

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

**Complaint no. :** 465 of 2019  
**First date of hearing:** 30.05.2019  
**Date of decision :** 23.02.2023

Mr. Dhruv Shrivastav

**R/o:** - A-1202, Rama CGHS, Sector- 43, Gurugram,  
Haryana- 122002

**Complainant**

**Versus**

1. M/s Lotus Green Developers Private Limited.

**Regd. office:** Lotus Business Park, Level-7, Tower- B, Plot  
No. 8, Sector- 127, Noida, U.P. - 201304

2. M/s Bright Buildtech Private Limited.

**Regd. office:** D-107, Panchsheel Enclave- 1, New Delhi-  
110017

**Respondents**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Pawan Bhushan (Advocate)

Sh. Deeptanshu Jain (Advocate)

Complainant

Respondents

**HARERA**  
**ORDER**  
**GURUGRAM**

1. The present complaint dated 01.02.2019 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 under the provisions 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 details**

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

S. No.	Heads	Information
1.	Name and location of the project	"Woodview Residences", Sector 89-90, Gurugram, Haryana
2.	Nature of the project	Plotted Colony
3.	Area of the project	101.081 acres
4.	DTCP License	59 of 2013 dated 16.06.2013
	valid up to	15.07.2021
	Licensee name	Orris Land & Housing Pvt. Ltd. and 42 others
5.	RERA registered/ not registered	Registered vide no. 34 of 2020 dated 16.10.2020
	Valid up to	15.07.2023
6.	Unit no.	B-30, First floor, pocket-1, (Page no. 38 of the complaint)
7.	Total area admeasuring	7090 sq. ft. (Page no. 38 of the complaint)
8.	Allotment Letter	29.10.2015 (Page no. 33 of the complaint)

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9.	Date of execution of tripartite agreement	17.02.2016 (Page no. 4 of the reply)
10.	Date of execution of buyer's agreement	20.01.2016 (Page no. 36 of the complaint)
11.	Possession clause	<b>5. POSSESSION OF DWELLING UNIT</b>  5.1 Subject to Clause 5.2 and subject to the Buyer Making timely payments, the company shall endeavor to complete the construction of the building block in which the dwelling unit is situated within <b>36 months, with a grace period of 6 months from the date of issuance of allotment letter</b> provided that all amounts due and payable by the buyer has been paid to the company in timely manner".
12.	Due date of delivery of possession	29.04.2019 (Calculated from date of allotment letter dated 29.10.2015 + 6 months) <b>(Grace-period allowed)</b>
13.	Total consideration	Rs.82,78,937/- (As per payment plan page no. 34 of the complaint)
14.	Total amount paid by the complainant	Rs.15,88,104/ [As per receipt information 58 to 60 of the complaint]
15.	Date of offer of possession	Not offered
16.	Occupation certificate	Not obtained



17.	Withdrawal from the project by seeking refund of the paid-up amount	01.02.2019 [By way of instated complaint]
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**B. Fact of the complaint**

3. The complainant has made the following submissions: -

- I. This complaint is preferred under section 31 read with section 18 of the Act, 2016 for the benefit of the complainant, who is a buyer in a residential real estate project. By way of this complaint, the complainant seeks the relief of refund contemplated under section 18 i.e., the refund of the entire amount deposited towards the total consideration of their respective units with interest of 18% pa. in the project "Wood view Residences", Sector 89 & 90, Gurgaon.
- II. That as per clause 5.1 of the builder buyer agreement, possession of the dwelling unit was to be delivered by the respondent/promoter within thirty-six months (36) (not including a further six (6) months grace period) from the date of issuance of the allotment letter.
- III. That the respondents have failed to deliver possession of the unit to the complainant herein, in violation of the terms of the builder buyer's agreement. The date for giving possession has expired for the said dwelling unit and still at the stage of skeletal structures even after expiration of 5 years of the launch of the project. He has already paid up a substantial amount of the price of the dwelling unit pursuant to the

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representations made by them. The entire episode and dealings with the respondents have caused much anguish and frustration to the complainant, with the result that he can no longer afford to wait and is forced to seek a refund of the entire principal amount paid along with 18% interest p.a. compounded annually.

- IV. That the balance of convenience lies in favour of the complainant, who has invested his hard-earned savings with the respondents. Thus, the complainant humbly requests this authority to allow the present complaint. Further, the complainant is aggrieved by the deficiency of services and unfair trade practices adopted by the respondents. He is grossly aggrieved by the act of the respondents of not handing over the possession of the unit even after expiration of the time for delivering such possession.
- V. That the complainant has paid substantial amount out of the total price of the unit purchased. He has invested his life savings to make payments to the respondents. The failure of the respondents to deliver possession of the units (which are currently languishing at the stage of incomplete skeletal structures) has caused immense pressure and financial burden on the complainant.
- VI. That the unfair trade practices of the respondents are evident from the fact that if an allottee defaulted in making payments of any instalment, the same would have invited forfeiture and cancellation at the option of respondent/promoter.



- VII. That the deficiency in service of the respondents is evident from the failure to deliver constructed dwelling unit within the time period specified in the builder buyer agreement. Further, the respondent /promoter failed to offer any revised timeline after persistent defaults on originally stipulated timelines.
- VIII. That the particular facts which make the filing of the present complaint necessary are enumerated herein below:
- That the respondents launched the project in the name of "Wood view Residences" in 2013-2014 and offered to public at large to apply for residential units.
  - That the complainant, had applied for booking an Independent Floor admeasuring 1090 sq. ft bearing unit no. B-30-FF on 22.09.2015. thereafter, an allotment letter dated 29.10.2015 was issued to the complainant. The said letter was to be provisional and subject to the execution of a builder buyer agreement.
  - That a builder buyer agreement dated 20.01.2016 was executed between the Complainant and the respondent/promoter with respect to unit no. B-30-FF. In terms of clause 5.1 of the builder buyer's agreement the respondent was to deliver possession of the said unit within a period of 36 months from the date of issuance of allotment letter i.e., 29.10.2015.
- IX. That the complainant made timely payments perfectly in accordance with the payment plan provided in Schedule - II of the builder buyer's





agreement. In total, a sum of Rs.15,88,054/-out of the total sale price of Rs.82,78,937/-has already been paid. This amount includes a payment of Rs.8,00,000/- made at the time of booking i.e., on 29.10.2015. He had taken a loan for financing the purchase of this flat. The complainant has also had to pay interest/amount for subvention of Rs. 1,02,068/-. This makes the total amount paid equal to Rs.16,90,122/-.

- X. That the respondents have grossly failed to deliver possession to him. The allotted unit in the project is languishing at the stage of skeletal structures, and the non-compliance of the project is not attributable to any circumstances provided for in the force majeure clause of the builder buyer's agreement.
- XI. That it is amply clear that the respondents have breached the terms of the agreement entered into with the complainant and failed to deliver the unit by the agreed possession date. The conduct, deficiency of service and unfair trade practices employed by the respondent has caused harassment and immense mental agony to the complainant. He is entitled to refund the total amount deposited with an interest of 18% per annum from the date of deposited payments.
- XII. That the respondents being the builder and marketer respectively are enjoying the substantial amount of consideration paid by him and other allottee(s) of the project. On the other hand, the complainant after having paid substantial amount of consideration towards his unit, is still empty handed. In addition, the complainant has wasted several years in



attempting to purchase a home and has also lost out on other interest-yielding investments.

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

4. The complainant has sought following relief(s):

- I. Direct the respondents to refund the entire amount deposited by the complainant towards the total sale consideration of their respective unit as has been provided under section 18(1) of the Act of 2016.
  - II. Direct the respondent to pay interest of 18% p.a. compounded annually to the complainant on the amount deposited with the respondent/promoter from the date of respective deposits till the date of realization as per Act of 2016.
5. On the date of hearing, the authority explained to the respondent/promoters 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 respondents**

6. The respondents have contested the complaint on the following grounds.

- I. That the respondent no.1, i.e., Lotus Greens Developers Pvt. Ltd. (presently. known as "Broad Homes Private Limited") is only the group company of the respondent no. 2 and has initially marketed the project which is being developed by the respondent No. 2. It is pertinent to mention that there is no privity of contract between the respondent no. 1 and the complainants, and it does not owe any responsibility whether contractual or otherwise, so far as the





completion and delivery of the units in the project is concerned. Hence, the name of the respondent no.1 be deleted from the array of parties.

- II. That the respondent No.2 (Bright Buildtech Pvt. Ltd.) which is a group company of the respondent no.1 is developing the project namely "Wood view Residences" on its share in the project land admeasuring 101.081 acres situated at revenue estate of village Hayatpur, Sector 89 and 90, Gurugram. It is pertinent to mention that the respondent no.2 has appointed M/s. Ace Mega Structures Private Limited (hereinafter referred as "Ace") as development manager for development, construction, sales and marketing of the project vide development management agreement' dated 23.05.2019 with the objective of ensuring expeditious development of the project and to provide professionally proficient customer-care interaction. The role and responsibility of 'Ace' was restricted to manage and supervise the construction and development of the said project and to ensure timely completion. The status of 'Ace' is purely that of a service provider who shall receive a fee as consideration for providing project management and development services to the respondent no. 2.

- III. That at the time of submission of the application, the complainant was provisionally allotted B-30 dwelling unit, Pocket-1, Type 2 BHK at the basic price of Rs.76,51,500/- plus EDC, IDC charges plus two



power backup, plus club members fee plus interest free maintenance security totalling to Rs.82,78,937/- as mentioned in the application form duly signed by the parties. The complainant had opted for 'subvention linked payment plan' and the detailed payment plan in respect of the said dwelling unit was sent to the complainant along with allotment letter dated 29.10.2015. at the agreed payment plan. The complainant was pay the installment within the agreed period. The respondent has issued a demand note on 18.01.2016 for payment for the next installment which became due for payment after ninety days.

- IV. At the time of booking of the said dwelling unit, it had also received the booking amount of Rs.8,00,000/-. Accordingly, the respondent /promoter had issued a payment acknowledgment receipt in respect of the receipt of the booking amount.
- V. That the complainant always remained negligent and never fulfilled his part of contract nor paid the installments as per the payment plan and failed to pay the installment. He approached for obtaining loan over the property in question and a tripartite agreement was executed on 17.02.2016, between the bank and complainant and respondents. The complainant paid the said amount by taking loan and permission to mortgage on 17.02.2016.
- VI. That the complainant is at fault in not making timely payment of due instalments and the construction of the said project became delayed.

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Non- payment of the instalments by the allottee is a force majeure' circumstance. Furthermore, the other reasons for delay in project are stoppage of construction activities in NCR region by the orders of Court, non-availability of construction material and labour, implementation of nationwide lockdown' to contain the spread of 'Covid-19', etc. Moreover, all these situations and adverse conditions are 'force majeure' circumstances beyond the control of the respondents.

VII. That the complainant is well aware of the fact that the respondent /promoter has appointed the development manager 'Ace Mega Structures Pvt. Ltd.' for construction and completion of the said project. The respondent/promoter vide letter dated 03.10.2019 informed the complainant about the appointment of the "development manager" who is responsible for all activities including the construction and sales of the project as per the development management agreement (DMA) dated 23.05.2019.

VIII. That the said project is reasonably delayed because of 'force majeure' situation which is beyond the control of the respondent/promoter. The respondent/promoter has filed the application for change of developer (COD) with the concerned authority i.e., Director General Town and Country Planning' (DGTCP) for the inclusion of the name of the 'co-developer' 'i.e., Bright Buildtech Pvt. Ltd., which is pending adjudication. However, despite all odds, still, the respondent/

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promoter along with development manager 'Ace' is making all efforts to complete the construction work at project site at full pace and is expecting to handover the possession very soon, once the present situation of pandemic 'Covid-19' gets over and situation normalizes.

- IX. That due to the exponential increase in the cases of 'Covid-19', the Central Government imposed nationwide lockdown' w.e.f. 25.03.2020 which was extended till 30.06.2020, resultantly in causing serious impact on the economy posing difficult challenges for everyone. It is pertinent to mention that prior, to this unprecedented situation of pandemic Covid-19', the respondent no.2 along with the development manager had been carrying out the construction of the project at full pace and was expecting to deliver the units to the buyers by the end of year 2020. However, due to the sudden outbreak of the pandemic and closure of economic activities, the respondents too are experiencing the liquidity crunch, as such, amid, this difficult situation of 'force majeure' they were not in a position to adhere to the arbitrary demands of the complainant for cancellation of the allotment and refund of the monies along with interest due the reasons mentioned hereinabove. Although, considering the seriousness of the situation and prevailing circumstances caused due to implementation nationwide lockdown, the Government of India has already extended the project completion deadlines by 6 months from the commencement of lockdown period. Therefore, the

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answering respondent expects to complete the entire project within the extended time period and to deliver the flat/ unit to the complainant very soon.

- X. That the natural life cycle was about to come back on track which was derailed in March 2020; the sudden outbreak of second wave of pandemic of COVID in April 2021 in the nation made the situation worst from worse and the country once again was under the grip of COVID and subsequently, lockdown was imposed in the country all over once again. It is further submitted that the second wave caused severe damage to the economy and real estate sector being no exception was hit the worst.
- XI. That other than the above reasons, there was delay in handing over of the possession of the allotted unit due to the various reasons which were beyond the control of the respondent no. 2. Following important aspects are relevant submitted for the kind consideration of this authority:-
- a) Non-booking of all apartments seriously affected the construction: - It is submitted that the global recession badly hit the economy and particularly the real estate sector. The construction of project is dependent on the amount of monies received from the bookings made and monies received henceforth, in form of instalments paid by the allottees. However, it is submitted that during the prolonged effect of the global

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recession, the number of bookings made by the prospective purchasers reduced ed drastically in comparison to the expected bookings anticipated by the respondent no.2 at the time of launch of the project. The reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent no.2, henceforth, causing delay in the construction work of the project.

- b) Lack of adequate sources of finance;
- c) Shortage of labour;
- d) Rising manpower and material costs;
- e) Approvals and procedural difficulties.
- f) There was extreme shortage of water in the region which affected the construction works.
- g) There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln,
- h) Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labours.
- i) Recession in economy also resulted in availability of labour and raw materials becoming scarce.

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- j) There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM).
- k) Direction by the Hon'ble National Green Tribunal & Environmental authorities to stop the construction activities for some time on regular intervals to reduce air pollution in NCR region.
- l) Due to the increase in pollution in National Capital Region, the Hon'ble Supreme Court of India vide Order dated 04.11.2019 passed in **Writ Petition (Civil) No. 13029 of 1985 titled as "M.C. Mehta-Versus- Union of India & Ors"** had put restriction on construction activities. It is reiterated herein that the company was attempting to make its best efforts to complete the construction works and to give possession of the flat to the allottees as soon as possible. It is submitted that the whenever the construction activity has stopped at the project site, it is due to the above said reasons of force majeure' beyond the control of the respondent no.2. Therefore, the unfair and unreasonable demands of the complainant be not entertained. It is submitted herein that the respondent no.2 is attempting to make its best efforts to complete the construction work and to give possession of the unit' to the allottees as soon as possible.



- XII. That the project. is at advance stage of construction and is complete to the extent of 70%. Therefore, in view of the same, the complainant should not be allowed to raise unreasonable demands which can materially affect the entire project. It is submitted that the respondent no.2 has launched 420 numbers of independent floors to be constructed on 140 plots. Out of the total unit 258 floors/units were sold by the company till date, the company is expecting to handover the possession of sold units on or before June 2022.
- XIII. That the complainant applied for the allotment of the unit as investment and not for personal use and which fact is abundantly clear and evident from his conduct. The complainant has invested in the unit with intent to have monetary gains by way of reselling the unit to a higher bidder at an appreciated value.
- XIV. That on 03.02.2021, the Secretary RERA, Haryana filed an affidavit before *Hon'ble Supreme Court of India in SLP (Civil) No. 13005/2020 titled as "M/s. Sana Realtors Pvt. Ltd. vs. Union of India & Ors."*, wherein, at Para Nos. 43 to 46 of the Counter Affidavit, it was submitted as under:

*In the cases where the projects are delayed inordinately Le. delay ranging from 2 to 10 years, the RERA Act and RERA Rules provide that in the event of delay, compensation shall be paid @SBI-MCLR +2% per year, which usually works out to simple interest@ of about 10%. It is further submitted by RERA, that keeping in view the overall interest of parties and in exercise of the regulatory functions the Authority can come to the finding that the compensation for the entire period of delay for entire period prior to enactment of RERA Act, 2016 be paid at the rate provided in Rule 15 of the RERA Rules and this provision can be made*

*applicable on all the previous agreement also delay irrespective of period"*

In view of the above stand, before the Hon'ble Supreme Court that in the cases of delay in completion of projects, the HRERA provides for compensation, keeping in view the overall interest of the parties. As such, this authority should take into account the adverse circumstances which were beyond the control of the respondents, and which has led to the delay in completion of project. However, the respondents are endeavourings to finish the project on or before June 2022. Therefore, this authority should not consider the prayer of refund of monies.

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 those undisputed documents and submissions made by the parties.
8. Though the complaint seeking refund was filed by the present complainant, but a perusal of the letter of allotment and buyer's agreement dated 29.10.2015 and 20.01.2016 respectively shows that besides Dhruv Srivastava, there are two more allottees by the name of Ms. Ritika Sharma and Yogesh Kumar Srivastava. Even that fact was pointed out by the respondents through their counsel during the course of arguments leading to filing their powers of attorney dated 09.12.2022 and the same being taken on record.

**E. Jurisdiction of the authority**



9. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

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 complainants 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*

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*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 objections raised by the respondent.**

**F.I. Objections regarding the complainant being investor.**

15. The respondent has taken a stand that the complainant is an investor and not consumer, therefore, is not entitled to the protection of the Act and to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and paid total price of **Rs.15,88,104/-** towards purchase of an apartment in the project



of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act and the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement cum provisional allotment letter executed between promoter and complainant, it is crystal clear that he is an allottee(s) as the subject unit allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investors". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors is not entitled to protection of this Act also stands rejected.

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

16. The respondent/promoters have raised the contention that the construction of the tower in which the unit of the complainant is situated,



has been delayed due to force majeure circumstances such as delay on part of the developer M/s. Ace Mega Structures Private Limited, shortage of labour, implementation of various social schemes by Government of India, demonetisation, lockdown due to covid-19 various orders passed by NGT, weather conditions in Gurugram and non-payment of instalment by different allottees of the project. But all the pleas advanced in this regard are devoid of merit. The plea advanced that the developer has failed to handover the possession of project on time as per 'development management agreement' entered between them on dated 23.05.2019. It is observed the plea advanced cannot be taken as the complainant was never a party to said contract and thus, there was no privity of contract. Further, the respondent has taken a plea that there was a delay in construction of the project on account of NGT orders, orders by EPCA, orders by Hon'ble Supreme Court of India, etc but did not particularly specify for which period such orders has been made operative. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter respondents cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

**F.III. Objection regarding delay in completion of construction of project due to outbreak of Covid-19**



17. The 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 (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020*** dated 29.05.2020 has observed as under:

*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 case also, the respondents were liable to complete the construction of the project and handover the possession of the said unit by 29.04.2019. It 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 cannot be excluded while calculating the delay in handing over possession.

**G. Findings on the relief sought by the complainant**

- G. I Direct the respondents to refund the entire amount deposited by the complainant towards the total sale consideration of their respective unit as has been provided under section 18(1) of the Act of 2016.**
- G. II Direct the respondent to pay interest of 18% p.a. compounded annually to the complainant on the amount deposited with the respondent/promoter from the date of respective deposits till the date of realization as per Act of 2016.**

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18. The complainant was allotted a unit in the project of the respondents detailed above on 29.10.2015 for a total sale consideration of Rs.82,78,937/-. A builder buyer's agreement was executed on 20.01.2016. The possession of the subject unit was to be offered within 36 months with a grace period of 6 months from the date of issuance of allotment letter. The due date of completion of project and offering possession of the unit comes out 29.04.2019. But the respondents failed to carry out the construction of the project and which led to withdrawal from the project by the complainant and are seeking refund by filing of complaint. However, the complainant approached the authority on 01.02.2019 i.e., before due date of handing over of possession seeking refund against the allotted unit. No doubt neither the occupation certificate of the project has been received nor the possession has been offered to the complainant but without waiting for the same and prior to the date fixed, he moved to the authority seeking refund of the paid-up amount which can be allowed either as per the terms and condition of the buyer's agreement or after deduction of 10% of the basic sale price of the unit in view of settled principal of law laid down in a number of cases by the Hon'ble apex court of the land. Even taking a cue from the same, the authority also framed regulation in this regard known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, providing as under-

*A* **"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."*

19. It is evident from the above-mentioned facts that the complainant had paid a sum of Rs.15,88,104/- against basic sale consideration of Rs.82,78,937/- of the unit allotted to him on 29.10.2015. the due date for completion of the project and offer of possession of the allotted unit as per buyer's agreement was fixed as 29.04.2019. But without waiting for that date for the builder for complete the project and offer a possession of the unit he filed this complaint on 01.02.2019 seeking refund of the paid -up amount besides interest. So, keeping in view the aforesaid factual and legal provisions, the complainant can be allowed to withdraw from the project and seek refund of the paid-up amount but only as per the provisions of the buyer's agreement entered into between the parties on 20.01.2016, though clause 5.8 of the buyer's agreement provides for forfeiture of earnest money amount but the same has not been defined anywhere in that document. So, in view of settled proposition of law in this regard the amount of earnest money can't exceed 10% of the basic sale price and the



same is supported by the regulation framed in this regard as detailed above. Hence, the respondent is directed to refund the paid-up amount to the complainant after retaining 10% of the basic sale consideration of Rs.82,78,937/- 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 application i.e., 01.02.2019 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**

20. 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 respondents are directed to refund paid-up amount of Rs.15,88,104/- to complainant/allottees after deducting 10% as earnest money of the basic sale consideration of Rs.82,78,937/- with 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.
- ii. Out of total amount so assessed, the amount paid by the bank/payee be refunded first in the account of bank and the

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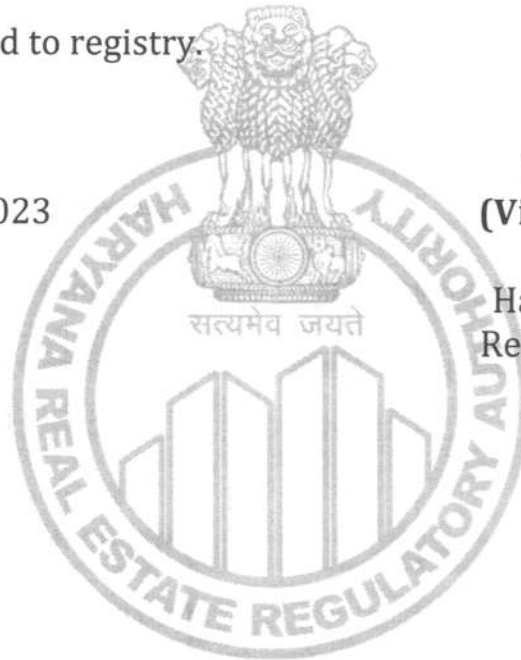
balance amount along with interest if any, be refunded to the complainant-allottees.

- iii. 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.

21. Complaint stands disposed of.

22. File be consigned to registry.

Dated: 23.02.2023



V. I - 3

**(Vijay Kumar Goyal)**

Member

Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
**GURUGRAM**