

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

Complaint no.	:	665 of 2021
First date of hearing:		31.03.2021
Date of Decision:		17.01.2023

Geetika Singh Jasbir Singh Both R/o: U-30, Green Park, New Delhi-110066	 Versus	Complainants
Ireo Grace Realtech Private Limited Registered Office: - C-4, 1 st Floor, Malviya Nagar, New Delhi-110017		Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member

APPEARANCE:	
Shri Sanjeev Sharma	Advocate for the complainants
Shri M.K Dang	Advocate for the respondent

ORDER

1. The present complaint dated 12.02.2021 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 provision of the Act or the rules and regulations

made thereunder 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. No.	Heads	Information
1.	Project name and location	"The Corridors" at sector 67A, Gurgaon, Haryana
2.	Licensed area	37.5125 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	05 of 2013 dated 21.02.2013
	License valid up to	20.02.2021
	Licensee	M/s Precision Realtors Pvt. Ltd. and 5 others
5.	RERA registered/not registered	Registered Registered in 3 phases Vide 378 of 2017 dated 07.12.2017(Phase 1) Vide 377 of 2017 dated 07.12.2017 (Phase 2) Vide 379 of 2017 dated 07.12.2017 (Phase 3)
	Validity	30.06.2020 (for phase 1 and 2) 31.12.2023 (for phase 3)
6.	Unit no.	1202,12TH Floor, A4 Tower (page no. 21 of complaint)
7.	Unit measuring	1726.91 sq. ft. (page no. 21 of complaint)



8.	Date of approval of building plan	23.07.2013 (annexure R19 on page no. 56 of reply)
9.	Date of allotment	07.08.2013 (annexure R-2 on page no. 36 of reply)
10.	Date of environment clearance	12.12.2013 (annexure R-20 on page no. 60 of reply)
11.	Date of execution of builder buyer's agreement	11.08.2014 (page no. 18 of complaint)
12.	Date of fire scheme approval	27.11.2014 (annexure R-22 on page no. 67 of reply)
13.	Total consideration	Rs. 1,84,44,568/- [as per payment plan on page no. 54 of complaint]
14.	Total amount paid by the complainants	Rs. 1,72,95,529/- [as per statement of account on page no. 69 of complaint]
15.	Due date of delivery of possession	23.01.2017 (calculated from the date of approval of building plans) Note: Grace Period is not allowed.
16.	Possession clause	13. Possession and Holding Charges Subject to force majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having default under any provisions of this Agreement but not limited to the timely payment of all dues and charges

		<p>including the total sale consideration, registration chares, stamp duty and other charges and also subject to the allottee having complied with all the formalities or documentation as prescribed by the company, the company proposes to offer the possession of the said apartment to the allottee within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder(Commitment Period). The Allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the Company.</p> <p>(Emphasis supplied)</p>
17.	Occupation certificate	27.01.2022 (as per project details)
18.	Offer of possession	

B. Facts of the complaint

The complainants have submitted as under:



3. That the complainants booked a residential flat in the project being developed by the respondent namely "The Corridors" at sector-67A, Gurugram.
4. That the complainants and the respondent entered into a flat buyer agreement dated 11.08.2014 and as per which the possession was to be handed over to the complainants by 27.11.2018 but even till date the possession has not been handed over to the complainants.
5. That the complainants have paid an amount of Rs. 1,72,95,529/- out of total sale consideration of Rs. 1,84,44,568/-.
6. That the complainants earlier had filed a complaint before the Haryana Real Estate Regulatory Authority bearing complaint no. 567 of 2018 which was decided on 07.12.2018 by which the authority directed the respondent to hand over possession of the unit in question to them along with delay penalty charges being the interest at the prescribed rate of 10.75% from 27.11.2018.
7. That in lieu of the order passed by the authority, the complainants had filed execution no. 207 of 2020 dated 14.01.2020 to get the order dated 07.12.2018 in case no. 567 of 2018 executed but because of the careless and negligent behaviour of the respondent, the said execution was lying pending as the respondent pays no heed to even mark appearance before the authority.
8. That it has come to the knowledge of the complainants that on 11.01.2021, the Hon'ble Supreme Court has passed an order in the matter titled as "Ireo Grace Realtech. Pvt. Ltd. Us Abhishek Khanna & ors.", bearing case no. civil appeal no. 5785 of 2019, and observed that complainants are not covered under phase I of the said project. They are covered under phase II of the



project and the occupation certificate of the phase II was not received at that point of time. Hence, they can demand refund.

9. That taking in view of the order passed by the hon'ble apex court, the complainants request for complete refund of the entire amount paid by them to the respondent.

C. Relief sought by the complainants:

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

- (i) Direct the respondent to refund the entire amount paid by the complainants.
- (ii) Direct the respondent to pay a sum of Rs. 5,00,000/- as compensation for mental harassment.
- (iii) Direct the respondent to pay a sum of Rs. 2,00,000/- as litigation charges.

11. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

The respondent has contested the complaint on the following grounds:

12. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed.
13. That the issue in question has already been adjudicated by the authority vide its order dated 07.12.2018 and the present complaint is barred by res judicata. The respondent has already filed an application for rejection of the complaint.
14. That the complainants are estopped from filing the present complaint by their own acts, omissions, admissions, acquiescence's, and laches.



15. That there is no cause of action to file the present complaint.
16. That the complainants have not approached this authority with clean hands and have intentionally suppressed and concealed the material facts. The complaint has been filed maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:
17. That the complainants, after checking the veracity of the project namely, 'Corridor; sector 67-A, Gurugram applied for allotment of an apartment vide booking application form.
18. That based on the application for booking, the respondent vide its letter dated 07.08.2013 allotted to the complainants apartment no. CD-A4-12-1202 having tentative super area of 1726.91 sq. ft for a total sale consideration of Rs. 1,84,44,568/-. The apartment buyer's agreement was executed on 11.08.2014 only after reminders dated 28.05.2014 and 17.07.2014 were sent by the respondent to them.
19. That the respondent raised payment demands from the complainants in accordance with agreed terms and conditions of the allotment as well as of the payment plan. Vide payment request letter dated 14.04.2013, the respondent had sent the payment demand towards the second instalment for an amount of Rs. 19,46,912/-. However, the complainants made the payment only after reminders dated 14.05.2013, 28.05.2013 and 02.09.2013.
20. That the respondent vide its payment request dated 18.03.2014 raised third instalment demand for an amount of Rs. 23,13,284/-. However the said payment was made only after reminder letters dated 13.04.2014, 22.04.2014, 04.05.2014, 28.05.2014 and 26.06.2014 respectively.

21. That the respondent vide its payment request dated 02.06.2016 had sent the payment request for an amount of Rs. 20,23,031/-. However, the said payment was credited towards the total sale consideration only after reminder dated 29.06.2016 by respondent.
22. That vide payment request dated 18.10.2016, the respondent had sent the payment request etter towards the 8th instalment for an amount of Rs. 16,96,343/-. The said payment was made by the complainants only after reminder dated 15.11.2016 was sent by respondent to the complainants.
23. That as per possession clause 13.3 of the agreement the time of handing over of possession was to be computed from the approval of building plans and/or fulfilment of the pre conditions imposed thereunder (commitment period). It is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise the construction could not be raised in the absence of the necessary approvals. It has been specified in sub- clause (iv) of clause 17 of the memo of approval of building plan dated 23.07.2013 of the said project that the clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. It is submitted that the environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in clause 39 of part-A of the environment clearance dated 12.12.2013 it was stated that fire safety plan duly was to be duly approved by the fire department before the start of any construction work at site. As per clause 35 of the environment clearance certificate dated 12.12.2013, the project was to obtain permission of Mines & Geology Department for excavation of soil before the start of construction. The requisite permission from the department of Mines & Geology Department has been obtained on 04.03.2014.

24. That the last of the statutory approvals which forms a part of the preconditions was the fire scheme approval which was obtained on 27.11.2014 and the time period for offering the possession, according to the agreed terms of the buyer's agreement, would elapse only on 27.11.2019. The respondent already completed the construction of the tower in which unit allotted to them is located and applied for grant of occupation certificate on 10.09.2019.
25. That the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions beyond the control of the respondent, and which have affected the materially affected the construction and progress of the project. Some of the force majeure events/conditions beyond the control of the respondent and affected the implementation of the project and are as under :
26. Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization: The respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/ company could not implement the entire project for approx. 7-8 months w.e.f from 9-10 November 2016 the day when the Central Government issued notification with regard to demonetization. During this period, the contractor could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and were paid in cash on a daily basis. During Demonetization the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on a site of the magnitude of the project in question are Rs. 3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid



went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got delayed due on account of issues faced by contractor due to the said notification of central government.

27. There are also studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the said issue of impact of demonetization on real estate industry and construction labour.
28. Thus, in view of the above studies and reports, the said event of demonetization was beyond the control of the respondent, hence the time period for offer of possession should be deemed to be extended for 6 months on account of the above.
29. Orders Passed by National Green Tribunal: In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also, the Hon'ble NGT has passed orders with regard to phasing out the 10 year old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The Contractor of the respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to that, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November-December 2016 and November- December 2017. The district administration issued the requisite directions in this regard.



30. In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of respondent and the said period is also required to be added for calculating the delivery date of possession.
31. Non-Payment of Instalments by Allottees: Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.
32. Incllement Weather Conditions viz. Gurugram: Due to heavy rainfall in Gurugram in the year 2016 and unfavourable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.
33. Meanwhile, during the pendency of complaint the occupation certificate of the project was received on 27.01.2022.
34. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

35. The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

36. 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

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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.

38. 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.

39. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private***

Limited Vs State of U.P. and Ors.” SCC Online SC 1044 decided on 11.11.2021 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.”

F. Findings on the objections raised by the respondent.

F.I Objection regarding complaint is barred by Section 11 and Order II Rule 2 CPC.

40. The respondents-promoter has raised the contention that the present complaint is barred by section 11 and Order II Rule 2 CPC. As per the law every person who files the proceedings against the other party is bound to include all the claims in one round of litigation. The complainants had already sought the relief of refund in the previous litigation and the same was declined by the authority vide order dated 07.12.2018. They were satisfied with the order of DPC and hence filed the execution petition seeking enforcement of the order dated 07.12.2018 to recover DPC amount and also persisted with the execution petition after 30.06.2020. The authority is of the view that in the complaint bearing no. 567 of 2018 which was decided by the authority vide order dated 07.12.2018 the complainants were allowed the delayed possession charges at prescribed rate of interest i.e., 10.75% p.a.



w.e.f. 27.11.2018 (due date of delivery of possession) as per the provisions of section 18(1) of the Act, 2016 till handing over of possession. Further the respondent was directed to handover the possession by 30.06.2020 failing which the complainants were held entitled to seek refund of the paid amount with interest. So, as per the orders dated 07.12.2018 the complainants were allowed to seek refund of the paid amount if the respondent failed to deliver the unit upto 30.06.2020. Therefore, the present complaint is maintainable before the authority and can be proceeded further as per the order dated 07.12.2018.

F.II Objections regarding force majeure

41. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction during 2015-2016-2017-2018, dispute with contractor, non-payment of instalment by allottees and demonetization. The plea of the respondent regarding various orders of the NGT and demonetisation is not tenable and all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding demonetisation is also devoid of merit. Further, any dispute between contractor and the builder cannot be considered as a ground for delayed completion of project as the allottee was not a party to any such contract. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. Thus, the promoter respondent 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.

G. Findings regarding relief sought by the complainants.

(i) Direct the respondent to refund the entire amount paid by the complainants.

42. In the present complaint the complainants contended that they booked a unit in the said project for a total sale consideration of Rs. 1,84,44,568/- out of which they have paid an amount of Rs. 1,72,95,529/-. The complainants earlier filed a complaint before the authority seeking refund of the paid amount. The authority vide its order dated 07.12.2018 allowed the delayed possession charges at prescribed rate of interest i.e., 10.75% p.a. w.e.f. 27.11.2018 (due date of delivery of possession calculated at that time) as per the provisions of section 18(1) of the Act, 2016 till handing over of possession. Further the respondent was directed to handover the possession by 30.06.2020 failing which the complainants were entitled to seek refund of the paid amount with interest. Thereafter, the complainants filed an execution petition bearing no. 207 of 2020 dated 14.01.2020 to get the order dated 07.12.2018 executed.
43. But the respondent failed to handover the possession of the unit by 30.06.2020 and as per the orders of hon'ble apex court in case of Abhishek Khanna V/s Ireo Grace Realtech Pvt. Ltd. the complainants are entitled for refund of their paid amount.
44. As per the possession clause 13.3 of the agreement the possession of the unit was to be handed over within 42 months from the date of approval of building plans or preconditions imposed thereunder. The due date for handing over of possession comes out to be 23.01.2017 calculated from the date of approval of building plans.



45. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and the builder. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoter/developer to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoter/developer. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoter/developer or gave them the benefit of doubt because of the total absence of clarity over the matter.
46. The respondent/ promoter has proposed to handover the possession of the subject apartment within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder plus 180 days grace period for unforeseen delays beyond the reasonable control of the company i.e., the respondent/promoter.
47. Further, in the present case, it is submitted by the respondent promoter that the due date of possession should be calculated from the date of fire scheme approval which was obtained on 27.11.2014, as it is the last of the statutory approvals which forms a part of the preconditions.



48. The authority has gone through the possession clause of the agreement in the present matter. On a bare reading of the said clause of the agreement reproduced above, it becomes clear that the possession in the present case is linked to the "fulfilment of the preconditions" which are so vague and ambiguous in itself. Nowhere in the agreement, it has been defined that fulfilment of which conditions forms a part of the pre-conditions, to which the due date of possession is subjected to in the said possession clause. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the unit in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the "fulfilment of the preconditions" has been mentioned for the timely delivery of the subject apartment. It seems to be just a way to evade the liability towards the timely delivery of the subject unit. According to the established principles of law and natural justice when a certain glaring illegality or irregularity comes to the notice of the adjudicator, the adjudicator can take cognizance of the same and adjudicate upon it. The inclusion of such vague and ambiguous types of clauses in the agreement which are totally arbitrary, one sided and against the interests of the allottee must be ignored and discarded in their totality. In the light of the above-mentioned reasons, the authority is of the view that the date of sanction of building plans ought to be taken as the date for determining the due date of possession of the unit in question to the complainants. Accordingly, in the present matter the due date of possession is calculated from the date of approval of building plans i.e., 23.07.2013 which comes out to be 23.01.2017.



49. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainants is situated is received after filing of application by the complainants for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainants-allottee have already wished to withdraw from the project and they have become entitled to the right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as it has failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate. This is without prejudice to any other remedy available to the allottees including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
50. 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 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.

51. 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 they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
52. This is without prejudice to any other remedy available to the allottee including compensation for which they may file an application for adjudging compensation with the adjudicating officer under section 71 read with section 31(1) of the Act of 2016.
53. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 1,72,92,529/- with interest at the rate of 10.60% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

- (ii) Direct the respondent to pay a sum of Rs. 5,00,000/- as compensation for mental harassment.
- (iii) Direct the respondent to pay a sum of Rs. 2,00,000/- as litigation charges.

54. The complainants in the aforesaid relief are seeking 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 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 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority: -

55. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act:-
- The respondent/promoter is directed to refund the amount of Rs. 1,72,92,529/- received by him from the complainants with interest at the rate of 10.60% 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.
 - 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.
56. Complaint stands disposed of.
57. File be consigned to the registry.

(Ashok Sangwan)
Member

V.1-3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.01.2023