

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

Complaint no.	:	1155 of 2022
First date of hearing:		10.08.2022
Order Reserve On:		03.05.2023
Date of decision	:	16.08.2022

<b>Sanjay Sarkar</b> <b>Kumkum Sarkar</b> <b>Address:</b> Flat No. 3016, Sector- A, Pocket B& G, DDA Flats, Vasant Kunj, New Delhi-70	<b>Complainants</b>
Versus	
<b>Ireo Grace Realtech Private Limited</b> <b>Registered Office:</b> - 304, Kanchan House, Karampura, Commercial Complex, New Delhi-110015	<b>Respondent</b>
<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
None	Advocate for the complainants
Shri M.K Dang	Advocate for the respondent

**ORDER**

1. The present complaint dated 25.03.2022 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be

responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder or to the 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.	Heads	Information
1.	Project name and location	"The Corridors" at sector 67A, Gurgaon, Haryana
2.	Licensed area	37.5125 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	05 of 2013 dated 21.02.2013
	License valid up to	20.02.2021
	Licensee	M/s Precision Realtors Pvt. Ltd. and 5 others
5.	RERA registered/not registered	<b>Registered</b> Registered in 3 phases Vide 378 of 2017 dated 07.12.2017(Phase 1) <b>Vide 377 of 2017 dated 07.12.2017 (Phase 2)</b> Vide 379 of 2017 dated 07.12.2017 (Phase 3)
	Validity	30.06.2020 (for phase 1 and 2) 31.12.2023 (for phase 3)
6.	Unit no.	902, 9 <sup>th</sup> floor, tower A2 (page no. 52 of reply)



7.	Unit measuring	1892.23 sq. ft. (page no. 52 of reply)
8.	Date of approval of building plan	23.07.2013 (annexure R-26 on page no. 102 of reply)
9.	Date of allotment	07.08.2013 (annexure R-2 on page no. 43 of reply)
10.	Date of environment clearance	12.12.2013 (annexure R-27 on page no. 106 of reply)
11.	Date of execution of builder buyer's agreement	02.06.2014 (page no. 49 of reply)
12.	Total consideration	Rs. 2,01,86,365/- [as per payment plan on page no. 46 of complaint]
13.	Total amount paid by the complainants	Rs. 62,05,440/- [as per page no. 99-100 of complaint]
14.	Due date of delivery of possession	<b>23.01.2017</b> (calculated from the date of approval of building plans) Note: Grace Period is not allowed.
15.	Possession clause	<b>13. Possession and Holding Charges</b> Subject to force majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having default under any provisions



		<p>of this Agreement but not limited to the timely payment of all dues and charges including the total sale consideration, registration chares, stamp duty and other charges and also subject to the allottee having complied with all the formalities or documentation as prescribed by the company, the company proposes to offer the possession of the said apartment to the allottee <b>within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder</b>(Commitment Period). The Allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the Company.</p> <p><b>(Emphasis supplied)</b></p>
16.	Legal Notice through email by complainants for refund	07.01.2022 (page no. 37 of complaint)
17.	Occupation certificate	27.01.2022

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		(annexure R-32 on page no. 120 of reply)
18.	Offer of possession	16.02.2022 (annexure R-32 on page no. 122 of reply)

**B. Facts of the complaint**

The complainants have submitted as under:

3. That in or about the starting of the year 2013, the opposite party had launched project titled "The Corridors" in Sector 67, Gurugram, Haryana for developing multi-storied residential complex consisting of school, hospital, shopping centre, mini sports city with the widest array of indoor and outdoor sports amenities including football tennis futsal, basketball and swimming the fitness trails with distance markers, 2-storeyed clubhouse, restaurants, banquet halls, spa, meditation centre, pedestrian roads charted through the 10 acre expanse of contiguous greens within the development.
4. That the complainants, Sh. Sanjay Sarkar and Smt. Kumkum Sarkar R/o Flat no. 3016, Sector - A, Pocket B and C, DDA SFS Flats, Vasant Kunj, New Delhi - 110070 booked one dwelling unit on 7th March 2013 by paying a sum of Rs. 15,00,000/- based on respondents' advertisements and false assurances.
5. That on 02.06.2014, complainants signed a buyer's agreement and one unit no. CD-A2-09-902 (3bhk + Servant) measuring sale area of 1892.23 sq. feet was allotted to them against the application. The agreement was delivered to respondent on 15.04.2014, which they never bothered to return after signing.

6. That the complainants tried to communicate with the respondent regarding the possession of allotted flat but the respondent always gave false assurances and never gave written response.
7. That the complainants visited the construction site on many occasions and to his surprise no work was being carried out at the site and the project stood in shambles with no work going on at the site and no assurance or replies being received from respondent, other than their as well its staff's threatening behaviors, clearly shows the ill intention of the respondent to cheat and defraud the complainants.
8. That the cause of action arose when the respondent failed to provide the possession to the complainants, cause of action further arose on 5th January 2022, when the complainants served a legal notice upon the opposite party through email and registered post calling upon them to refund the amount paid against the flat and to make the payment of interest @18% p.a. within a period of 15 days from the receipt of the notice along with the compensation and damages of Rs. 25,00,000/- which was duly received by the respondent.

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

9. The complainants have sought following relief(s):
  - (i) Direct the respondent to refund an amount of Rs. 62,05,441/- paid against the flat along with interest at the prescribed rate.
  - (ii) Direct the respondent to pay the litigation expenses of Rs. 75,000/-.
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.**

The respondent has contested the complaint on the following grounds: -

11. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between the parties prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
12. That there is no cause of action to file the present complaint.
13. That the complainants have no locus standi to file the present complaint.
14. That the complainants are estopped from filing the present complaint by its own acts, omissions, admissions, acquiescence's, and laches.
15. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 54 of the buyers agreement.
16. That the complainants have not approached this authority with clean hands and has intentionally suppressed and concealed the material facts in the complaint. The complaint has been filed maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:
17. That the complainants, after checking the veracity of the project namely, 'The Corridors', Sector 67-A, Gurgaon had applied for



- allotment of an apartment vide its booking application form dated 22.03.2013.
18. That based on the said application, the respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainants, apartment no.CD-A2-09-902 in group housing project known as 'The Corridors', having tentative super area 1892.23 sq. ft. for a sale consideration of Rs. 2,01,86,365. It is submitted that the complainants signed and executed the apartment buyer's agreement on 02.06.2014.
  19. That the respondent raised payment demands from the complainants in accordance with the agreed terms and conditions of the allotment letter as well as of the payment plan. It is submitted that vide payment demand dated 14.04.2013, the respondent had raised the installment for the net payable amount of Rs. 21,67,318/-. However, the complainants remitted the due amount only after reminder dated 14.05.2013 was sent by the respondent to the complainants.
  20. That vide payment request dated 18.03.2014, the respondent had sent instalment demand to the complainants, on account of 'Commencement of Excavation', for the net payable amount of Rs. 25,38,122.08. However, the complainants failed to remit the due amount on the deadline of payment.
  21. That vide payment demand dated 10.1.2017, the respondent had sent 4<sup>th</sup> installment demand for the net payable amount of Rs. 25,40,900.53. However, the said amount was not received despite reminders dated 06.02.2017 and 01.03.2017. The complainants failed to remit the due amount and the said amount was adjusted in the next installment demand as arrears.

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22. That vide payment demand dated 01.11.2017, the respondent sent 5<sup>th</sup> installment demand for the net payable amount of Rs. 49,44,220.04, including the previous arrears. However, the complainants yet again defaulted in making the due payment despite reminders dated 27.11.2017 and 20.12.2017 and the said amount was adjusted in the next installment demand as arrears.
23. That vide payment demand dated 24.01.2018, the respondent sent 6<sup>th</sup> installment demand for the net payable amount of Rs. 72,84,985.02/-, including the previous arrears. However, the complainants yet again defaulted in making the due payment despite reminders dated 20.02.2018 and 16.03.2018 sent by the respondent and the said amount was adjusted in the next instalment demand as arrears.
24. That vide payment demand dated 15.03.2018 the respondent sent 7<sup>th</sup> installment demand for the net payable amount of Rs. 94,24,627/-, including the previous arrears. However, the complainants yet again defaulted in making payment despite reminders dated 13.04.2018 and 11.05.2018 sent by the respondent and the said amount was adjusted in the next installment demand as arrears.
25. That vide payment demand dated 04.06.2018 the respondent sent 8<sup>th</sup> installment demand for the net payable amount of Rs.1,14,16,767.20, including the previous arrears. However, the complainants yet again defaulted in making the due payment despite reminders dated 29.6.2018 and 02.08.2018 and the said amount was adjusted in the next installment demand as arrears.
26. That vide payment demand dated 01.11.2018 the respondent sent 9<sup>th</sup> installment demand for the net payable amount of Rs. 1,34,08,908.35, including the previous arrears. However, the complainants yet again

defaulted in making payment despite reminders dated 27.11.2018 and 22.01.2019 sent by the respondents. The complainants have failed to make the payment towards the due amount till date.

27. That as per possession clause 13.3 of the agreement the time of handing over of possession was to be computed from the date of receipt of all requisite approvals. Even otherwise the construction could not be raised in the absence of the necessary approvals. It has been specified in sub- clause (iv) of clause 17 of the memo of approval of building plan dated 23.07.2013 of the said project that the clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. It is submitted that the environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in clause 39 of part-A of the environment clearance dated 12.12.2013 it was stated that fire safety plan duly was to be duly approved by the fire department before the start of any construction work at site. Further as per clause 35 of the environment clearance certificate dated 12.12.2013, the project was to obtain permission of mines & geology department for excavation of soil before the start of construction. The requisite permission from the department of mines & geology department has been obtained on 04.03.2014. The fire scheme approval was granted on 27.11.2014 and the time period for calculating the date for offering the possession, according to the agreed terms of the buyer's agreement, would have commenced only on 27.11.2014. Therefore, 60 months from 27.11.2014 (including the 180 days grace period and extended delay period) would have expired on 27.11.2019. However, the same was

subject to the complainant complying with contractual obligations and the occurrence of the force majeure events.

28. That the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent, and which have affected the materially affected the construction and progress of the project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under :
29. Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization: The respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/company could not implement the entire project for approx. 7-8 months w.e.f from 9-10 November 2016 the day when the Central Government issued notification with regard to demonetization. During this period, the contractor could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and were paid in cash on a daily basis. During Demonetization the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on a site of the magnitude of the project in question are Rs. 3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got

- delayed due on account of issues faced by contractor due to the said notification of central government.
30. There are also studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the said issue of impact of demonetization on real estate industry and construction labour.
  31. Thus, in view of the above studies and reports, the said event of demonetization was beyond the control of the respondent, hence the time period for offer of possession should be deemed to be extended for 6 months on account of the above.
  32. Orders Passed by National Green Tribunal: In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also the Hon'ble NGT has passed orders with regard to phasing out the 10 year old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The Contractor of the respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to following, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November-December 2016 and November- December 2017. The district administration issued the requisite directions in this regard.

33. In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of respondent and the said period is also required to be added for calculating the delivery date of possession.
34. Non-Payment of Instalments by Allottees: Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.
35. Inclement Weather Conditions viz. Gurugram: Due to heavy rainfall in Gurugram in the year 2016 and unfavourable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.
36. 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**

37. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority has complete territorial and subject

matter jurisdiction to adjudicate the present complaint for the reasons given below:

**E. I Territorial jurisdiction**

38. 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**

39. 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)(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.*

40. 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

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which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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

**F.1 Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.**

41. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the apartment buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
42. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* decided on 06.12.2017 and which provides as under:

- "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter..."
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."
43. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-
- "34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."
44. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the



charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

**F.II Objection regarding complainants are in breach of agreement for non-invocation of arbitration**

45. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

***"54. Dispute Resolution by Arbitration***  
*"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and*



*the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".*

46. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

### **F.III Objections regarding force majeure**

47. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainants are situated, has been delayed due to force majeure circumstances 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

and 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. Further, any contract and dispute between contractor and the builder cannot be considered as a ground for delayed completion of project as the allottee was not a party to any such contract. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. 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.

48. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c ), 357 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*

49. 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).

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

**(i) Direct the respondent to refund an amount of Rs. 62,05,441/- paid against the flat along with interest at the prescribed rate.**

50. The complainants have booked the residential apartment in the project named as 'The Corridors' situated at sector 67 A for a total sale consideration of Rs. 2,01,86,365/-. It was allotted the above-mentioned unit vide allotment letter dated 07.08.2013. Thereafter the apartment buyer agreement was executed between the parties on 02.06.2014.
51. 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 been requesting the promoter for refund of his amount even before the OC was obtained as unit was not ready at that time when he sought refund. The request of the allottee met with deaf ears and promoter failed to refund the amount along with interest even after the right of allottee to claim such refund of an amount paid with interest at prescribed rate from the promoter under section 19(4) of the Act and the promoter was 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.

52. The due date of possession as per agreement for sale as mentioned in the table above is 23.01.2017 and there is delay of 5 years 2 months 2 days on the date of filing of the complaint. Although the allottee in this case has filed this application/complaint on 25.03.2022 after possession of the unit was offered to him after obtaining occupation certificate by the promoter but the allottee has earlier opted/wished to withdraw from the project after the due date of possession was over through legal notice dated 07.01.2022 vide email. 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:

- (i) Allottee wishes to withdraw from the project; or
- (ii) Allottee does not intend to withdraw from the project

53. 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 impliedly means that he wished to withdraw from the project.

54. Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (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"*

55. 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.

56. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 62,05,440 /- with interest at the rate of 10.75% (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*.

**(ii) Direct the respondent to pay the litigation expenses of Rs. 75,000/-**

57. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (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 complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the authority: -**

58. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act:-
- i. The respondent/promoter is directed to refund the entire amount paid by the complainants along with prescribed rate of interest @ 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 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.
59. Complaint stands disposed of.
60. File be consigned to the registry.



**(Ashok Sangwan)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 16.08.2022**