

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

Complaint no. : 5037 of 2019
First date of hearing: 03.01.2020
Order pronounced on: 28.03.2023

Neeraj Bala Gupta,
R/o: - D-7/502, Tulip Petals,
Sector-89, Gurugram, Haryana-122001.

Complainant

Versus

M/s Bright Buildtech Private Limited.
Regd. Office at: - Lotus Business Park,
Level 7, Tower-B, Plot No. 8, Sector-127,
Noida Expressway, Noida-201304(U.P).

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Shri DS Dagar (Advocate)
Shri Deeptanshu Jain (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 11.11.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all

obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made 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 complainant, 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	'Woodsviw 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
	Validity status	15.07.2021
	Name of licensee	Orris Land & Housing Pvt. Ltd. & 42 Ors.
	Licensed area	100.081 Acres
5.	Date of allotment	02.04.2014 (as per Annexure-B on page no. 28 of the complaint)
6.	Unit no.	C-44, 1 st floor [as per application form on page no. 23]
7.	Unit measuring	1740 sq. ft. [as per application form on page no. 23]
8.	Date of execution of Apartment buyer's agreement	Not executed
9.	Possession clause in application form	10. Possession 10.(a) Subject to Clause 10 (b) below and subject also to all the applicants/buyers of the dwelling units in the project making timely payment the company shall endeavor to complete the construction of the dwelling unit within 36 months with

		a grace period of 06 months from the date of allotment of the dwelling unit.
10.	Due date of possession	02.10.2017 (calculated from the date of allotment of the dwelling unit) (grace period is allowed being unqualified)
11.	Total sale consideration	Rs.1,20,42,862.13/- [as per ledger on page no. 94 of reply] Basic sale price Rs.1,13,58,000/- [as per page no. 26 of complaint]
12.	Total amount paid by the complainant	Rs.15,00,000/- [as pleaded by complainant and admitted by respondent]
13.	Occupation certificate	Not yet received
14.	Offer of possession	Not offered
15.	Reminder letter	21.03.2015 (page no. 27 of reply) 14.11.2015 (page no. 26 of reply)
16.	Environment clearance	17.10.2014

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant was lured by the representations of respondent and booked a unit bearing no. C-44, 1st floor, measuring 1740 sq. ft. in in project named "Woodview Residences" at Sector 89, Gurgaon for a total sale consideration of Rs. 1,20,42,862.13/-. A provisional allotment letter dated 02.04.2014 was issued regarding the said unit.
- II. That the respondent asked for execution of buyer's agreement and sent a format of same to the complainant in month of May 2015. But the complainant was not agreeable with some biased terms and conditions

of the agreement and asked the respondent to remove some of them via e-mail dated 04.08.2015. But the respondent denied to delete the same vide e-mail dated 26.08.2015.

- III. That the agreement was unfair/biased because as per article 8, if allottee delay in paying installment then he/she has to pay the same with interest @12% per annum upto 30 days and @18 % per annum after 30 days to 90 days and the builder/company has right to cancel and forfeit the earnest amount if installment is not paid within 90 days delay of due date. Also, as per article 10(c) if, developer delays in offering the possession it shall be liable to pay compensation @ Rs 5/- per sq.ft. per month for 1-4 month period only. Hence, the complainant refused to go with said BBA.
- IV. That the complainant requested many times to resolve the matter, but the respondent did not pay any heed to his requests.
- V. That the complainant earlier filed a complaint in District Consumer Forum, Gurugram on 04.09.2015, but the same was dismissed undecided vide order 05.06.2017 in view of the latest pecuniary jurisdiction rules laid down by National Consumer Dispute Redressal Forum in the Judgment of Sanjay Jain Vs Spaze Tower Pvt Ltd decided on 01.02.2017.
- VI. That the complainant thereafter filed an application in the Permanent Lok Adalat, Gurugram and the same was withdrawn by him on 20.08.2019. So, the complainant was left with no other option but to file the present complaint before this Authority seeking refund of the amount paid along with interest at prescribed rates.

C. Relief sought by the complainant:

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

I. To refund the entire amount of Rs.15,00,000/- (Rupees Fifteen Lacs only) along with prescribed rate of interest.

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 respondent.

6. The respondent has contested the complaint by way of reply dated 23.08.2021 on the following grounds: -

- (i) That the complaint filed is not maintainable in the present form, unless the complaint is modified to meet the required criteria as specified under the RERA rules & regulations. The same is also not filed in the correct prescribed form i.e. form 'CAO', before the Ld. Adjudicating Officer, HRERA. In view of these technical objections, the present complaint originally filed under the old format of form 'CRA' is not maintainable, unless the same is modified/amended/re-filed in 'Form-CAO' before the Ld. Adjudicating Officer to meet the requirements of the law.
- (ii) That the complainant had approached the respondent for allotment of 'dwelling unit' in the project named "Woodsviw Residencies", situated in sectors 89 & 90, Gurugram, Haryana and a dwelling unit was provisionally allotted to him bearing unit no. C-44, first floor in the said project towards the total consideration of Rs.1,20,42,862.13/- including basic sale price plus EDC, IDC charges plus club members fee plus interest free maintenance security.

- (iii) That a buyer's agreement was executed between the parties on 02.09.2015, as per which the possession of the 'dwelling unit' was to be given in terms of Clause 5.1 & 5.2 of the said agreement.
- (iv) That the complainant was required to pay the due installments as per the payment schedule in respect of the said dwelling unit. However, the payment schedule was never adhered to by the complainant. Pertinently, the respondent issued demand notes and reminder letters to the complainant on several occasions calling upon him to make the timely payment of the due installments.
- (v) That the respondent has appointed M/s. Ace Mega Structures Private Limited as 'development manager' for development, construction, sales and marketing of the project vide 'development management agreement' dated 23.05.2019 only with the objective of ensuring expeditious development of the project and to provide professionally proficient customer-care interaction.
- (vi) That the respondent has launched 420 number of independent floors to be constructed on 140 plots. Out of which 258 floors/units were sold by the company till date. The chronology of the project is summarized hereinbelow as follows:
- a) M/s. Orris Infrastructure Private Limited ("Orris") in collaboration with M/s. Bright Buildtech Private Limited ("Bright") and other landowners had filed an application with the Director, Town and Country Planning Haryana ("DTCP") for issuance of a license in favour of Orris for development of a township of 101.081 acres in sector-89-90, Gurugram and the same was issued in favour of Orris bearing licence no. 59 of 2013 dated 16.07.2013. Thereafter, M/s. Bright Buildtech Private Limited and M/s. Orris

Infrastructure Private Limited entered into an agreement dated 18.05.2013 whereby, Orris has transferred development rights of 50% in the subject land to Bright.

- b) "Bright" has also applied for registration of the project under RERA on 28.11.2019 which is pending for approval and hearing for that application was fixed for 22.02.2021.
- c) State Environment Impact Assessment Authority, Haryana has issued environment clearance for above said township and separately a forest NOC has been issued by Dy. Conservator of Forests, Gurgaon, Haryana.
- (x) That the said project of respondent-builder was delayed due to 'force majeure' situation beyond its control as it has filed the application for change of developer with the concerned Authority i.e., Director General, Town and Country Planning (DGTCP) for the inclusion of the name of the 'co-developer' i.e., 'Bright Buildtech Pvt. Ltd.', which is pending adjudication before the concerned authority. However, despite all odds, the respondent alongwith development manager 'Ace' made all the efforts to complete the construction work at project site at full pace and is expecting to handover the possession very soon.
- (xi) That the delay in handing over the possession of the dwelling unit/ apartment has been caused due to the exponential increase in the cases of 'Covid-19', due to which the Central Govt. had imposed nationwide lockdown. However, due to the sudden outbreak of the pandemic and closure of economic activities, the respondent had to stop the construction work during the lockdown. Other various

challenges being faced by the respondent are submitted for the kind consideration of this Hon'ble Court;

- a) Non-booking of all apartments seriously affected the construction and several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent, henceforth, causing delay in the construction work of the project.
- b) Lack of adequate sources of finance.
- c) Shortage of labour.
- d) Rising manpower and material costs.
- e) Approvals and procedural difficulties.

(xii) The table concluding the time period for which the construction activities in the project were restrained by the orders of competent authority/court are produced herein below as follows:

S.No.	Court/Authority & Order Date	Title	Duration
1.	National Green Tribunal- 08.11.2016 10.11.2016	Vardhman Kaushik vs Union of India	08.11.2016 to 16.11.2016
2.	National Green Tribunal 09.11.2017	Vardhman Kaushik vs Union of India	Ban was lifted after 10 days
3.	Press Note by EPCA	Press Note- 31.10.2018	01.11.2018 to 10.11.2018
4.	Hon'ble Supreme Court- 23.12.2018	Three-day ban on industrial activities in pollution hotspots and construction work	23.12.2018 to 26.12.2018
5.	EPCA/Bhurelal Committee Order- 31.10.2018	Complete Ban	01.11.2019 to 05.11.2019
6.	Hon'ble Supreme Court 04.11.2019-14.02.2020	M.C Mehta vs Union of India, Writ Petition(c) no. 13029/1985	04.11.2019 to 14.02.2020
7.	Government of India	Lockdown due to Covid-19	24.03.2020 to 03.05.2020

8.	Government of India	Lockdown due to Covid-19	8 weeks in 2021
	Total	37 weeks (approximately)	

(xiii) That in view of the above facts and circumstances the demand of the complainant for refund of the amount paid is baseless and the same cannot be allowed under any situation. It is respectfully submitted that whenever the construction activity has stopped at the project site, it is due to the above-said reasons of 'force-majeure' beyond the control of the respondent. If such prayers are allowed, the same will materially affect the construction works at site, besides the interests of all the other allottees who have booked flats in the said project. It is relevant to point out herein that at present, the respondent is focusing on the completion and delivery of the said project. The monies received from the allottees have been utilized in the construction activities and thus, there is no justification in the demand for refund. It is noteworthy to mention that the project of the respondent is at advanced stage of construction and is complete to the extent of 70%.

(xiv) That the complainant had applied for the allotment of the dwelling unit as investment and not for personal use which fact is abundantly clear and evident from his conduct. It is submitted that the complainant has invested in the unit with intent to have monetary gains by way of reselling the unit to a higher bidder at an appreciated value. Thus, in view of the constant precedents upheld by various Real Estate Regulatory Authorities across the country, the present complaint is not maintainable wherein, it is held unanimously that the investors of real estate projects are not entitled to relief from Real Estate Regulatory Authority.

(xv) That the instant complaint is not maintainable keeping in view the facts, circumstances and law relating thereto. It is further submitted that the complainant has failed to produce any evidence or specific averments worth its salt to prove its claims. Moreover, there is no quantification of claims as sought for by the complainant under prayer/compensation sought clause, and therefore, the instant complaint is liable to be dismissed at the threshold. It is further submitted that the complainant has filed the captioned frivolous complaint with false averments, only with a malafide intention to make illegal enrichment at the cost of the respondent. Since the captioned complaint is filed without any cause of action, the same is liable to be dismissed at the outset.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

8. 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

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

10. 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.
11. 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.”

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

F. Findings on the objections raised by the respondent.

F.I Objection regarding maintainability of complaint.

13. The objection of respondent that application regarding refund should be filed in the ‘Form CAO’ before the Adjudicating Officer and not before the Authority in ‘Form CRA’ stands rejected keeping in view of 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, and 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. 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.

F.II Objections regarding the complainant being investor.

14. The respondent took a stand that the complainant is an investor and not consumer, therefore, is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations

made thereunder. Upon careful perusal of all the documents available, it is determined that the complainant is a buyer and has paid total price of Rs.15,00,000/- to the promoter towards purchase of unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

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

F.III Objections regarding the circumstances being 'force majeure'

16. The respondent took an objection that the project was delayed because of the 'force majeure' situations like outbreak of Covid-19, ban on construction by competent authorities, delay on part of govt. authorities in granting approvals and other formalities, non-booking of apartments, lack of adequate source of finance, shortage of labour, shortage of bricks and water, demonetization policy by central govt. etc which were beyond the control of respondents. Therefore, as per the grounds mentioned above, the authority allow a grace period of 6 months to the respondent for handing over the possession of the said unit as per possession clause 10(a) of the application form and which is allowed. Hence, the due date for handing over the possession of the said unit after granting a grace period of 6 months comes to 02.10.2017.

G. Findings on the relief sought by the complainant.

- G.I To refund the entire amount of Rs. 15,00,000/- paid by the complainant with prescribed rate of interest.**

17. The complainant intends to withdraw from the project and is seeking return of the amount paid by him 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)

18. As per possession clause 10(a) of the application form annexed in complaint provides for handing over of the possession and the same is reproduced below:

"10. POSSESSION OF THE DWELLING UNIT

10(a) "Subject to Clause 10 (b) below and subject also to all the applicants/buyers of the dwelling units in the project making timely payment the company shall endeavor to complete the construction of the dwelling unit within 36 months with a grace period of 06 months from the date of allotment of the dwelling unit."

19. The authority has gone through the possession clause mentioned above and observations of the authority are given below.
20. At the outset, it is relevant to comment on the preset possession clause that the possession has been subjected to all kinds of terms and conditions of this application, and the complainant not being in default under any provisions mentioned 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 application form 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 mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

21. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over possession of the apartment within 36 months from the date of allotment i.e., 02.04.2014 along with a grace period of 6 months. On consideration of the circumstances, the documents, submissions and based on the findings of the authority, the authority allows the grace period of 6 months being unqualified. Therefore, the due date for handing over possession of the subject unit comes out to be 02.10.2017.
22. **Admissibility of refund along with interest at prescribed rate of interest:** However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by him 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.

23. 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.
24. 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., 28.02.2023 is **08.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
25. The authority has further, observes that even after a passage of more than 9 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/promoter. 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 him. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent 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 respondents/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.....”

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 he wishes to withdraw from the project, without prejudice to any other remedy

available, to return the amount received by respondents/promoter 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 him 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*.

H. Directions of the authority

30. 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 received i.e., Rs.15,00,000/- 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 respondent to comply with the directions given in this order and failing which legal consequences would follow.
31. Complaint stands disposed of.

32. 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