

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

Date of decision: 28.03.2023

NAME OF THE BUILDER		ANSAL HOUSING LTD.	
PROJECT NAME		ANSAL HUB 83 BOULEVARD	
S. No.	Case No.	Case title	APPEARANCE
1	CR/1804/2021	Neepa Vashisht V/s Ansal Housing Ltd.	Shri. O.S Sheoran Smt. Meena Hooda
2	CR/1901/2021	Ishani Vashisht & Divyanti Vashisht V/s Ansal Housing Ltd.	Shri. O.S Sheoran Smt. Meena Hooda

CORAM:Shri Ashok Sangwan
Shri Sanjeev Kumar AroraMember
Member**ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,

namely, "Ansal Hub 83 boulevard" (Commercial Colony) being developed by the same respondent/promoter i.e., M/s **Ansal Housing Ltd.** The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location		ANSAL HOUSING LTD "ANSAL HUB 83 BOULEVARD" Sector-83, Gurugram.	
<p>Clause 26</p> <p><i>"The developer shall offer possession of the unit any time, within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material o supplies, failure of transportation, strike, lockouts, action of labour union, any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any courts/tribunals and/or any other public or competent authority or intervention of statutory authorities, or any other reason(s) beyond the control of the developer. The allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the developer."</i></p> <p style="text-align: right;">(Emphasis supplied)</p>			
Occupation certificate: - Not obtained			
Sn.	Complaint No. & Case Title	CR/1804/2021 Neepa Vashisht V/s Ansal Housing Ltd.	CR/1901/2021 Ishani Vashisht & Divyani Vashisht V/s Ansal Housing Ltd.

1.	Reply status	Reply received on 01.08.2022	Reply received on 01.08.2022
2.	Unit no.	SF-208 [pg. 50 of complaint]	FF-119 [pg. 33 of complaint]
3.	Date of allotment letter	07.12.2012 [pg. 52 of complaint w.r.t unit no. 207]	Not mentioned [pg. 35 of complaint w.r.t unit no 121]
4.	Date of transfer of unit in name of complainant	01.04.2014 [pg. 50 of complaint]	16.08.2012 [pg. 33 of complaint]
5.	Due date of possession	07.12.2015 [Note: Due date calculated from date of allotment letter i.e., 07.12.2012 as the date of building plan is not known.]	16.08.2015 [Note: Due date calculated from date of transfer i.e., 16.08.2012 as the date of building plan is not known.]
6.	Total Consideration / Total Amount paid by the complainant(s)	BSC: ₹ 26,49,207.16/- AP: ₹ 19,88,806.77/-	BSC: ₹ 35,80,494/- AP: ₹ 29,18,533.47/-
7.	Relief sought	1. Refund the entire amount paid by the complainant along with the interest. 2. Compensation	1. Refund the entire amount paid by the complainant along with the interest. 2. Compensation

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the buyer's agreement executed between the parties in respect of said unit for not handing over the

possession by the due date, seeking award of refund the entire amount along with interest and compensation.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
 6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1804/2021 Neepa Vashisht V/s Ansal Housing Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.
- A. Project and unit related details**
7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/1804/2021 Neepa Vashisht V/s Ansal Housing Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Hub 83 Boulevard", Sector-83, Gurugram
2.	Total area of the project	2.60 acres
3.	Nature of the project	Commercial complex part of residential colony

4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid up to and 71 of 2010 dated 15.09.20210 valid up to
5.	Name of licensee	Buzz Estate Pvt. Ltd. & others.
6.	Registered/not registered	Registered vide no. 09 of 2018 dated 08.01.2018 for 2.80 acres. Valid up to 31.12.2020
7.	Unit no.	SF-208 [pg. 50 of complaint]
8.	Area of the unit	393 sq. ft. [pg. 50 of complaint]
9.	Date of allotment letter in name of original allottee w.r.t unit no. 207	07.12.2012 [pg. 52 of complaint]
10.	Date of transfer of unit no. 208 in name of complainant	01.04.2014 [pg. 50 of complaint]
11.	Possession clause	26 <i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of sanction of building plans or date of execution of the allotment letter, whichever is later subject to force majeure circumstances such as act of God, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material or supplies, failure of transportation, strike, lockouts, action of labour union, any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any court/tribunals and/ or authorities, delay in grant of part/ full</i>



		<p>completion(occupancy) certificate by the government and/or any other public or competent authority or intervention of statutory authorities, or any other reason(s) beyond the control of the developer. The allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the developer.</p> <p><i>(Emphasis supplied)</i> <i>[page 59 of complaint]</i></p>
12.	Due date of possession	<p>07.12.2015</p> <p>(Note: 36 months from date of allotment letter i.e., 07.12.2012 as the date of building plan is not known)</p>
13.	Delay in handing over possession till the date of filling of this complaint i.e., 07.04.2021	5 years 4 months
14.	Basic sale consideration as per payment plan annexed with allotment letter at page 68 of complaint	₹ 26,49,202.16/-
15.	Total amount paid by the complainant as call notice dated 06.01.2020 at pg. 90 of complaint	₹ 19,88,806.77/-
16.	Offer of possession	Not offered
17.	Occupation certificate	Not obtained

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -

- a. That the complainant is principal in a school at Noida and wife of Wg. Cdr. (R) Ajay Vasisht, who served nation with honesty and dedication and is power of attorney of complainant herein.
- b. That it is pertinent to mention that as there is dispute/issue regarding the no. of the unit allotted to the complainant therefore in the complaint here in unit no 208 will be mentioned bonafidely without prejudice to rights of the complainant.
- c. That it is most pertinent to mention that complainant became the second owner by purchasing the unit no 208 at ANSAL HUB 83 by way of transfer through sale-deed dated 26th February 2014 from the earlier purchaser namely Teena Bhatia and Sunit Bahl R/o 423/11, Rattan Garden, Gurgaon, Haryana-122001. The said sale-agreement was done for the unit no. 208, second floor, ANSAL HUB 83, Sector-83, Gurgaon, Haryana measuring about 393 sq. ft. for a total sale consideration of ₹ 21,90,052/-. Complainant had paid a total consideration amount along with premium of ₹ 13,55,660/- in which the service tax and other charges paid by original allottee to respondent and the balance amount and the other charges to be paid to the respondent by the complainant as per payment plan.
- d. That the first owner by whom the complainant bought the unit i.e., Teena Bhatia and Sumit Bahl who were the owner of unit no. 207 as per the buyer's agreement, but the unit transferred to the complainant was SF-208, this fact was raised and reminded again and again to the respondent but the same was not acknowledged by the respondent. The area of shop no. 207 was 452.09 sq. ft., while the area of shop no. 208 was measuring 393 sq. ft. Respondent maliciously while giving a

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- small shop to the complainant but charged the price of shop larger shop no. 207.
- e. That trusting market reputation of Ansals and to plan for post-retirement life, the complainant had invested her hard-earned life savings to purchase one unit in the above commercial complex in the name of Neepa Vasisht / complainant in ANSAL HUB -83 Gurugram. However, the buyer/complainant has been charged and paid for/according to the size/area of shop no. 207 i.e., 452.09 sq. ft. for total cost of ₹ 21,90,052/- The complainant has paid a total sum of ₹ 19,88,806/- till date.
- f. That respondent approached complaints with lucrative offer to invest in the above mentioned projects through their dealer and convinced the complaint to invest in the project for future personal use as husband of complainant had retired and was thinking to do some business and for the settlement of grown up children the only commitment made by the respondent by which complainant got convinced was that said unit will be delivered in just 36 months i.e., with in 2yrs believing the market reputation of Ansal / respondents complainant agreed for purchasing the said unit. The complainant is now feeling embittered and mentally harassed and find herself nowhere close to getting possession of the said unit even after 6 years and 7 months what to talk about 36 months.
- g. That in regard to shop no SF- 208 transferred to Ms Neepa Vasisht the said shop was transferred from first allottee namely Teena Bhatia and Sunit Bahl the first allottee had signed the byers agreement on 07.12.2012. The said shop was transferred vide sale deed dated

26.02.2014. Allotment letter dated 24.09.14 was sent to the complainant along with transfer letter dated 01.04.14 duly signed by authorized representative of the respondents as on 01.04.2014 complainant transferred a sum of ₹ 13,55,660/- at the time of signing the agreement, after signing the agreement complainant started paying the regular payment as and when demanded by the respondent, complainant has paid a total sum of ₹ 19,888,06/- towards Shop no 208 at the said ANSALS HUB 83.

- h. That complainant had full right to visit the site and after several personal visits, complainant found that the project was nowhere even near to completion not even the structure was erected, dissatisfaction was expressed and communicated through emails and speed post communications and telephonic conversations with the officials of respondents, but no sincere efforts were made to speed up the construction work the complainant lost her trust and faith in the respondent's credentials, whose officials, made false promises, provided wrong information on status of construction, and as a result avoided meeting and cared little about the agreed terms between themselves and the complainant as set in builder buyers agreement.
- i. That above dilly-delaying tactics and care-free attitude of the officials of the respondent has caused immense mental agony to the complainant and disturbed their financial planning owing to extra ordinary delay in construction and repeated false promises given by the concerned officials of the respondent about the completion of above project in time.

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- j. That complainant along with, Wg. Cdr. (R) Ajay Vasisht (power of attorney holder of the complainant) met the officials of respondent Mr. Sonu Gupta at 1600 hrs. on 01.11.2019 at Barakhamba Road New Delhi Branch office, it was discussed and promised by the above mentioned officials and other officials that due to the considerable delay in completion of the said project, no further payment shall be demanded from the complainant and the penalties payable by the respondent towards delay in possession shall be adjusted in the final payment to be made against possession if any it was also verbally promised by the respondents that there will be an official mail or written communication soon but despite several repeated follow-up calls, there was no formal written communication/confirmation to a reasonable proposal placed by the complainant in the said meeting as above mentioned.
- k. That the respondents have been demanding the alleged outstanding overdue of ₹ 5,94,249/- and interest of ₹ 2,30,430/- calculated up to 10.01.2020 which is accruing every day for no fault of the complainant the respondents have been demanding the unjustified exorbitant dues which are not payable as the project under dispute is yet to be completed and it doesn't seems that it will complete in the next 2-3 years' time therefore, the respondents have not fulfilled their contractual obligations and unnecessary and illegally demanding the above mentioned alleged amount from the complainant and furthermore threatening that if the said amount is not paid the allotment will be cancelled.

- l. That this matter was also discussed with several officials of respondent viz. Mr. Aninday Ganguly, Mr. Ranjita Krishnan, Mr. Navtej etc. personally, through emails visits, telephonically but the issues have remained unresolved till date. This has definitely dented complainant's trust & faith in the respondent's credentials.
- m. That the complainant assumed that within 2yrs time as laid down in builder byers agreement the project will complete and after that She will have some business set up and manage future of daughters but it in fact disturbed the budget and family expenditure on marriage of her daughter therefore complainant tried to arrange bank loans but were constrained in arranging further bank loan for making balance payments for above unit, due to non-renewals clearance of the above project of the respondent from H-RERA, as per rules.
- n. That it is heart-breaking and regretful that instead of providing copies of above documents, the officials of respondents started threatening through emails that waiver of penalty clause will be subject to their payment in time which was contradictory to their verbal commitment made earlier the emails have a threatening intent which amounts to cheating/mentally torturing to extract money from the complainant on dubious grounds. The project in dispute is not even nearing completion the latest photographs of the project.
- o. That the complainants' requested the respondent through telephonic conversation as well as emails for an appointment with Mr. Vijay Mahajan, Addl. Vice President (S&A) of respondent during November 2019 which failed to be arranged till date by the respondent and all emails have remained unanswered. Instead, vide email dated 14th

January 2020; complainant have been issued a "threat letter" dated 10.01.2020 threatening to cancel allotted shop, astonished on the said atrocious behaviour complainant followed up, Mr Navtej, official of the respondent who informed the complainant to ignore routine erroneous e-mail but has not withdrawn/ cancelled the said letter which shows the respondent's deceit intentions beyond doubt. The letter dated 10.01.2020.

- p. That respondent is deliberately adopting these dubious tactics to buy time in offering the complainant the possession with the intention to shift its apses on account of delays in construction and to demand penalties for delayed payments, etc. This amounts to fraud being committed by the respondent as the pictorial evidence have already been provided to the officials of the respondent during site visit dated 07.10.2019 and the current position of the project is also available through pictures and videos, the said project is far beyond completion. The demand letter dated 06.01.2020 of the project ANSAL HUB-83.
- q. That it is pertinent to mention here that the complainant had already paid an amount of ₹ 19,88,806/- out of the total sale consideration amount of ₹ 21,90,052/- which is almost 90 percent of the total consideration amount. That the project in question is still not completed the relevant photographs are already annexed with this complaint hence, the complainant/buyer is fully competent and is entitled for refund of the entire amount paid till date along with the interest as per law.
- r. That the original builder buyer agreement was made between the first buyer and the respondent on 07.12.2012 and if this said date is taken

in account the said project is under construction since 07.12.2012 that means more than seven years, respondent have flouted the terms and conditions as laid down by themselves in the builder buyer agreement. The complainant's hard-earned money has been fleeced and lying with the respondent for last 6-7 years.

- s. That the complainant has suffered huge losses on account of lapses on part of respondent and for no fault of complainant instead complementing the project in all respects and waiving of the penalties and giving interest on the huge amount invested by the complainant and other investors respondent are dealing with the complainant as trapped investor therefore complainant has no other option but to knock the doors of the Hon'ble Court for Justice.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)
- Refund the entire amount paid by the complainant along with the interest.
 - Compensation
10. 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.

11. The respondent has contested the complaint on the following grounds.
- That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this Hon'ble Authority. The complainants have

filed the present complaint seeking compensation and interest for alleged delay in delivering possession of the unit booked by the complainants. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under Section 71 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "the Act" for short) read with Rule -29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as "the Rules") and not by this Hon'ble Authority. The present complaint is liable to be dismissed on this ground alone.

- b. That the relief sought in the complaint by the complainant is based on false and frivolous grounds and he is not entitled to any discretionary relief from this authority as the person not coming with clean hands may be thrown out without going into the merits of the case.
- c. The respondent is a Public Limited Company registered under the Companies Act, 1956, having its Registered Office at 606, Indraprakash, 21 Barakhamba Road, New Delhi-110001. The present reply is being filed by the respondent through its duly authorized representative named Mr. Vaibhav Chaudhary whose authority letter is appended hereto with this reply. The above said project relates and pertains to Licence No.87 of 2009 dated 30.12.2009, which was received from the Director General, Town & Country Planning, Haryana, Chandigarh over the land measuring an area of 19 Kanal 15 Marla (2.46875 acres) comprised in Rect. No.59, Killa No. 16/1/3 (0-13), 16/2/2 (0-7), 17 (8-0), 18/1/1 (3-8), 24/1/1 (6-18), and 25/1/1 (0-17), falling in Sector-83 of the Gurugram-Manesar Urban Master

Plan 2021 (Project-1). The land of the project is owned by Mr. Virender Singh So Sh. Ramphal jointly with his wife namely, Mrs. Meena Devi, both residents of Village Rampura, Tehsil Sohna, District Gurugram, who in collaboration with M/s Aakansha Infrastructure Pvt. Ltd. having its Registered Office at House No.216, Village & P.O. Malikpur, Najafgarh, New Delhi have obtained licence for the development of a commercial project on the land as aforesaid bearing no.87 of 2009 dated 30.12.2009. By a subsequent agreement dated 10.02.2011, the said owners i.e., Mr. Virender Singh and Mrs. Meena Devi and Aakansha Infrastructure Pvt. Ltd. have assigned their entire rights, entitlements and interests in the land and resultant FSI of the entire project to Samyak Projects Pvt. Ltd. The said Samyak Projects Pvt. Ltd. had entered into a separate agreement with Ansal Housing & Construction Ltd. (the "developer") to develop and market the entire area to be developed in terms of licence no.87 of 2009 and other sanctions obtained from the Government of Haryana on the said land as aforementioned.

- d. That, since the Real Estate (Regulation of Development) Act, 2016, and the Haryana Real Estate (Regulation of Development) Rules, 2016, came in to force the respondent has decided and has already applied for the registration of the project named ANSALS HUB 83 and ANSALS HUB 83 BOULEVARD with the Hon'ble Authority.
- e. That even otherwise, the complainant has no locus-standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the allotment

letter, as shall be evident from the submissions made in the following paragraphs of the present reply.

- f. That the vendors of the complainants approached the respondent sometime in the year 2011 for purchase of an independent unit in its upcoming commercial project "Ansals Hub 83 Boulevard" (hereinafter "the project") situated in Sector-83, Gurugram, Haryana. It is submitted that the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, the complainants took an independent and affirm decision to purchase the unit, un-influenced in any manner by the respondent.
- g. That thereafter the complainants vide application form dated applied to the respondent for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application form, were allotted a commercial unit bearing no.208, type of unit - shop, sale area 393 sq. ft. in the project, situated in sector-83, Village Sihi, Gurugram. The complainants consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants. The complainants further undertook to be bound by the terms and conditions of the application form and allotment letter as well.

- h. It is further submitted that despite there being a number of defaulters including complainants, in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period had there been no force majeure.
- i. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainants within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court at Chandigarh duly passed in civil writ petition no.20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process; simultaneously, orders at different dates passed by the hon'ble national green tribunal restraining thereby the excavation work causing air quality index being worse, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home allottee(s) as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only buy liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of the allotment as well as in compliance of other local

bodies of Haryana Government as well as Govt. of Haryana or the Centre Govt. as the case may be.

- j. It is submitted that the complaint is not maintainable or tenable under the eyes of law as the complainants has not approached the Hon'ble Authority with clean hands and has not disclosed the true and material facts relates to this case of complaint. The complainants, thus has approached the Hon'ble Authority with unclean hands and have suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been discloser of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as ***S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994(1) SCC Page-1*** in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud not only on the opposite party, but also upon the Hon'ble Authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as ***Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012 decided on 25.09.2013.***
- k. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are

registered with the Hon'ble Authority. the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298*, the liberty to the promoters /developers has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of Section 3 of the Act as it was opined that the said Act named RERA is having prospective effect instead of retrospective.

- i. That, it is also a conceded and admitted fact that the project related to the present complaint has not yet been registered with RERA and as such the Hon'ble Authority lacks jurisdiction to entertain the present complaint. It is also worthwhile to mention here that the allegations having been levelled in this complaint are with regard to cheating and alluring which only can be decided by the Hon'ble Civil Court and in these scenarios the Hon'ble Authority also lacks jurisdiction.
- m. That, it is submitted that several allottees, including the complainants, have defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question.

Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is further submitted that the respondent had applied for registration with the authority of the said project by giving afresh date for offering of possession. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless; thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

- n. That, as far as labour cess, firefighting works and HVAT and GST are concerned, the central government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the builder buyer's agreement, vide which complainants were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainants further agreed to pay their proportionate share in any future enhancement /additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.

- o. It would be relevant to mention here in case titled as **Mr. Abhishek Mohan Gupta Vs. M/s Ireo Grace Realtech (Pvt.) Ltd., Complaint No.2044 of 2018, date of first hearing 12.03.2019**, decided on 12.03.2019 by the Hon'ble Authority, in para no.36, it was held by the Hon'ble Authority that the authority came across that as per clause 13.3 the respondent has agreed to offer the possession of the said apartment within a period of 42 months from the date of approval of building plans and/or fulfilment of preconditions imposed thereunder + 180 days grace period. The building plan for the project in question was approved on 23.07.2013 which contained a precondition under clause 17(iv) that respondent should obtain clearance from ministry of environment and forest, government of India before starting construction of project. The said environment clearance for the project in question was granted on 12.12.2013 containing a precondition of obtaining fire safety plan duly approved by fire department before starting construction. The respondent obtained the said approval on 27.11.2014. Therefore, the due date of possession comes out to be 27.11.2018 and the possession has been delayed by 3 months and 13 days till the date of decision...."
12. 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.
13. Keeping in view the judgement of Hon'ble Supreme Court in the case titled as **M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra)** 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 and submissions made by both the parties during the proceedings.

E. Jurisdiction of the authority सत्यमेव जयते

14. The application 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

15. 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

16. 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.

17. 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.
18. 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. (Supra)* 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."

19. 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 relief sought by the complainants.

F.1 Refund entire amount paid by the complainant along with the interest

20. In the present complaints, 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)

21. Clause 26 of the allotment provides for handing over of possession and is reproduced below:

"26

The developer shall offer possession of the unit any time, within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material o supplies, failure of transportation, strike, lockouts, action of labour union, any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any courts/tribunals and/or any other public or competent authority or intervention of statutory authorities, or any other reason(s) beyond the control of the developer. The allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the developer."

22. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund of the amount paid by them at the prescribed rate of interest. However, the allottee intend 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., 28.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
25. 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;"*

26. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 26 of the allotment letter dated 07.12.2012, the possession of the subject apartment was to be delivered within a period of 36 months from the date of sanction of building plan or date of execution of allotment whichever is later. Accordingly, the due date calculated from date of allotment letter i.e., 07.12.2012. The period of 36 months ended on 07.12.2015.
27. Keeping in view the fact that the allottee/complainant wish to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.
28. The due date of possession as per agreement for sale as mentioned in the table above is 07.12.2015 and there is delay of 5 years 4 months on the date of filing of the complaint.
29. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees 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....."

30. Further, 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. 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."

31. 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 allottees 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 he wishes to withdraw from the project, without prejudice to any other remedy available, to return the

amount received by him in respect of the unit with interest at such rate as may be prescribed.

32. 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 them at the prescribed rate of interest i.e., @ 10.70% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II. Compensation

33. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), 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 complainant may approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

34. 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 by it from the complainant along with interest at the rate of 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondent builder is directed not to create third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.
35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
36. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
37. Files be consigned to registry.


(Ashok Sangwan)
Member


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.03.2023