

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM****Date of Decision: 24.03.2023**

NAME OF THE BUILDER		M/S KASHISH DEVELOPERS LTD.	
PROJECT NAME		MANOR ONE	
S. No.	Case No.	Case title	Appearance
1	CR/251/2019	M/s Skynet Enterprises Pvt. Ltd. V/S M/S Kashish Developers Ltd.	Shri Aman Kumar Yadav None
2	CR/252/2019	M/s Skynet Enterprises Pvt. Ltd. V/S M/S Kashish Developers Ltd.	Shri Aman Kumar Yadav None

CORAM:

Shri Sanjeev Kumar Arora

Member**ORDER**

1. This order shall dispose of all the two complaints titled 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 between 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, Manor One situated at Sector-111, Gurugram being developed by the same respondent/promoter i.e., M/s Kashish Developers Ltd. 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 refund of the paid up amount along with interest.
3. The respondent in the present complaints have not filed any reply or written submission. On the proceedings dated 10.10.2022 AR of the respondent-promoter appeared and was allowed two weeks' time to file the reply along with cost of Rs. 10,000/-to be paid to the complainants. The authority specifically directed if the reply has not been filed the defense of the respondent shall be struck off. Since, till today no reply has been submitted and none has appeared on behalf of respondent. Therefore, the authority assumes/ observes that the respondent has nothing to say in the present matter. Thus, the authority is proceeding as per the pleadings and documents on the record.
4. The details of the complaints, 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	"Manor One" at sector 111, Gurgaon, Haryana.
Project area	14.843 acres
DTCP License No.	110 of 2011 dated 16.12.2011 valid upto 13.12.2019
Name of Licensee	M/s Vinman Construction Pvt. Ltd. and 4 others



Rera Registered	Registered Vide 58 of 2019 dated 24.09.2019 Valid Upto 31.12.2021
Details of Occupation Certificate	Not Obtained

Possession Clause: - 3(a). Possession

That subject to terms of this clause and subject to the apartment allottee having complied with all the terms and conditions of this agreement and not being in default under any of the provision of this agreement and further subject to compliance with all the provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developers by the apartment allottee(s) under this agreement, as prescribed by the Developer, the Developer proposes to hand over the possession of said apartment within a period of thirty **(36) months (excluding a grace period of 6 months) from the date of execution of this agreement.** It is however understood between the parties that the possession of various Block/Towers comprised in the complex and also the various common facilities planned therein shall be ready and completed in phases wise and will be handed over to the allottees of different Blocks/Tower as and when the same will be completed and in a phased manner.

S. no.	Complaint No., Case Title, and Date of filing of complaint	Unit No.	Unit measuring	Date of apartment buyer agreement	Due Date of Possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/251/2019 M/s Skynet Enterprises Pvt. Ltd. V/S	A-8A, 8 th floor, Tower A (page no. 41	895 sq. ft.	14.05.2013	14.05.2016	TSC: - Rs. 75,24,025 /- AP: - Rs. 50,40,131 /-	Direct the respondent to refund the amount of Rs.



	M/S Kashish Develope rs Ltd. DOF: 18.01.20 19 Reply: Not Received	of complai nt)					50,40,13 1/- along with 24% p.a. compoun ded quarterly from the date of payment made towards each instalme nt till date of refund for failing to deliver possessi on of the unit within the stipulate d time period under the agreeme nt. .
2.	CR/252/ 2019 M/s Skynet Enterpris es Pvt. Ltd. V/S M/S	C2-6A, 6 th Floor, Tower C2 (page no. 44	2325 sq. ft.	14.05.20 13	14.05.2 016	TSC: - Rs. 1,54,19,42 5/- AP: Rs. 1,14,41,31 1/-	Direct the responde nt to refund the amount of Rs. 1,14,41,3



Kashish Developers Ltd.	of complaint)					11/- along with 24% p.a. compounded quarterly from the date of payment made towards each instalment till date of refund for failing to deliver possession of the unit within the stipulated time period under the agreement.
DOF: 18.01.2019						
Reply: Not Received						

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form
TSC Total Sale consideration
AP Amount paid by the allottee(s)

5. 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 refund of the paid up amount along with interest.

6. 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.
7. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/251/2019 M/s Skynet Enterprises Pvt. Ltd. V/S M/S Kashish Developers Ltd.** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

8. 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/251/2019 M/s Skynet Enterprises Pvt. Ltd. V/S M/S Kashish Developers Ltd.

S. N.	Particulars	Details
1.	Name of the project	"Manor One" situated at Sector-111 Gurgaon.
2.	Nature of the project	Group Housing Colony



3.	Project area	14.843 acres
4.	DTCP license no. and validity status	110 of 2011 dated 16.12.2011 valid upto 13.12.2019
5.	Name of licensee	M/s Vinman Construction Pvt. Ltd. and 4 others
6.	RERA Registered/ not registered	Registered Vide 58 of 2019 dated 24.09.2019 Valid Upto 31.12.2021
7.	Allotment Letter	28.11.2012 (page 34 of the complaint)
8.	Date of apartment buyers' agreement	16.05.2013 (page no. 36 of complaint)
9.	Unit no.	A-8A, 8 th Floor, Tower A (page no. 41 of complaint)
10.	Unit area admeasuring	895 sq. ft. (page no. 41 of complaint)
11.	Due date of possession	14.05.2016 (calculated from the date of execution of agreement) Note: Grace Period is not allowed.
12.	Possession clause	3(a) Possession That subject to terms of this clause and subject to the apartment allottee having complied with all the terms and conditions of this agreement and not being in default under any of the provision of this agreement and further

		<p>subject to compliance with all the provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developers by the apartment allottee(s) under this agreement, as prescribed by the Developer, the Developer proposes to hand over the possession of said apartment within a period of thirty (36) months (excluding a grace period of 6 months) from the date of execution of this agreement. It is however understood between the parties that the possession of various Block/Towers comprised in the complex and also the various common facilities planned therein shall be ready and completed in phases wise and will be handed over to the allottees of different Blocks/Tower as and when the same will be completed and in a phased manner.</p> <p>(Emphasis supplied)</p>
13.	Total sale consideration	<p>Rs. 75,24,025/-</p> <p>(as per payment plan on page no. 76 of complaint)</p>
14.	Amount paid by the complainant	<p>Rs. 44,56,005/-</p> <p>(as per receipts in complaint)</p>
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

The complainant has made the following submissions in the complaint:

9. That in August 2012, the complainant applied for registration and allotment of a unit in the respondent's group housing complex known as Manor One in sector-111, Gurgaon, Haryana and paid a booking amount of Rs. 6,00,000/- on 01.08.2012.
10. That the complainant was allotted the said unit vide allotment letter dated 28.11.2012 issued by the respondent to the complainant. The total sale consideration for the unit was for Rs. 75,24,025/-.
11. That the flat buyer's agreement was executed between the parties on 14.05.2013. There was thus a delay of almost 9 months from the date of booking of unit. The possession clause 3(a) of the agreement provides for a possession period of thirty-six months from the date of execution of agreement.
12. That the respondent ought to have delivered the unit by 13.05.2016. However, it failed to deliver the possession of the unit by stipulated time period under the agreement. The complainant had made a total payment of Rs. 50,40,131/- i.e., 67% of the total sale consideration.
13. That the respondent has failed to handover possession of the unit to the complainant till date within the stipulated time period under the agreement in violation of section 11(4) (a) of the Act.
14. That since the respondent charges an interest of 24% p.a. on the delayed payments towards instalment the complainant is seeking refund of a sum of Rs. 50,40,131/- along with interest @ 24% p.a. from the date of payment made towards each instalment till date of refund.

C. Relief sought by the complainant: -

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

- i. **Direct the respondent to refund the amount of Rs. 50,40,131/- along with 24% p.a. compounded quarterly from the date of payment made towards each instalment till date of refund for failing to deliver possession of the unit within the stipulated time period under the agreement.**

16. 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. Jurisdiction of the authority

17. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

18. 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.

D.II Subject matter jurisdiction

19. 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.

20. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
21. 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(C)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."

22. 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.

E. Entitlement of the complainant for refund:

i. **Direct the respondent to refund the amount to the tune of Rs. 44,56,005/- to the complainant along with 18% interest from the date of payment made by the complainant till the date of refund.**

23. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest as per section 18(1) of the Act and the same 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)

24. Clause 3(a) of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"3(a): Possession

That subject to terms of this clause and subject to the apartment allottee having complied with all the terms and conditions of this agreement and not being in default under any of the provision of this agreement and further subject to compliance with all the provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developers by the apartment allottee(s) under this agreement, as prescribed by the Developer, the Developer proposes to hand over the possession of said apartment within a period of thirty (36) months (excluding a grace period of 6 months) from the date of execution of this agreement. It is however understood between the parties that the possession of various Block/Towers comprised in the complex and also the various common facilities planned therein shall be ready and completed in phases wise and will be handed over to the allottees of different Blocks/Tower as and when the same will be completed and in a phased manner.

25. The complainant booked a unit in the project of the respondent's detail above for a total sale consideration of Rs. 75,24,025/- and the buyer's agreement was executed between the complainant and respondent on 14.05.2013.
26. As per the clause 3(a) of the buyer's agreement the possession of the unit was to be handed over within 36 months from the date of the agreement. The due date for handing over of possession comes out to be 14.05.2016.
27. 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....."

28. 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. 2021-2022(1) RCR (c), 357** 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 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."

29. 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) of the Act. 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.

30. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

31. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee 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."

32. 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.

33. 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., 24.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

34. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 44,56,005/- 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 each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.

F. Directions of the authority


35. 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 entire amount paid by the complainants (in the two complaints) along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the 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. This decision shall mutatis mutandis apply to cases mentioned in para 4 of this order.

36. The complaints stand disposed of.

37. Files be consigned to registry.



(Signature)
(Sanjeev Kumar Arora)
Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.03.2023

HARERA
GURUGRAM