

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

Complaint no. : 3699 of 2021  
First date of hearing: 29.10.2021  
Date of decision : 01.03.2023

1. Sunita Jindal  
2. Sanchit Jindal  
Both RR/o: - C-11, Friends Colony, New Delhi- 110065

**Complainants**

Versus

M/s Raheja Developers Limited.  
**Regd. Office at:** W4D, 204/5, Keshav Kunj, Cariappa  
Marg, Western Avenue, Sainik Farms, New Delhi-  
110062

**Also, at:** - Raheja Mall, 3<sup>rd</sup> Floor, Sector- 47, Sohna Road,  
Gurugram- 122001

**Respondent**

**CORAM:**

Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member  
Member**

**APPEARANCE:**

Sh. Abhishek Dahiya (Advocate)  
Sh. Garvit Gupta (Advocate)

**Complainants  
Respondent**

**HARERA**  
**GURUGRAM**

**ORDER**

1. The present complaint dated 27.09.2021 has been filed by the complainant/allottees 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 related details**

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

| S. N. | Particulars                            | Details  |
|-------|--|--|
| 1.    | Name of the project                    | "Raheja Revanta", Sector 78, Gurugram, Haryana                 |
| 2.    | Project area                           | 18.7213 acres  |
| 3.    | Nature of the project                  | Residential Group Housing Colony                               |
| 4.    | DTCP license no. and validity status   | 49 of 2011 dated 01.06.2011 valid up to 31.05.2021             |
| 5.    | Name of licensee                       | Sh. Ram Chander, Ram Sawroop and 4 Others                      |
| 6.    | Date of revised environment clearances | 31.07.2017<br>[As per information obtained by planning branch] |
| 7.    | Date of revised building plans         | 24.04.2017<br>[Page no. 96 of reply]                           |
| 8.    | RERA Registered/ not registered        | Registered vide no. 32 of 2017 dated 04.08.2017                |
| 9.    | RERA registration valid up to          | 31.07.2022   |



|     |  |  |
|-----|--|--|
|     |  | 5 Years from the date of revised Environment Clearance   |
| 10. | Unit no.                               | B-401, ground floor, Tower/block- B<br>(Page no. 71 of the complaint)  |
| 11. | Unit area admeasuring                  | 2813.310 sq. ft.<br>(Page no. 71 of the complaint)   |
| 12. | Date of execution of agreement to sell | 23.11.2012<br>(Page no. 67 of the complaint)   |
| 13. | Allotment letter                       | 06.11.2012<br>[Page no. 64 of the complaint]   |
| 14. | Possession clause                      | <b>4.2 Possession Time and Compensation</b><br><i>That the Seller shall sincerely endeavor to give possession of the <b>Unit to the purchaser within thirty-six (36) months in respect of 'TAPAS' Independent Floors and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer &amp; water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However, the</b></i> |



*seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and/or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."*

(Page no. 81 of the complaint)

15. Grace period

**Allowed**

As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 6 months of grace period. It is a matter of fact that the respondent has



|     |   |   |
|-----|---|---|
|     |   | not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by November 2016. As per agreement to sell, the construction of the project is to be completed by November 2016 which is not completed till date. <b>Accordingly, in the present case the grace period of 6 months is allowed.</b> |
| 16. | Due date of possession  | 23.05.2017<br>(Note: - 36 months from date of agreement i.e., 23.11.2012 + 6 months grace period)   |
| 17. | Basic sale consideration as per BBA at page 102 of complaint  | Rs.2,29,38,481/-  |
| 18. | Total sale consideration as per customer ledger dated 16.04.2019 page no. 128 of the complaint        | Rs.2,43,03,410/-  |
| 19. | Amount paid by the complainants as per customer ledger dated 16.04.2019 page no. 128 of the complaint | Rs.2,27,71,933/-  |
| 20. | Payment plan  | Installment linked payment plan   |



|     |   |  |
|-----|---|--|
|     |   | (As per payment plan ay page no. 101 of the complaint) |
| 21. | Occupation certificate /Completion certificate                                      | Not received   |
| 22. | Offer of possession   | Not offered  |
| 23. | Delay in handing over the possession till date of filing complaint i.e., 27.09.2021 | 4 years 4 months and 4 days                            |

**B. Facts of the complaint**

3. The complainants have made the following submissions: -

- I. That somewhere around in the year 2102, the complainants were looking for a suitable residential property for their personal utilisation and residence. At the contemporaneous time, respondent approached the complainants and represented that they were developing a state-of-the-art residential project at Sector - 78, Gurugram viz., 'Raheja's Revanta'.
- II. That the respondent had represented that 'Raheja's Revanta' was the country's most unique project and would be unparalleled in its amenities and qualities. The respondent, in order to convince the complainants to book a residential unit in the said project, represented that was being constructed and designed in consultation/collaboration with Arabtech Holding PJSC, the company that built the tallest building in the world i.e., Burj Khalifa.





III. That the respondent handed over a brochure to the complainants and represented that they were in-fact using the most advanced construction technique which reduces the slab cycle from 20-25 days to 5-6 days and as such, the project would be completed well in advance and latest by 2016 pursuant to which the residential unit would be handed by executing necessary documents. The Respondent further showcased that the said residential project would include the following amenities:

- Premium residences;
- Club house and recreation;
- Infinity pool at the highest skybridge in India;
- View of Araville range;
- Laundromat for quick washing of clothes;
- Valet parking for Surya tower residents;
- Use of designer marble and tiles;
- Cub facility with outdoor sports facility.

IV. That believing the representations and assurances advanced by the respondent and having no reason whatsoever to doubt their intentions and with a dream of owning a residence for themselves, the complainants decided to book a residential unit in tower-B of the said project. As per the terms and conditions prescribed by the respondent, they have paid a sum of Rs.20,39,273/- to the respondent vide cheque bearing no. 015331 dated 23.07.2012 drawn on HDFC Bank, which was in-fact duly acknowledged by it and reflected into the statement of accounts issued by it.

V. Thereafter, the complainants requested the respondent to execute an agreement or grant any offer letter for recording the agreement



to sell the said residential unit in favour of complainants. However, despite repeated requested the respondent kept on delaying executing any agreement to sell and merely informed that the same would be executed in due course.

- VI. Thereafter, out of nowhere and despite the complainants still being not aware of the terms of the payments, respondent raised a demand of Rs.30,59,355/- portraying that the same was due towards the second instalment as per the terms and conditions of the projects. The respondent at the relevant time also informed that any default on the instalment would entail a penal interest. Furthermore, it was also informed that an agreement to sell would be shortly executed upon the payment of the said amount. Having no other option but to pay for the second instalment, they made the requisite payment of Rs.30,58,910/- towards the second instalment which was duly acknowledged by it and reflected into the statement of accounts.
- VII. That even thereafter, the respondent did not come forward to execute an agreement to sell. It was after repeated attempts and requests by the complainants that the respondent, on 06.11.2012, issued only an allotment letter thereby acknowledging and allotting apartment no. B-401 admeasuring 2812.21 sq. ft. and 484.33 sq. ft. court/ terrace area. Thereafter, the respondent finally executed an agreement to sell dated 23.11.2012 with the complainants.



- VIII. That the said agreement to sell reiterated the commitment given by the respondent to hand over the possession of the said residential unit by 2016. Amongst other terms, the total sale consideration was determined at Rs.2,25,32,930/- (inclusive of base price and PLC), subject to the terms and conditions of the agreement to sell.
- IX. That to meet their financial commitments towards payment for the said residential project, the complainants were constrained to avail a loan facility from Kotak Mahindra Bank for a sum of Rs.1,29,50,000/- at a floating rate of 11% p.a. for a total period of 180 months (15 years).
- X. That pursuant to the aforesaid loan agreement, a tripartite agreement dated 18.12.2012 came to be executed between the Kotak Mahindra Bank, complainants and the respondent. Furthermore, in order to service their obligations towards the construction linked payment plan, they were constrained to avail certain unsecured loans from their family and friends and as such they had duly been making payments towards the same.
- XI. That the complainants gradually paid virtually the entire sale consideration, they started approaching the respondent to inquire as to the status of the construction. However, the respondent on one pretext or the other, kept on dismissing the complainants and made false promises that the construction would be completed in no time and the possession would be accordingly handed over.

- XII. That as a matter of record, the complainants came to pay virtually the entire amount as due and payable by 23.11.2016 (being the date as promised for the completion of project). Notwithstanding the same, the respondent continued to demand additional parament on account of VAT Charges, IDC, EDC, etc. and as such, the complainants were made to pay the said charges from time to time. It is a matter of record that as on 16.04.2019, the complainants had already paid a sum of Rs. 2,27,71,932.24/-. Further, as even by 23.11.2016, the respondent did not come forward to hand over the possession to the complainants and execute a registered sale deed, the complainants were constrained to constantly approach by it and requested them to immediately and forthwith hand over the possession of the residential unit.
- XIII. That the respondent on every such occasion represented that the project was almost complete and as such, the possession would be handed over in no time. The complainants at every such occasion informed the respondent of the huge financial liability they were made to incur owing to the servicing of the loans (secured and unsecured) availed by them and requested them to immediately hand over the possession of their residential units.
- XIV. However, after waiting for an inordinate period of almost three (03 years), the complainants were left with no other option but to avail legal remedies and take recourse to the National Consumer Dispute Redressal Commission. As such, the complainants filed a

consumer complaint before the commission bearing CC No. 774 of 2019. The matter could be effectively adjudicated, the entire country witnessed an outbreak of the novel COVID-19 virus and as such the entire country was brought to a standstill. In order to curb the spread of the infection, the Govt. announced nationwide lockdown which even affected the judicial machinery of the country. The judicial forums were constrained to operate on a limited and restrictive functioning and as such the above-mentioned consumer complaint came to adjourned from time to time and as things stand today, the same is pending adjudication before the Hon'ble Commission.

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

4. The complainants have sought following relief(s).
  - i. The respondent may be directed to refund of Rs.2,27,71,932/- along with interest/compensation towards delay at the rate of 18% per annum from the date of payment till actual date of refund to the complainants.
  - ii. Respondent may kindly be directed to pay a sum of Rs. 20,00,000/- as compensation for damages on account of mental harassment caused to the complainants, lack of service, physical discomfort, mental agony and pain.
5. The respondent/promoter put in appearance through company's A.R & Advocate and marked attendance on 13.09.2022, and 14.12.2022. Despite specific directions it failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the



procedure of the court by avoiding to file written reply. In the proceeding dated 01.03.2023, it was observed that, "*Despite repeated opportunities, the respondent has failed to submit the response and was not even present for hearing today. In view of the above, it is presumed that the respondent does not wish to state anything with regard to relief sought by the complainant.*"

6. 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 submissions made by the complainants.
7. The respondent has brought to the notice of the authority on 14.12.2022, that the complainant has previously approached the Hon'ble National Consumer Dispute Redressal Commission in CC No. 774 of 2019 case title as Sunita Jindal and Sanchit Jindal Vs Raheja Developers Ltd. (Annexure P-8 at page no. 138 to 142 of the complaint). On 14.12.2022, the order was reserved on the ground of maintainability of complaint as the complaint is also filed before NCDRC. The complainants have filed a document dated 14.02.2023, wherein the order of NCDRC dated 07.02.2023, is being attached which clearly states that the said complaint has been dismissed as withdrawn. Hence, the plea raised by the respondent is rejected.

**D. Jurisdiction of the authority**

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.



**D.I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

**D.II Subject-matter jurisdiction**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation





which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (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."*

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.



**E. Findings on the relief sought by the complainants.**

**E.I. The respondent may be directed to refund of Rs.2,27,71,932/- along with interest/compensation towards delay at the rate of 18% per annum from the date of payment till actual date of refund to the complainants.**

14. 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)***

15. As per clause 4.2 of the agreement to sell dated 23.11.2012 provides for handing over of possession and is reproduced below:

**4.2 Possession Time and Compensation**

***That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser within thirty-six (36) months in respect of 'TAPAS' Independent Floors and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the***



*Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. **However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."***

16. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such a clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of



subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

**17. Due date of handing over possession and admissibility of grace period:**

As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 6 months of grace period, in case the construction is not complete within the time frame specified. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by November 2016. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay in completion of the project. Accordingly, in the present case the grace period of 6 months is allowed.

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

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



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

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

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

20. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 01.03.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.

21. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1)**, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement to sell dated form executed between the parties on 23.11.2012, the possession of the subject unit was to be delivered within a period of 48 months from the date of execution of buyer's agreement which comes out to be 23.11.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 23.05.2017.

22. Keeping in view the fact that the allottee/complainants wish to withdraw from the project and 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 plot 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.
23. The due date of possession as per agreement for sale as mentioned in the table above is 23.05.2017 and there is delay of 4 years 4 months and 4 days on the date of filing of the complaint. The authority has further, observes that even after a passage of more than 4.4 years till date neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. It is also pertinent to mention that complainants have paid almost 99% of total consideration till 2018. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottee intends to withdraw from the project and is





well within the right to do the same in view of section 18(1) of the Act, 2016.

24. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent /promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

*".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

25. 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 SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. it was observed

*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."*

26. 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 allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as 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 the unit with interest at such rate as may be prescribed.
27. 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., @ 10.70% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.





**E. II Respondent may kindly be directed to pay a sum of Rs. 20,00,000/- as compensation for damages on account of mental harassment caused to the complainants, lack of service, physical discomfort, mental agony and pain.**

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

**F. Directions of the authority**

29. 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 i.e., Rs.2,27,71,933/- received by it from the complainants along with interest at the rate of 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules,

2017 from the date of each payment till the actual date of refund of the deposited amount.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee-complainants.

30. Complaint stands disposed of.

31. File be consigned to registry.

Dated: 01.03.2023

  
**HARERA**  
**GURUGRAM**

  
**(Ashok Sangwan)**  
Member

Haryana Real Estate  
Regulatory Authority,  
Gurugram