	Tower no. C-1-903 1300 sq. ft. (Page no. 21 of the complaint)	17.01.2012 (Page no. 24 of the complaint)	29.08.2015 (Calculated from date of commencement of excavation work i.e., 29.02.2012 page 54 of reply)	Rs.29,90,000/- (Page 27 of the complaint) Rs. 41,74,084/- (Page 57 of reply)	Rs. 39,62,291/- (As stated by complainant)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking the relief of refund of the entire amount paid by them along with interest and compensation.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s)are also similar. Out of the above-mentioned case, the particulars of ***complaint case bearing no. 913/2018 titled as*** **Neelam Goyal and otr. Vs. Shree Vardhman Infrahome Private Limited is being taken as a lead case in order to determine the rights of the allottee(s) qua refund of the amount paid along with prescribed rate of interest.**

A. Project and unit related details

7. 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:

***CR/913/2018 titled* as Neelam Goyal and otr. Vs. Shree Vardhman Infrahome Private Limited**

S. N.	Particulars	Details
1.	Name of the project	"Shree Vardhman Flora, Sector – 90, Gurugram
2.	Project area	10.881 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	23 of 2008 dated 11.02.2008 valid upto 10.02.2025
5.	Name of licensee	Moti Ram
6.	RERA Registered/ not registered	Registered vide no. 88 of 2017 dated 23.08.2017
7.	Unit no.	Tower no. B-4 - 502 (Page no. 42 of the complaint)
8.	Unit area admeasuring	1875 sq. ft. (Page no. 42 of the complaint)
9.	Allotment letter	21.11.2011 (Page no. 14 of the complaint)

10.	Date of buyer agreement	20.01.2012 (Page no. 40 of the complaint)
11.	Possession clause	**14 (a) Possession** *The construction of the flat is likely to be completed* ***within a period of thirty six months (36) of commencement of construction of the particular tower/block in which the flat is located*** *with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex.*
12.	Due date of possession	30.11.2015 (Calculated from date of commencement of excavation work i.e., 31.05.2012 - page 50 of reply)
13.	Total sale consideration	Rs.44,00,625 /- (Page 43 of the complaint) Rs. 58,28,580/- (Page 49 of reply)

14.	Amount paid by the complainants	Rs. 58,28,578/- (Page 2 of the complaint and as per 49 of reply)
15.	Occupation certificate	02.02.2022 (As per DTCP website)
16.	Offer of possession	22.07.2021 (Page 1 on list of documents supplied by respondent)
17.	Delay in handing over the possession till date of filing complaint	2 years 9 months and 18 days

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -

i. The complainants were approached by respondent in March 2011 and represented that it was planning to launch a residential project. Lured by representation made by it, the complainants booked a unit in the project, and were subsequently allotted the unit on 21.11.2011.

ii. An agreement dated 20.01.2012 was executed between the parties whereupon the complainants were explained that their unit in the proposed residential project would comprise of super area of 1875 Sq. ft approximately bearing flat no. 502 in tower No. B- 4. They have paid a total sum of Rs. 58,28,578/- against the basic sale consideration of Rs.44,00,625 /- As per the buyer's agreement, the respondent itself agreed that the

construction of the flats was likely to be completed within a period of thirty-six months, meaning thereby, the construction work was to be rendered on or before July 2015. But instead of completing the construction of the building, it kept demanding more money from the complainants.

iii. The complainants, sometime in 2014, visited the site of the project as it was shown earlier and to their utter shock noticed that the site was lying closed. Upon enquires with the staff of the respondent, they were once again assured that the project would be shortly completed. Relying upon the assurances, the complainants waited further, to hear any news of the project for the next several weeks and months.

iv. That it was categorically mentioned that time is essence of the builder buyer agreement, but the respondent raised the demands of instalments without adhering to the terms of the BBA and payment plan. The said unit was booked under construction linked plan. Further, as per the terms of the allotment, the possession of the said unit was to be handed over to the complainants by within a period of 36 months from the date of execution of builder buyer agreement. But the builder kept raising demands without adhering to construction at project site. So, in those circumstances, the complainants could not wait endlessly for possession of booked unit.

v. That in view of Section 18 of Act of 2016, the complainants are entitled to refund of amount paid or receive penalty of interest for every month of delay, till the handing over of the possession to the respondent. Furthermore, as per the provisions of Rule 15 of Rules, they are entitled for interest on the amount paid to the respondent at the rate prescribed under the Act of 2016

vi. The complainants have suffered losses or damages due to false and incorrect statement or commitment made by the respondent for delivering the possession of flat within stipulated time. Thus, the complainants want to withdraw from the project and is entitled to get the amount along with interest from the respondent.

C. Relief sought by the complainants: -

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

I. Direct the respondent to refund the amount of Rs. **58,28,578/-** along with interest per annum.

II. Any other relief which this hon'ble authority deems fit and proper may also be granted in favour the complainants.

10. 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

The respondent has contested the complaint on the following grounds.

11. The present complaint filed under Section 31 of the and Development) Act, 2016 is not maintainable under the said provision. The respondent has not violated any of the provisions of the Act.

12. The complainants have sought relief under section 18 of the Act, but the said section is not applicable in the facts of the present case and as such the complaint deserves to be dismissed. It is submitted that the operation of Section 18 is not retrospective in nature and the same cannot be applied to

the transactions that were entered prior to the Act came into force. The parties while entering into the said transactions could not have possibly taken into account the provisions of the Act and as such cannot be burdened with the obligations created therein. In the present case, also the flat buyer agreement was executed between the parties much prior to the date when the Act came into force and as such section 18 of the Act cannot be made applicable to the present case. Any other interpretation of the Act will not only be against the settled principles of law as to retrospective operation of laws but will also lead to an anomalous situation and would render the very purpose of the Act nugatory. The complaint as such cannot be adjudicated under the provisions of Act.

13. That the expression "**agreement to sell**" occurring in Section 18(1)(a) of the Act covers within its folds only those agreements to sell that have been executed after Act of 2016 came into force and the FBA executed in the present case is not covered under the said expression, the same having been executed prior to the date the Act came into force.

14. That the FBA executed in the present case did not provide any definite date or time frame for handing over of possession of the apartment to the complainants and on this ground alone, the refund and/or compensation and/or interest cannot be sought under Act. Even the clause 14 (a) of the FBA merely provided a tentative/estimated period for completion of construction of the flat and filing of application for occupancy certificate with the concerned authority. After completion of construction, the respondent was to make an application for grant of occupation certificate (OC) and after obtaining the OC, the possession of the flat was to be handed over.

15. The reliefs sought by the complainants are in direct conflict with the terms and conditions of the FBA and on this ground alone, the complaint deserve to be dismissed. The complainants signed the agreement only after having read and understood the terms and conditions mentioned therein and without any duress, pressure or protest and as such the terms thereof are fully binding upon her. The said agreement was executed much prior to Act coming into force and the same has not been declared and cannot possibly be declared as void or not binding between the parties.

    That the delivery of possession by a specified date was not essence of the FBA, and the complainants were aware that the delay in completion of construction beyond the tentative time given in the contract was possible. Even the FBA contain provisions for grant of compensation in the event of delay. As such, it is submitted without prejudice that the alleged delay on part of respondent in delivery of possession, even if assumed to have occurred, cannot entitle the complainants to ignore the agreed contractual terms and to seek interest and/or compensation on any other basis and the breach thereof cannot entitle the complainants to seek rescind the contract.

16. That any such order of refund shall cause irreparable loss and hardship not only to the promoter of the project but also the majority of its allottees who are interested in taking possession of their respective flats. Any order of refund will open a floodgate for such orders and shall sound the death knell for the project in question. The project is also already under financial stress due to various reasons beyond its control including Covid-19 pandemic and the order of refund would increase the financial stress to such a high level that

completion of the project would become impossible causing losses to all stake holders.

17. 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

18. 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

19. 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

20. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

21. 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.

22. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) R.C.R. (Civil) 357) and*** *reiterated in case of* ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for

delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

23. 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 thereon.

F. Findings on objection raised by the respondent

F.I Objection regarding force majeure conditions.

24. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure *conditions*. The respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, 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 30.11.2015. 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. Moreover a grace period of six months is being allowed in terms of agreement executed with buyers providing grace period of 6 months only due to shortage of labour or raw material or force majeure.

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

25. 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 flat 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 would 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)*** decided on 06.12.2017 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."*

26. Further 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 as under: -

"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."

27. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the flat-buyer agreements have been executed in the manner that there is no scope left to the allottees 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.

G. Findings on the relief sought by the complainants

G. I Direct the respondent to refund the amount of Rs.55,92,393/- along with interest per annum.

28. In the present complaint, the complainants intend 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 as provided under

section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -*
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
> ***he shall be liable on demand to the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act:*
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*
>
> *(Emphasis supplied)*

29. The above-mentioned clause is unconditional and provides that if the respondent is unable to complete the construction of the allotted unit within stipulated period of 36 months, then a grace period of 6 months shall be allowed to the respondent. Since there were situations beyond the control of respondent such as COVID-19. Therefore, the authority is of view that the said grace period of 6 months shall be allowed to the respondent. Therefore, as per clause 14(a) of the buyer's agreement dated 20.01.2012 the due date is to be calculated from commencement of excavation work, the due date of possession comes out to be 31.11.2015.

30. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund of the amount paid by them in respect of the subject unit at the 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.*

31. 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.

32. 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., 24.01.2023 is **8.60%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.60%.**

33. Keeping in view the fact that the allottees/complainants 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.

34. The due date of possession as per agreement for sale as mentioned in the table above is **30.11.2015** and there is delay of **2 years 9 month and 18 days** on the date of filing of the complaint.

35. The occupation certificate of the project where the unit is situated has been obtained by the respondent/promoter on 02.02.2022 i.e., much after the due date of possession and filing of complaint on 17.09.2018, So it shows that after the due date has expired, the allottees have exercised their right to withdraw from the project and sought refund of the paid-up amount. Moreover, 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. Moreover, the fact cannot be ignored that the said OC dated 02.02.2022 is obtained much after the date of institution of present complaint.

36. 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. (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."

37. 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 to return the amount received by them in respect of the unit with interest at such rate as may be prescribed as they wish to withdraw from the project, without prejudice to any other remedy available.

38. 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 complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.60% 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 said amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

39. The complainants are claiming compensation/litigation cost in six complaints mentioned at serial number 2 till 7 of the table. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainants may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

H. Directions of the authority

40. 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 respective complainants (mentioned at serial no. 3 of this order in each case) 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 its actual realization.

    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.

41. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

42. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.

43. Files be consigned to registry.

(Sanjeev Kumar Arora) Member		**(Ashok Sangwan)** Member
Haryana Real Estate Regulatory Authority, Gurugram Dated: 24.01.2023		