

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

Complaint no. : 619 of 2019
First date of hearing: 17.07.2019
Order reserved on: 31.01.2023
Order pronounced on: 28.03.2023

Mrs. Sudha Dubey,
W/o Mr. Yogendra Kumar Dubey,
R/o: - H. No. A-179, First Floor,
Vipul World, Sector-48, Gurugram,
Haryana-122018.

Complainant

Versus

1. M/s Bright Buildtech Private Limited.
Regd. Office at: - D-107, Panchsheel Enclave-1,
New Delhi-110017,
Also at: - Lotus Business Park, Level 7,
Tower-B, Plot No. 8, Sector-127, Noida Expressway,
Noida-201304(U.P).
2. M/s Lotus Green Developers Pvt. Ltd.
Regd. Office at: - Lotus Business Park, Level 7,
Tower-B, Plot No. 8, Sector-127, Noida Expressway,
Noida-201304(U.P).
Also at: - Flat No. 14, Ground Floor, Pul Pehlad Pur,
DDA MIG Suraj Apartment, New Delhi-110044.
3. M/s Orris Infrastructure Pvt. Ltd.
Regd. Office at: - J-5/10, DLF Phase-2,
Gurugram-122002, Haryana.

Respondents

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member



APPEARANCE:

Sh. J.S Dhull (Advocate)
Shri Deeptanshu Jain (Advocate)
Ms. Charu Rastogi (Advocate)

Complainant
Respondent No.1&2
Respondent No.3

ORDER

1. The present complaint dated 25.02.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees 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	'Woodsvew Residencies', sector-89-90, Gurugram
2.	Nature of project	Residential plotted colony
3.	RERA registered/not registered	34 of 2020 dated 16.10.2020
4.	DTPC License no.	59 of 2013 dated 16.07.2013
5.	Validity status	15.07.2021



6.	Name of licensee	Orris Land & Housing Pvt. Ltd. & 42 Ors.
7.	Licensed area	100.081 Acres
8.	Unit no.	B-47, upper ground floor [As per buyer's agreement on page no. 28 of complaint]
9.	Unit measuring	1090 sq. ft. [As per buyer's agreement on page no. 28 of complaint]
10.	Date of allotment	11.02.2015 (as per Annexure- A2 on page no. 25 of complaint)
11.	Date of execution of Apartment agreement buyer's	09.12.2015 (as alleged by complainant and admitted by respondent)
12.	Possession clause in application form	5. Possession 5.1 Subject to Clause 5.2 and subject to buyers making timely payment, the company shall endeavor to complete the construction of the building block in which the dwelling unit is situated within 36 months with a grace period of 06 months from the date of issuance of allotment letter, provided that all amounts due and payable by the buyer has been paid to the company in timely manner. The company shall be entitled to reasonable extension of time for the possession of the dwelling unit in the event of any default or negligence attributable to the buyer's fulfillment of terms & conditions of this agreement.
13.	Due date of possession	11.08.2018 (as per buyer's agreement)



		buyer's fulfillment of terms & conditions of this agreement.
13.	Due date of possession	11.08.2018 (as per buyer's agreement) (grace period of 6 months is allowed being unqualified)
14.	Total sale consideration	Rs. 83,95,137/- Basic Sale Price Rs. 78,48,000/- (as per payment plan on page no. 46 of complaint)
15.	Total amount paid by the complainant	Rs.23,07,167/- (as per receipts attached along with complaint)
16.	Occupation certificate	Not yet received, although applied
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complaint was allured by the advertisements and assurances given by the officials of respondent and booked a 2BHK residential apartment bearing no. B-47-UGF, having a super area of 1090 sq. ft. (101.26 sq. mts.) in the project "Woodview Residencies", sector 89 & 90, Gurugram, Haryana, for a total sale price of Rs.83,95,137/- including EDC, IDC, IFMS and club membership fee etc. for her residence. The said independent floor was allotted to the complainant vide provisional allotment letter dated 11.02.2015.
- II. That the buyer's agreement was executed between the parties on 09.12.2015 and the payments were to be paid by the complainant as per payment plan raised by the respondents from time to time.

- III. That as per the clause 5.1 of the buyer's agreement dated 09.12.2015, the possession of the said independent floor was to be handed over to the complainant within 36 months with a grace period of 6 months from the date of issuance of allotment letter issued on 11.02.2015.
- IV. That the complainant never defaulted in making the payment of installments as per payment plan and there was no force majeure. So, the possession of the said independent floor was to be delivered to the complainant upto 10.02.2018.
- V. That due to delay in start of the construction of the project, the complainant sent email dated 18.04.2015 requesting respondents to cancel the allotment of the said independent floor and refund of initial booking amount paid by her. But on the false assurances and representations, the complainant has paid a total sum of Rs.23,07,167/- (Rupees Twenty-Three Lakh Seven Thousand One Hundred and Sixty-Seven only) from 09.05.2014 to 18.01.2016 from time to time as demanded by the respondents. Thereafter, no demand was raised by the respondents and hence, no payment was made by the complainant. Thereafter, the complainant sent various emails to respondents regarding cancellation of allotment of the said unit and for the refund of total amount paid by her. But the respondents avoided the same under one pretext or the other vide various emails sent by them during the said period.
- VI. That the respondents have committed fraud upon the complainant by way of not cancelling the said allotment and also by not refunding the amount paid by her towards the said unit and there is inordinate delay of about 1 (one) year till date. The action of the respondents



tantamounts to unfair trade practice and deficiency in service by breaching the terms and conditions of the buyer's agreement.

- VII. That due to the illegal and deliberate wrongful act of the respondents, the complainant suffered mental pain, agony and physical harassment and they are jointly and severally liable to compensate the same.

C. Relief sought by the complainant:

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

- I. To refund the entire amount of Rs.23,07,167/- (Rupees Twenty-Three Lakh Seven Thousand One Hundred and Sixty-Seven only) along with prescribed rate of interest.
 - II. Pass any other order/direction which the Hon'ble Authority deems fit and proper in favour of the complainant and against the respondents.
5. 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 respondents.

6. The respondent no. 1 & 2 vide reply dated 25.03.2019 contested the complaint on the following grounds: -

- (i) That the complaint filed is not maintainable and this Hon'ble Regulatory Authority has no jurisdiction whatsoever to entertain the present complaint as the same is addressed to Adjudicating Officer, as such the Hon'ble Authority has no jurisdiction to hear and adjudicate the same.
- (ii) That the complaint pertains to compensation and interest for a grievance under section 12, 14, 18 and 19 of the Act of 2016, and hence

was required to be filed before the Adjudicating Officer under rule 29 of the Haryana Real Estate (Regulation & Development) Rules, 2017 read with section 31 and section 71 of the said act and not before this Hon'ble Regulatory Authority under rule 28.

- (iii) That the complainant has concealed true and material facts from this Hon'ble Forum. The true and correct facts are that she had approached the respondent for allotment of dwelling unit in the "Woodview Residency" project at Sector 89 and 90, Gurugram and the complainant submitted the application form along-with an amount of Rs.8,00,000/.
- (iv) That at the time of submitting the application, the applicant was provisionally allotted B-13 dwelling unit, UGF, at the basic sale price of Rs.78,48,000/- plus EDC, IDC charges plus club members fee plus interest free maintenance security totalling to Rs.83,95,137/- as mentioned in application form duly signed by the complainant. She had opted for construction linked plan and a detailed payment plan in respect of the dwelling unit was sent to the complainant along-with allotment letter dated 11.02.2015.
- (v) That as per the agreed payment plan, the complainant was to pay the installment within the agreed period and the respondent issued a demand note on 21.03.2015 for payment of the next instalment became due for payment after sixty days.
- (vi) That the complainant failed to make the payment of above said instalment. Even, then the respondent showing his bonafide sent the buyer's agreement of the above said allotted unit to the complainant vide letter dated 03.08.2015, calling upon her to complete the

formalities and submit the buyer's agreement duly signed with the respondent.

(vii) That the complainant always remained negligent and never fulfilled her part of contract nor paid the instalment as per the agreed payment plan. It is the complainant who is at fault who has not paid the instalments in time due to which the construction of the project was delayed.

(viii) That the complaint or the claim of the complainant is hopelessly barred by time.

7. No reply has been received from respondent no.3 with regard to the present complaint. Therefore, the complaint will be decided as per documents available on record and submission made by the parties.
8. 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.
9. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement titled as ***M/s Newtech Promoters and Developers Pvt Ltd. Vs State of UP & Ors. 2021-22(1) RCR (C), 357***, the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case the allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.5.2022 in CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP and observed that

there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.

10. Keeping in view the judgement of Hon'ble Supreme Court in case titled as *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. 2021-22(1) RCR (C), 357* the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/ CRA. Both the parties want to proceed further in the matter accordingly. The Hon'ble Supreme Court in case of *Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019* has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the pleading mentioned in the complaint and the reply received from the respondent and submissions made by both the parties during the proceedings.

E. Jurisdiction of the authority

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



E.I Territorial jurisdiction

11. 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

12. 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.

13. 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.

14. 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*** and 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."

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

F. Findings on the objections raised by the respondents.

F. I Objection regarding the delay in payment

The objection raised by the respondents regarding delay in payment by the complainant is rejected in view of the documents available on record which shows that she had made a payment of Rs.23,07,167/- as per demands raised by them vide demand notices as per payment plan. Section 19(6) of Act lays down an obligation on the allottee(s) to make timely payments towards consideration of allotted unit. As per documents available on record, the complainant has paid all the installments as per payment plan duly agreed upon by the complainants while signing the agreement and the same is evident from the proof of payments attached along with complaint. However, no document regarding non-payment of any installment or demand regarding the said unit was placed on record by the respondents. Hence, keeping in view of the facts mentioned above the plea advanced by the respondents stands rejected.

G. Findings on the relief sought by the complainant.

G.I To refund the entire amount of Rs.23,07,167/- paid by the complainant with prescribed rate of interest.

16. The complainant intends to withdraw from the project and is seeking refund of the amount paid by her 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)

17. Possession clause 5.1 of the apartment buyer's agreement annexed in complaint provides for handing over of possession and the same is reproduced below:

"5. POSSESSION OF THE DWELLING UNIT

5.1 Subject to Clause 5.2 and subject to buyers making timely payment, the company shall endeavor to complete the construction of the building block in which the dwelling unit is situated within 36 months with a grace period of 06 months from the date of issuance of allotment letter, provided that all amounts due and payable by the buyer has been paid to the



company in timely manner. The company shall be entitled to reasonable extension of time for the possession of the dwelling unit in the event of any default or negligence attributable to the buyer's fulfillment of terms & conditions of this agreement."

18. The authority has gone through the possession clause of the agreement and observations of the authority are given below.
19. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. 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 fulfilling formalities and documentations etc. as prescribed by the promoter 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 clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of her right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
20. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the



apartment by 11.02.2018, with a grace period of 6 months. On consideration of the circumstances, the documents, submissions and based on the findings of the authority, it allows the grace period of 6 months being unqualified. Therefore, the due date of handing over possession of the said unit comes out is 11.08.2018. ✓

21. **Admissibility of refund along with interest at prescribed rate of interest:** However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by her 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.

22. 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.
23. 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., 24.02.2023 is **08.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.

24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

25. The authority has further, observes that even after a passage of more than 8 years (i.e., from the date of allotment till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoters. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to her and for which she has paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained that



whether the respondents have 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.

26. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoters. 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....."

27. 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. reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others (Supra)***, 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."

28. 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 is 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 she wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.
29. 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 complainant is entitled to refund of the entire amount paid by her at the prescribed rate of interest i.e., @ 8.70% 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*.
30. The respondent no.3(Orris Infrastructure Pvt. Ltd.) on proceedings dated 31.01.2023, contented that it is not concerned with the relief in the present complaint as it is not a party in the said buyer's agreement. However, as per record available the respondent no.3 was granted licence by the Director, Town and Country Planning, Haryana vide licence no. 59 of 2013 to develop and construct the plotted colony in a parcel of land admeasuring 101.081 acres in Sector 89-90, Gurugram. Later respondent no.3 vide agreement dated 18.05.2013 transferred development rights of 50% in the subject land to respondent no.1(Bright Buildtech Pvt. Ltd.) and made it co-developer in the subject land. But, merely by executing the Development Agreement dated 18.05.2013 with respondent no.1, the respondent no.3 cannot escape its responsibility and obligations to the allottees of the project being licensee of the project and is covered under the definition of promoter within the meaning of 2(zk)(i),(v).
31. Promoter has been defined in section 2(zk) of the Act. The relevant portion of this section reads as under: -
- "2. Definitions.** — *In this Act, unless the context otherwise requires —*
- (zk) "promoter" means, —
- (i) *a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose*



of selling all or some of the apartments to other persons and includes his assignees; or

(ii) xxx

(iii) xxx

(iv) xxx

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale;"

As per aforesaid provisions of law, respondent no.1 & 3 will be jointly and severally liable for the completion of the project. Whereas, the primary responsibility to discharge the responsibilities of promoter lies with respective promoter in whose allocated share the apartments have been bought by the buyers. In view of the same, the contention/objection of respondent no.3 stands rejected.

H. Directions of the authority

32. 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/promoters are directed to refund the amount i.e., Rs.23,07,167/- received by them from the complainant alongwith 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 respondents to comply with the directions given in this order and failing which legal consequences would follow.

33. Complaint stands disposed of.

34. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.03.2023