

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

<b>Complaint no.:</b>	<b>2018 of 2018</b>
<b>First date of hearing:</b>	<b>12.03.2019</b>
<b>Date of decision:</b>	<b>12.07.2023</b>

1. Lalit Kumar Nayar
2. Rita Nayar
3. Nitin Nayar

Through POA holder Lalit Kumar Nayar

**R/o** D-902, Central Park-I, Golf Course Road, Sector-42,  
Gurugram-122002

**Complainants**

Versus

1. Jasmine Buildmart Pvt. Ltd.  
**Office address:** 406, 4<sup>th</sup> floor Elegance Tower, 8,  
Jasola District Centre, New Delhi-110025
2. Ambawatta Buildwell Pvt. Ltd.  
**Office address:** Khasra No. 267 First floor, opposite  
Syndicate Bank, Chhattarpur Enclave, Mehrauli, New  
Delhi-110047
3. Mr. Amit Katyal, Managing Director, Krrish Group  
**Office address:** Hno. C-654, New Friends Colony,  
New Delhi-110025
4. Mr. R.P Gupta, CEO Krrish Group  
**Office address:** Pegasus One, Ground Floor, Behind  
IBIS Hotel, Golf Course Road, DLF Phase-V, Sector 53,  
Gurugram-122002

**Respondents**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Mr. Dheeraj Gupta (Advocate)

**Complainants**



Ms. Ishika Rajoria (Advocate)

Respondents

**ORDER**

1. The present complaint dated 29.10.2018 has been filed by the complainants/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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"Provence Estate", Gwal Pahari, Sohna, Gurugram
2.	Unit no.	2002, 20 <sup>th</sup> floor, tower C (pg. 32 of complaint)
3.	Unit area admeasuring	5800 sq. ft. (pg. 32 of complaint)
4.	Date of execution of buyer's agreement	01.04.2013 [pg. 29 of complaint]
5.	Possession clause	<b>3.1 Possession</b> <i>Subject to clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the seller and any restraints/restrictions from any courts/authorities and subject to the</i>





*purchaser(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and having complied with all provision's formalities documentation etc. As prescribed by the seller whether under this agreement or otherwise from time to time, the seller proposes to hand over the possession of the apartment to the purchaser(s) **within a period of 36 (thirty-six) months from the date of commencement of construction or execution of this agreement, whichever is later** subject to force majeure. The purchaser(s) agrees and understands that the seller shall be entitled to a **grace period of 180 (one hundred eighty) business days after the expiry of 36 (thirty-six) months for applying and obtaining the occupation certificate in respect of the project from the authority.** The seller shall give notice of offer of possession in writing to the purchaser(s) with regard to the handing over of possession, whereafter, within thirty (30) days, the purchaser(s) shall clear his outstanding dues and complete documentary formalities and take physical possession of the apartment. In case, the purchaser(s) raises any issue with respect to any demand, the same would not entitle the purchaser(s) for an extension of the time for taking over possession of the apartment. In the event the purchaser(s) fails to make all payments and accept and take the possession of the apartment within thirty (30) days of the notice of offer of possession the purchaser(s) shall be deemed to be custodian of the apartment from such due date indicated in the notice of offer of possession and the apartment shall be held by the seller solely at the risks and costs of the purchaser(s) including but not limited to applicability of the appropriate holding charges as defined in clause 3.3 below and interest.*





		<i>[Emphasis Supplied]</i> <i>[pg. 38 of complaint]</i>
6.	Date of consent to establish	26.07.2011 <i>[pg. 56 of reply]</i>
7.	Due date of possession	01.04.2016 <b>[Note:</b> 36 months calculated from BBA being later. Grace period of 180 days denied as the application for occupation certificate was made after the lapse of 36 months.]
8.	Basic sale price as per BBA dated 01.04.2013 at page 59 of complaint	₹ 4,25,25,600/-
9.	Amount paid by the complainants as per reminder letter dated 01.09.2022 at pg. 39 of reply by respondent no. 1	₹ 2,88,34,232/-
10.	Occupation certificate	29.10.2019 <i>[pg. 10 of reply by respondent no. 1]</i>
11.	Notice of possession	02.11.2019 <i>[pg. 31 of reply by respondent no. 1]</i>
12.	Reminder letters	01.09.2022 <i>(pg. 39 of reply by respondent no. 1)</i>
13.	Request for refund	20.09.2022 <i>[pg. 7 of additional documents submitted by complainants]</i>
14.	Cancellation letter	26.10.2022 <i>(pg. 41 of reply by respondent no. 1)</i>

**B. Facts of the complaint**

3. The complainants have pleaded the complaint on the following facts:
- That respondent no 2 is the absolute owner of the land admeasuring 12.138 acres approx. situated at Gwal Pahari, tehsil Sohna, district Gurgaon, Haryana. That vide a development agreement dated 20.01.2011 respondent no 2 transferred the development, construction, marketing and sales rights to respondent no 1 to



develop, construct, market and sell group housing project on the said land.

- b. Accordingly, respondent no.1 under the flagship of Krrish group launched a project by the name of "Provence Estate" (hereinafter referred to as "project") located at Gwal Pahari, tehsil Sohna, district Gurgaon, Haryana. Having been swayed by the mass publicity and promises of the respondents, the complainant got interested in the project and booked a unit in the project of the respondent upon the payment of the booking amount of ₹ 10,00,000/-.
- c. In pursuance of the same, the complainant entered into an apartment buyer's agreement dated 01.04.2011 with the respondent no.1 and was allotted an apartment bearing no.2002 at 20th floor in tower C admeasuring 5800 sq. ft. @ BSP of ₹ 7332 per sq. ft. along with two covered car parking space in the project of the respondents.
- d. To further promote their project, the respondents listed out the various special characteristics, features, amenities and advantages attached to the project including but not limited to private pool, jacuzzi, sauna, spa centre, personal gym, home theatre, indoor bar counter, terrace garden within residential unit, party lawn, club, health & reflexology zones, youth corner, French landscaping, fountains, putting greens, major sports, panoramic glass lifts, water stream, tennis court, soccer pitch, cricket nets, skating rink, basketball, yoga zone, adventure play zone, grass lawns for picnics, open air theatre, etc so as to lure and attract the home buyers into investing in their project.



- e. Besides the aforesaid it was further promised by the respondents in the agreement that the apartment will be delivered within 3 years from the date of commencement of construction or execution of the agreement whichever is later with a grace period of 6 months i.e., latest by January 2014.
- f. Believing upon the aforesaid claims and representation of the respondents, the complainants made the payments to the respondents in accordance with the possession linked payment plan opted in the agreement. It is submitted that in terms of the agreement the total sale consideration of the apartment was ₹ 4,57,35,000/- which also includes the payment towards EDC, IDC, club membership charges, IFMS and overhead expenses as mentioned in the agreement.
- g. It is submitted out of the total sale consideration, the complainant had made the payment of ₹ 2,86,10,973/- in terms of the demand raised by the respondents and there had been no delay on part of the complainants in making the payments to the respondents.
- h. However even after receiving all the payments on time, the respondents failed to complete the construction in terms of the scheduled provided in the agreement. It is submitted that after construction of the four proposed blocks of super structures, the construction work at the project site was completely suspended and as of October 2018 there has been a delay of more than 4 years in completion of the project and handing over the possession of the apartment in the project.







- i. That being aggrieved of the unreasonable and inordinate delay in construction of the project, the complainants along with other flat buyers approached the CEO of the Krrish group Mr. R.P. Gupta (respondent no 4) to enquire about the reason of the slow progress and no work at the construction site, however the representatives of the respondent always remained untraceable and unreachable and only vague, evasive and misleading replies received from their end. Later, the minutes of the meetings conducted with the respondents were also addressed to the respondents vide a letter dated 08.04.2015 and the same has never been replied by the respondents.
- j. Since no information was coming forth from the respondents regarding the date of completion of the project and delivery of the apartment therein, the group of home buyers formed a registered association on 25.09.2015 under the Haryana registration and regulation of societies act and decided to approach together all the concerned officials of the respondents.
- k. Accordingly, the association of the flat buyers wrote to the managing director of the Krrish group on 18.11.2015 namely Mr. Amit Katyal who is also the respondent no 3 in the subject complaint, for seeking assurances with regard to the timely completion of the entire proposed residential complex but received no reply from the respondents which clearly exhibit their malafide intentions and ulterior motives.
- l. After continuously and aggressively chasing the senior management of the respondent no.1 for more than a year, the complainants





managed to meet the CEO of the respondent who again gave false assurances to the home buyers vide his letter dated 02.02.2016 giving therewith a bar chart of future construction. However, it is relevant to mention herein the respondents also failed to complete the construction even in terms of the bar set by them in their letter dated 02.02.2016.

- m. In pursuance thereto the respondents furnished a list of 137 apartment buyers with details of the balance payments due from the home buyers. However, the association was shocked to learn that there had been no delay on part of the home buyers in making the payments. In fact, the respondents had already received 90% of the payments from the home buyers and even upon receiving 90% of the full price of all the apartments from the buyers of the apartment, the quantum of work carried out is less than 50%. Clearly, the money collected by the flat buyers was siphoned off by the respondents towards their other projects and companies. Which have resulted in delay in the completion of the project. After learning of the same, the complainants wrote to the respondents on 25.02.2016 seeking justification of the aforesaid discrepancy and illegality on their part in construction of the project. However even the said letter has never been replied to by the respondents. Even after passing of more than 4 years from the promised date of possession there is no sign of completion of the said project. In fact, work at the construction site has been completely abandoned and no construction has been going on from the last 2 years.





- n. Further it has come to the knowledge of the complainants that the license bearing number 105 of 2008 issued to the respondents by department of town and country planning, Haryana lapsed in 14.05.2018 and the same has not been renewed thereon. Moreover, there has been no assurance from the respondents as to when the construction work at the project site would be resumed and the possession would be handed over leaving the complainants and other home buyers in the lurch.
- o. Therefore, being frustrated with the unprofessional & unethical approach of the respondents, the complainant wrote a letter to the respondents on 10.10.2018 for seeking refund of the amount paid by him towards the allotment of flat in view of their delay in completion of the project and handing over the possession. However, till date the respondents have neither replied to the said letter nor refunded the amount of ₹ 2,86,10,973/-paid by the complainants towards the allotment of the flat.
- p. It is submitted that the complainants are senior citizens and bought the unit in 2011 so that they could shift in the coming years and spend the rest of their life in a peaceful and quite environment in an apartment which would suit their lifestyle and away from the hustle-bustle of the busy city life. However due to the inordinate delay and considering the age of the complainants, the whole purpose of taking the possession has been defeated. Therefore, the complainants are no longer interested in taking the possession of the unit and seek refund of the amount paid by them to the respondents towards the allotment of the unit along with interest.





**C. Relief sought by the complainants:**

4. The complainants have sought following reliefs:
  - a. Refund the entire amount paid by the complainants along with the prescribed rate of interest.
  - b. Cost of litigation.
5. On the date of hearing, the authority explained to the respondents/promoter about the contravention 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 on the following grounds:
  - a. That the complainant has specifically misled this hon'ble authority by stating that the apartment buyer's agreement was executed in the year 2011, however on contrary the booking of the said. Apartment was made in the year 2012 and the apartment buyers' agreement was signed on 01.04.2013, thus the date of possession has to be construed from the said date.
  - b. That the complainant thus has not approached the hon'ble authority with clean hands and has suppressed and concealed material facts and proceedings which have a direct bearing on the very maintainability of the purported complaint and if there had been disclosure of these material facts and proceedings, the question of entertaining the purported complainant would not have arisen.
  - c. That without prejudice to rights and contentions it is further submitted that the answering respondent had filed an application





for registering the said project under the Act which the authority has duly accepted wherein the units has been scheduled to be delivered on or before 31.12.2018. That it is further submitted that the answering respondent is also entitled to extension of time under the Act upon showing a reasonable cause for delivering the project and accordingly the respondent has already applied for extension of time and the revised date of possession for handing over the said unit is 31.12.2019. Such certificate once given (or deemed to have been given) by this authority is not only binding upon the company but is also binding upon all the customers of the project as this certificate is being granted by this authority after considering all aspects of the project along with reasons for the proposed commitment date as mentioned in the application for registration of the project.

- d. That once such certificate is issued, subject to the provisions of this Act, the company becomes bound to deliver the project within such specified time as per the certificate and such certificate can't be called into question by any customer since it has been issued after due considerations of all the respected members of this authority.
- e. That thus on a strict interpretation of the above stated principals and on a principal of natural justice, the date of delivery of possession of the project of the company in so far, the plot of the complainant is concerned shall be construed to be that which is given in the certificate of registration of project and also the extended period i.e., 31.12.2019.





- f. That it is further submitted that once the jurisdiction of this forum is invoked by the complainant whether rightly or wrongly, the laws governing this authority would be applicable for adjudication of any matters before this authority.
- g. That evidently there was lot of delay on part of government agencies in providing relevant permissions, licenses approvals and sanctions for project which resulted in inadvertent delay in the project which constitute a force majeure condition as anticipated in clause 11 of buyers agreement, as delay caused in these permissions cannot be attributed to respondent, for very reason that respondent, for very reason that respondent has been very prompt in making applications and replying to objections if any raised for obtaining such permissions.
- h. It is pertinent to note here that despite the best efforts by opposite party to hand over timely possession within the proposed time period of said apartment booked by complainants hearing respondent could not do so due to reasons beyond control of answering respondent.
- i. That in the present case the complainant, and as per the space buyer agreement dated 01st April 2013 the respondent was supposed to hand over the possession within a period of 36 months from the date of the signing of agreement i.e., on or before 01st of April 2016 subject to the other restriction as imposed under said clause of the agreement. That the project was delayed because of the reasons as stated herein below. Moreover, the said date now





stands superseded by registration of the project under the act and thus the present complaint is premature in nature.

- j. The following events were responsible for delay in completion of the project:
- i. That the sudden surge requirement of labour and then sudden removal has created a vacuum for labour in NCR region. That the projects of not only the respondent but also of all the other developers/builders have been suffering due to such shortage of labour and has resulted in delays in the projects beyond the control of any of the developers.
  - ii. That the ministry of environment and forest and the ministry of mines had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of sand which is the most basic ingredient of construction activity. That said ministries had barred excavation of topsoil for manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite-based thermal power plants without mixing 25% of ash with soil.
  - iii. That shortage of bricks in region has been continuing ever since and the respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.
  - iv. That sand which is used as a mixture along with cement for the same construction activity was also not available in the abundance as is required since mining department imposed





serious restrictions against manufacturing of sand from Aravali region.

- v. That this acute shortage of sand not only delayed the project of the answering respondent but also shot up the prices of sand by more than hundred percent causing huge losses to respondent.
- vi. That same further cost huge delay in project and stalling various parts and agencies at work in advanced stages, for now the respondent had to redo, the said work causing huge financial burden on opposite part no. 1, which has never been transferred to complainants or any other customers of project.
- vii. That in addition the current govt. has on 8th November 2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only. Being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labourers not accepting demonetized currency after demonetization.
- viii. That in July 2017 the Govt. of India further introduced a new regime of taxation under the goods and service tax which further created chaos and confusion owing to lack of clarity in its implementation. That ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials





required for construction of the project wherein the auditors and ca's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.

7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

**E. Jurisdiction of the authority**

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

**E.I. Territorial jurisdiction**

9. 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**

10. 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.

11. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on 11.11.2021 wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the*

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*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."*

13. Furthermore, the said view has been reiterated by the division bench of Hon'ble Punjab and Haryana High Court in ***Ramprastha Promoter and Developers Pvt. Ltd. Vs Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021.*** The relevant paras of the above said judgment reads as under:

*"23) The supreme court has already decided on the issue pertaining to the competence/power of the authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.*

*24) The substantive provision of the Act having been interpreted by the Supreme Court; the Rules have to be in tandem with the substantive Act.*

*25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."*

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of ***M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)***, and the

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division bench of Hon'ble Punjab and Haryana High Court in "*Ramprastha Promoter and Developers Pvt. Ltd. Vs Union of India and others. (supra)*", the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee along with interest at the prescribed rate.

**F. Findings on the objections raised by the respondent.**

**F.I. Objection raised by the respondent regarding force majeure condition.**

15. The respondent/promoter has raised the contention that the construction of the project was badly affected on account of a restraint order such as orders passed by National Green Tribunal to stop construction during 2015-2016-2017-2018, dispute with contractor, non-payment of instalment by allottees and demonetization. The plea of the respondent regarding various orders of the NGT and demonetisation but all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding demonetisation is also devoid of merit. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong. Moreover, it has already been clearly stated by the apex court 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. wherein it was observed that 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. Furthermore, as far as entitlement of grace period according to the clause mentioned in the BBA is concerned the clause requires grace period of 180 (one hundred eighty) business days after the expiry of 36 (thirty-six) months for applying and obtaining the occupation certificate in respect of the project from the authority. Since in the present matter the respondent applied for grant of occupation certificate in the competent authority on 03.07.2019 i.e., much later than the lapse of 36 months from the date of BBA. Accordingly, authority holds that the respondent is not entitled to invoke grace period clause for delay.*

**G. Findings on the relief sought by the complainants.**

**G.I. Refund entire amount paid by the complainants along with the interest.**





16. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest. 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. Clause 3.1 of the BBA dated 01.04.2013 provides for the handing over of possession and is reproduced below for the reference:

*"Subject to clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the seller and any restraints/restrictions from any courts/authorities and subject to the purchaser(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and having complied with all provision's formalities documentation etc. As prescribed by the seller whether under this agreement or otherwise from time to time, the seller proposes to hand over the possession of the apartment to the purchaser(s) **within a period of 36 (thirty-six) months from the date of commencement of construction or execution of this agreement, whichever is later** subject to force majeure. The purchaser(s) agrees and understands that the seller shall be entitled to a **grace period of 180 (one hundred eighty) business days after the expiry of 36 (thirty-six) months for applying and obtaining the occupation certificate in respect of the project from the authority.** The seller shall give notice of offer of*

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*possession in writing to the purchaser(s) with regard to the handing over of possession, whereafter, within thirty (30) days, the purchaser(s) shall clear his outstanding dues and complete documentary formalities and take physical possession of the apartment. In case, the purchaser(s) raises any issue with respect to any demand, the same would not entitle the purchaser(s) for an extension of the time for taking over possession of the apartment. In the event the purchaser(s) fails to make all payments and accept and take the possession of the apartment within thirty (30) days of the notice of offer of possession the purchaser(s) shall be deemed to be custodian of the apartment from such due date indicated in the notice of offer of possession and the apartment shall be held by the seller solely at the risks and costs of the purchaser(s) including but not limited to applicability of the appropriate holding charges as defined in clause 3.3 below and interest."*

18. The section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate but the allottee has filed the complaint against the promoter for refund of his amount even before the OC was obtained and after the lapse of due date of possession as unit was not ready at that time when he sought refund. The promoter is obligated under section 18(1) to return the amount along with interest at prescribed rate on demand to the allottee and allottee having clearly wished to withdraw from the project on account of promoter's failure to complete and unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein.
19. The due date of possession as per agreement for sale as mentioned in the table above is 01.04.2016 and there is delay of about 2 years on the date of filing of the complaint.





20. In the present matter the respondent has cancelled the said unit on 26.10.2022 i.e., during the pendency of suit wherein the respondent agreed to refund an amount of ₹ 1,70,41,729/- after forfeiture of the earnest money. Before adjudicating upon the above stated relief, it would be appropriate to keep a reliance upon the validity of the said cancellation. The complainant has filed the present complaint back in the year 2018 i.e., before the offer of possession and after the lapse of due date of possession as the project remained incomplete till then. The said act of the complainant is justified in view of the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022.*** It was observed:

*"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."*

21. The promoter on 02.11.2019 issued notice for possession along with a demand of ₹ 2,54,75,161/-. The allottee on 20.09.2022 again requested for refund after possession of the unit was offered to him after obtaining occupation certificate by the promoter subsequent to which





the promoter issue the cancellation letter for non-payment of the but since the allottee has earlier opted/wished to withdraw from the project after the due date of possession was over and even before the notice for possession issued by the promoter. Therefore, the said cancellation is not valid and accordingly, the authority while constituting the view on the basis of the aforesaid reasoning, elucidates the above facts and establishes the entitlement of the allottee for refund as the respondent/promoter has defaulted in fulfilling his obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period.

22. Section 18(1) gives two options to the allottee if the promoter fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein:
  - a. Allottee wishes to withdraw from the project; or
  - b. Allottee does not intend to withdraw from the project.
23. The right under section 19(4) accrues to the allottee and the promoter is liable under section 18(1) on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottee has exercised the right to withdraw from the project after the due date of possession is over. The allottee has been demanding return of the amount with prescribed rate of interest explicitly means that he wished to withdraw from the project.
24. 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). This judgement of the Supreme Court of India recognized unqualified right of the allottee and liability of the promoter in case of failure 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. The allottee has exercised this right and it is unqualified one, accordingly entitled to claim the refund of the amount paid along with interest at the prescribed rate.

25. **Admissibility of refund along with prescribed rate of interest:** The complainants is seeking refund the amount paid by them along with 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. 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.”*

26. 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.
27. 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., **12.07.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

28. Accordingly, the authority hereby directs the promoter to return the full amount received by him i.e., ₹ 2,88,34,232/- with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

#### **H. Directions of the authority**

29. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. The respondent/promoter is directed to refund the entire amount of ₹ 2,88,34,232/- paid by the complainants along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the rules from the date of each payment till the date of refund of the deposited amount.
  - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
  - iii. The respondent is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainants, and even if,

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any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

30. Complaint stands disposed of.
31. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.07.2023