BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Order reserved on: 18.05.2023

Date of decision: 20.07.2023

	NAME OF THE BUILDER	ANSAL HOUSING LTD. (formerly known as M/s ANSAL HOUSING & CONSTRUCTION LTD)	
	PROJECT NAME	ANSAL HIGHLAND PARK	
S. No.	Case No.	Case title	APPEARANCE
1	CR/6035/2022	Ankur Jain V/s Ansal Housing Ltd.	Shri Rishab Jain Shri Amandeep Kadyan
2	CR/6407/2022	Ankur Jain V/s Ansal Housing Ltd.	Shri Rishab Jain Shri Amandeep Kadyan

CORAM:

Shri Vijay Kumar Goyal **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 Highland Park" (group housing colony) being developed by the same respondent/promoter i.e., M/s Ansal Housing Limited. 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 of entire amount along with interest at prescribed rate 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 HIGHLAND PARK" Sector-103, Gurugram.**	
Possession Clause: - 31 *"The developer shall offer possession of the unit any time,* ***within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later*** *subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace* ***period of 6 months allowed to the developer over and above the period of 48 months*** *as above in offering the possession of the unit."* **(Emphasis supplied)**		
Occupation certificate: - Not obtained		
Note: Grace period is allowed being unqualified & included while computing due date of possession.		
Complaint No., Case Title,	**CR/6035/2022 Ankur Jain V/s Ansal Housing Ltd.**	**CR/6407/2022 Ankur Jain V/s Ansal Housing Ltd.**
Reply status	13.01.2023	13.01.2023
Unit No.	EDNBG-1303 [pg. 41 of complaint]	EDNBG-1304 [pg. 41 of complaint]
Date of apartment buyer agreement	04.06.2015 [pg. 38 of complaint]	04.06.2015 [pg. 38 of complaint

Due date of possession	04.12.2019	04.12.2019
Total Consideration	**TSC:** ₹ 1,08,94,380/-	**TSC:** ₹ 1,08,94,380/-
Total Amount paid by the complainant(s)	**AP: ₹ 39,04,625/-**	**AP: ₹ 38,85,360/-**
Relief Sought	1. Refund the entire amount along with interest. 2. Cost of litigation	1. Refund the entire amount along with interest. 2. Cost of litigation

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment 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/6035/2022 Ankur Jain 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/6035/2022 Ankur Jain V/s Ansal Housing Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Highland Park", Sector 103, Gurugram.
2.	Total area of the project	11.70 acres
3.	Nature of the project	Group housing project
4.	DTCP license no.	32 of 2012 dated 12.04.2012 valid up to 11.04.2020
5.	Name of licensee	M/s Identity Buildtech Pvt. Ltd. M/s Agro Gold Chemicals India LLP
6.	Registered/not registered	Registered Vide registration no. 16 of 2019 dated 01.04.2019 valid up to 30.11.2021
7.	Unit no.	EDNBG-1303 [pg. 41 of complaint]
8.	Area of the unit	1940 sq. ft. [pg. 41 of complaint]
9.	Date of execution of buyer's agreement	04.06.2015 [pg. 38 of complaint]
10.	Possession clause	***Clause 31.***

		31. *The developer shall offer possession of the unit any time,* ***within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later*** *subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace* ***period of 6 months allowed to the developer over and above the period of 48 months*** *as above in offering the possession of the unit.* *(Emphasis supplied)* *[pg. 47 of complaint]*
11.	Date of sanction of building plan	16.04.2013
12.	Due date of possession	04.12.2019 (**Note:** 48 months from date of execution of BBA i.e., 04.06.2015 being later + 6 months grace period allowed being unqualified)
13.	Basic sale consideration as per BBA dated 04.06.2015 at page 55 of complaint.	₹ 1,08,94,380/-
14.	Total amount paid by the complainant as per sum of receipts.	**₹ 39,04,625/-**
15.	Offer of possession	**Not offered**
16.	Occupation certificate	**Not obtained**

B. Facts of the complaint

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

a. The grievances of the complainant relate to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent in regard to the **apartment no. EDNBG-1303,** a 3 BHK + utility apartment having a saleable area of 1940 square feet in the project "**Ansals Highland Park**" (hereinafter referred to as "project") situated in village Tikampur, Sector 103, Gurugram, Haryana, purchased by the complainant paying his hard earned money.

b. In the apartment buyer's agreement (hereinafter referred to as "agreement"), it is stated that the land measuring 11.7 acres situated in village Tikampur, Sector 103, Gurugram Haryana is owned by respondent developer's wholly owned subsidiaries, Identity Buildtech Private Limited and Agro Gold Chemicals Private Limited. The respondent company had made various arrangements with its subsidiary companies and has necessary rights to undertake the development, marketing and sale of the residential flats to be constructed on the said land. The Director, Town and Country Planning, Chandigarh, Haryana vide licence bearing no. 32 of 2012 had granted permission for development of a group housing project to be known as **"Ansals Highland Park".**

c. The respondent demanded and collected a total sum of ₹ 39,04,625/- for the said apartment till 2nd March 2016. The respondent promised to deliver the possession by 4th June 2019 as per the provisions of the apartment buyer's agreement. Thereafter, despite of a delay of more

than three (3) years and three (3) months from the date of possession, the respondent has failed to complete the construction works and has failed to offer the legal and legitimate possession of the apartment to the complainant till date.

d. The respondent kept the complainant in dark about the actual and true status of the construction of the apartment bought by the complainant. The respondent kept telling the complainant that the apartment would be ready as per the commitments and the promises made to the complainant. The complainant has reposed faith in the representations made by the respondent, about the development of the project. The respondent kept raising demands from the complainant, but the construction activities were not visible and moving at snail's speed at the project site. Even after a delay of more than three (3) years and three (3) months from the date of possession i.e., 4th June 2019, the respondent has failed to complete the construction works at the project till date and has failed to make a legal and legitimate offer of possession of the apartment to the complainant.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)

a. Direct the respondent to refund the amount paid along with prescribed rate of interest per annum on compounded rate from the date of booking from the flat in question.

b. Litigation cost- ₹ 2,00,000/-

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.

a. That the present complaint is not maintainable qua the answering respondent as the complaint is totally false, frivolous and devoid of any merits against the answering respondent. The complaint under reply is based on pure conjecture. Thus, the present complaint is liable to be dismissed on this ground alone.

b. The answering respondent is a developer and has built multiple residential and commercial buildings within Delhi/NCR with a well-established reputation earned over years of consistent customer satisfaction.

c. That the complainants had approached the answering respondent for booking a flat no. EDNBG-1303 in an upcoming project Ansal Highland Park, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 04.06.2015 was signed between the parties.

d. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainant and the answering respondent was in the year 2015. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e., RERA Act, 2016. It is further submitted that Parliament would not make the operation of a statute retrospective in effect.

e. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It

is submitted that the complainant cannot be allowed to take advantage of his own wrong.

f. That even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has admittedly filed the complaint in the year 2022 and the cause of action accrue on 04.06.2019 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.

g. That even if the complaint is admitted being true and correct, the agreement which was signed in the year 2015 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 37 of the said agreement provides for ₹ 5/ sq. ft. per month on super area for any delay in offering possession of the unit as mentioned in clause 31 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the hon'ble commission in order to alter the penalty clause by virtue of this complaint more than 7 years after it was agreed upon by both parties.

h. That the complaint itself discloses that the said project does not have a RERA approval and is not registered. It is submitted that if the said averment in the complaint is taken to be true, the Hon'ble Authority does not have the jurisdiction to decide the complaint.

i. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the

permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainant.

j. That the answering respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the answering respondent. It is further submitted that the builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the answering respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.

k. That the answering respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted that clause 32 of the builder

buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession. The answering respondent has clearly provided in clause 35 the consequences that follow from delayed possession. It is submitted that the complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram.

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.

E. Jurisdiction of the authority

13. 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

14. 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

15. 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.*

16. 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.

17. 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."

18. 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.I Refund entire amount paid by the complainant along with the interest.

19. 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)*

20. Clause 31 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

> ***"31.***
> *The developer shall offer possession of the unit any time,* ***within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later*** *subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace* ***period of 6 months allowed to the developer over and above the period of 48 months*** *as above in offering the possession of the unit."*

21. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the

commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

22. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The authority calculated due date of possession from the date of date of execution of agreement i.e., 04.06.2015 being later. The period of 48 months expired on 04.06.2019. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.

23. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund 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.

24. 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.

25. 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., 20.07.2023 is **8.75%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.

26. 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;"

27. 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 31 of the agreement executed between the parties on 04.06.2015, the possession of the subject apartment was to be delivered within stipulated time i.e., by June 2019. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 04.12.2019.

28. 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.

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., @ 10.75% 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. Cost of litigation

33. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case 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. Therefore, the complainants 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 10.75% 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.

ii. 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. There shall be separate decrees in individual cases.

37. Files be consigned to registry.

(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.07.2023