



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

Complaint no.	:	2332 of 2022
Date of filing complaint:		24.05.2022
First date of hearing:		24.08.2022
Date of decision	:	25.07.2023

John Galt International
R/o: 1A, Maya building, plot 533, 17th road,
Khar(West), Mumbai-400052.

Complainant

Versus

M/s Vatika Limited
Office : Flat no. 621, 6th floor, Devika towers, Nehru
Place, New Delhi-110019

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Member
Member

APPEARANCE:

Sh. Ankush Satija
Sh. Venket Rao

Advocate for the complainant
Advocate for the respondent

ORDER

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

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thereunder or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika Express City" at sector 88A & 88B, Gurgaon, Haryana
2.	Nature of the project	Residential plotted colony
3.	Project area	100.785 acres
4.	DTCP license no.	94 of 2013 dated 31.10.2013 valid upto 30.10.2019
5.	Name of licensee	M/s Malvina Developers Pvt. Ltd. & others
6.	RERA Registered/ not registered	Registered vide no. 271 of 2017 dated 09.10.2017 valid upto 08.10.2022
7.	Plot no.	12, Street no. E-11, block E
8.	Plot area admeasuring	400 sq. yds.
	Date of booking	11.11.2012
9.	Date of allotment	22.11.2013 (email messages pertaining to blocking of plot at page no. 37)
10.	Date of builder buyer agreement	Not executed
12.	Due date of possession	22.11.2016 Since no BBA is executed despite number of requests vide email from page 38 to 40. Due date for handing over of possession is calculated as per Fortune



		<p><i>Infrastructure and Ors. vs. Trevor D' Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> wherein it was observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.</p>
13.	Total sale consideration	Rs. 1,78,00,000/-
14.	Amount paid by the complainant	<p>Rs. 1,58,00,000/- as per the agreement dated 11.11.2012 at page 33 and 34.</p> <p>Rs. 1,78,00,000/- as per claim of the complainant including the cash component paid on 10.08.2012 but no receipts for cash component are attached and hence not being taken into consideration.</p>
15.	Offer of possession	Not offered
16.	Completion certificate	Not obtained
17.	Legal notice for refund	15.03.2022

B. Facts of the complaint:

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3. That based on the representations/assurances of the respondent, the complainant agreed to invest in the respondent's project namely "Vatika Express City". In pursuance thereof, payment to the tune of Rs. 1,78,00,000/- has already been paid to the respondent by the complainant.
4. That a formal agreement dated 11.11.2012 was also executed between the parties containing terms of the aforesaid investment. At the time of execution, the respondent promised a very rosy picture of the project and assured the complainant about the timely allotment as well as handing over of the possession of the said plot of land in the said project, which was assured to be handed over, on or before the completion of 48 months from the date of execution of the agreement dated 11.11.2012.
5. That subsequently, the complainant vide email dated 16.11.2013 requested the respondent to confirm the allotment of the plot of land in the said project in terms of the said agreement. The respondent vide email dated 22.11.2013 confirmed allotment of plot bearing no. 12, street no. E-11, block no. E, Sector 88A, Gurgaon, Haryana, situated in an upcoming residential township, namely "Vatika Express City" and blocked the same in favour of the complaint.
6. That the complainant from time to time, had verbal discussions with the representatives of the respondent wherein, it was represented to the complainant that all requisite licences, approvals and permissions have been duly acquired by the respondent, and that a third-party developer had been engaged for undertaking development of the said plot of land. It was further represented to the complainant that the construction of the said project was going in full swing, and that there was no impediment causing any sort of delay in timely delivery of possession in the project.



7. That despite the aforesaid assurance and despite duly receiving complete payment for the said plot way back in 2012, the respondent has till date failed to handover/deliver possession of the said plot to the complainant, which needless to reiterate, was promised to be handed over to the complainant within 48 months from the execution of the agreement dated 11.11.2012 i.e., on or before November, 2016.
8. That the respondent despite allotting the said plot in the said project to the complainant, has miserably failed to even execute a registered agreement to sell, builder buyer agreement and/or other documents required to be executed by promoters/directors of a registered project, in the manner prescribed under the act, and has not only failed to adhere to the terms of the Agreement dated 11.11.2012, but also been non-compliant with the provisions, rules and regulations of the Act. Needless to state, the complainant has on numerous occasions requested the respondent to execute the builder buyer agreement and other such documents. However, the respondent has remained non-compliant and till date has even failed to get the said documents executed.
9. That the respondent failed to even keep the complainant informed about the developments in the project, and kept on assuring/representing that possession would be duly handed over to the complainant, which assurances have in hindsight turned out to be nothing but false promises, to defraud the complainant into parting with their hard-earned money. Needless to reiterate, the complainant being a registered firm based out in Mumbai was totally dependent upon the respondent for timely information regarding the updates/developments in the said project.

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10. That the complainant from time to time, had telephonic communications with the representatives of the respondent requesting execution of an agreement to sell, builder buyer agreement and other such documents. However, all such request fell on deaf ears, as the respondent completely ignored all such requests and till date, no builder buyer agreement or any other document was executed between the parties.
11. That the complainant on account of the aforesaid delays, lapses and breaches solely attributable to the respondent, vide email dated 28.10.2017 was constrained to request the respondent to refund back the money paid to the respondent along with accrued interest, due to incessant delays/breaches solely attributable to the respondent, who had by this time completely abdicated from their contractual obligations towards the complaint, despite receiving complete payment in respect of the project way back in 2012.
12. However, the respondent completely turned a blind eye to the requests of the complainant and failed to transfer possession of the said plot or refund consideration paid in term thereof, on one pretext or the other, despite being in possession of hard-earned money of the complainant to the tune of Rs. 1,78,00,000/-.
13. Since then, the complainants made repeated attempts to enquire about the status of the project whereby it was informed to the complainants that the said plot is not yet ready and that possession would not be handed over promptly. The respondent while acknowledging the inordinate delay caused by them assured the complainants that the possession of the said plot would be handed over to the complainants as earliest as possible. As such, the complainant was left with no other option but to trust the

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assurances/promises of the representatives of the respondent, which in hindsight have turned out to be false, frivolous and vexatious.

14. That the unreasonable delay caused by the respondent even in initiating construction at the said project site amounts to gross breach of the faith reposed by the complainant in them. The aforesaid act clearly portrays their deceitful intention since inception laced with the motive to entice innocent customers like the complainants of entrusting of their hard-earned money to the respondents. Needless to reiterate, the partners of the complainant firm despite having invested their life savings for purchasing the said plot have been left completely disheartened and have lost all faith in the respondents capability of handing over possession of the said plot.
15. That despite the aforesaid, the complainant in early 2022, was again assured/represented by the representatives of the respondent that the possession of the said plot in the said project would be duly completed and possession of the same would be handed over to the complainant at the earliest. However, when the complainant vide email dated 19.02.2022 showed interest towards "*visiting the plot and taking possession of the plot*", no response was forthcoming from the respondent.
16. As such, having no faith left, the complainant sent its representative to visit the construction site, however, to the utter shock and dismay of the complainant, the construction of the entire project is still far from completion, yet the respondent was continuing to make fraudulent and false representations in order to cheat the complainants of their money, thereby causing wrongful gain to the respondent and wrongful loss to the complainant to the tune of Rs. 1,78,00,000/-.

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17. To the utter shock and dismay of the complainant, upon visiting the site, it came to light that the project had been stalled from time to time, due to negligence, breaches and non-compliances on behalf of the complainant. Upon further enquiry, it has now been brought to the knowledge of the complainant that the Authority has in numerous occasions come to the aid of the allottees in the said project, who were suffering from the delay in delivery of possession and other such delays, breaches and lapses on behalf of the complainant. Avoiding prolixity but at the risk of repetition, it is reiterated that the complainant having made complete payment to the respondent way back in 2012 had fulfilled their contractual obligations with utmost conviction and professionalism, however, the respondent despite having acknowledged the receipt of the aforesaid amount failed to handover possession/occupation of the said plot to the complainant, within the stipulated period of 48 months from the date of execution of agreement dated 11.11.2012 i.e., which period expired way back in November, 2016.
18. In view of the aforesaid nonchalant behaviour of the respondent, the complainant was constrained to issue legal notice dated 15.03.2022, through its counsel, seeking termination of the agreement dated 11.11.2012 on account of breaches, delays and lapses solely attributable to the respondent and claiming refund of the amount paid to the respondent in 2012 along with accrued interest. Subsequent to receiving the said legal notice, the respondent while acknowledging and admitting their contractual obligations expressed an intention to settle the matter amicably and proposed to "*initiate the process of refund* in favour of the complainant.

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19. That the complainant, through its counsel, replied to the aforesaid email, vide email dated 21.03.2022 expressing their readiness and willingness to settle the matter amicably, subject to meeting a consensus. However, despite best efforts of the complainant, a consensus could not be arrived at between the parties, as the respondent despite admitting and acknowledging its financial obligations towards the complainant, failed to make payment/refund of the amount along with accrued interest, as prescribed under the act.
20. That after seeing the unreasonable delay and *malafide* practice, the complainant has decided to withdraw from the project in accordance with Section 18(1) of the Real Estate (Regulation and Development) Act, 2016, having already terminated the agreement dated 11.11.2012 vide legal notice dated 15.03.2022 and seeks refund of the amount paid by him to the respondent, in respect of the said plot with interest.
21. That the complainant has suffered incessantly on account of the delays, lapses and breaches solely attributable to the respondent and has suffered wrongful loss at the behest of the respondent, who has disproportionately gained and unfairly acquired advantage out of their own default. As such, the complainants is entitled to claiming compensation for opportunity loss and gains prevented by the respondents.

C. Relief sought by the complainants:

22. The complainant has sought following relief(s):
- Direct the respondent to refund the total amount to the complainant along with the prescribed rate of interest as per the applicable rules.

D. Reply by respondent:



23. That the present complaint, filed by the complainant, is bundle of lies and hence liable to be dismissed as it is filed without any cause of action. The complainant had failed to provide the correct facts and the same are reproduced hereunder for proper adjudication of the present matter. The complainant is raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
24. At the outset, in around August 2012, the complainant, learned about the project launched by the respondent and approached the respondent repeatedly to know the details of the said project. The complainant further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
25. That the complainant in the present complaint is a corporate entity who had purchased the said plot in question only with the perspective of an investment not for own usage and residing purposes. Further, the complainant has erred gravely in filing the present complaint and misconstrued the provisions of the Act, 2016. It is imperative to bring the attention of the Authority that the Act, 2016 was passed with the sole intention of regularization of real estate projects, promoters and the dispute resolution between the parties.
26. That after having keen interest in the project constructed by the respondent the complainant desired to book a plot and paid an amount of Rs.20,00,000/- for further registration upon won judgment and investigation.
27. That on 11.11.2012, an investment agreement was executed between the parties for the plot in question in the aforesaid project. The complainant



was well aware of the terms and conditions of the agreement and agreed to sign upon the same upon their own judgment and investigation.

28. That the booking made by the complainant was more of an investment nature and as per the agreement no specific possession clause was provided at the time of execution of the agreement. The complainant was more concerned about the appreciation over the investment than for the possession.
29. That since starting the respondent was committed to complete the project and has invested each and every amount so received from the complainant towards the agreed sale consideration. The project was slightly decelerated due to the economic slowdown in the economy.
30. Apart from the above, the progress of the construction of the project was also affected due to various other unforeseen circumstances such as:
- Unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the respondent. Under this new development NH 352 W was initially supposed to be developed as sector roads by Haryana Urban Development Authority (HUDA) which took around 3 years in completing the land acquisition process.*
 - The Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45 (1) of Gurugram Metropolitan Development Authority Act, 2017 (GMDA Act) vide its Notification dated 11.04.2018 makes the transfer scheme for transferring the properties falling within the ambit of NH 352 W acquired by the HUDA to GMDA for development and construction of NH 352 W.*
 - The GMDA vide its letter dated 08.09.2020 had handed over the possession of said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.*
 - Further, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 mtrs. was uplifted. Before start of the acquisition and construction process, the respondent had already laid down*

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the services according to the earlier sector road level. However, due to upliftment caused by the HUDA in NH 352 W the company has been constrained to raise and uplift the same within the project, which not only result in deferment of construction of project but also attract costing to the respondent.

- e. Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the layout plans.*
- f. Direct impact on project due to policy of NILP and TOD issued on 09.02.2016.*

31. That the project in question was obstructed due to the reasons beyond the control of the respondent and the same are explained in detail. Upon considering the aforesaid fact the respondent whole adopting a customer centric approach had offered to settle the complaint by making refund of the amount paid by the complainant without any deduction and interest.
32. That on 16.03.2022, the respondent vide email had already requested and called upon the complainant to return the original documents of the said plot to further enable the respondent in proceeding further with the refund process.
33. That instead of return the original documents in possession the complainant had preferred to file the complaint before the Authority. However, the matter could have been amicably settled if the complainant had submitted the original documents to the respondent.
34. That the complainant has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong ground and has mislead the Authority for the reasons stated above. None of the reliefs as prayed for by the complainants are sustainable before the Authority and in the interest of justice.

E. Jurisdiction of the authority:

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35. 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

36. 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

21. 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.

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22. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
23. 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 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."

24. 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)**, 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 objection raised by the respondent.

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

25. It is contended on behalf of the respondent/builder that due to various circumstances beyond its control, it could not speed up the construction of the project, resulting in its delay such as various orders passed by NGT honble Supreme court, introduction of new highway being NH-352W, transferring the land acquired for it by HUDA to GMDA, then handing over to NHAI, re-routing of high tension lines passing through the land of the project and outbreak of covid-19 etc. But all the pleas advanced in this regard are devoid of merit. The passing of various orders to control pollution in the NCR region during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Secondly, the various orders passed by other authorities were not all of a sudden. Thirdly, due to covid-19 there may be a delay but the same has been set off by the govt. as well as authority while granting extension in registration of the projects, the validity of which expired from March 2020 for a period of 6 months. Moreover, many of events happened beyond the due date of possession & hence cannot be given any benefits of indefinite period for its own wrongs
26. The circumstances detailed earlier did not arise at all and could have been taken into account while completing the project and benefit of indefinite period in this regard cannot be given to the respondent/builder.

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.F.II Objection regarding the complainant being investor.

27. It is pleaded on behalf of respondent that complainant is an investor and not consumer. So, she is entitled to any protection under the Act and the complaint filed by her under Section 31 of the Act, 2016 is not maintainable. It is pleaded that the preamble of the Act, states that the Act is enacted to protect the interest of consumers of the real estate sector. The Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is a buyer and paid considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of the term allottee under the Act, and the same is reproduced below for ready reference:

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

28. In view of above-mentioned definition of allottee as well as the terms and conditions of the flat buyer's agreement executed between the parties, it is crystal clear that the complainant is an allottee as the subject unit



allotted to them by the respondent/promoter. The concept of investor is not defined or referred in the Act of 2016. As per definition under section 2 of the Act, there will be 'promoter' and 'allottee' and there cannot be a party having a status of 'investor'. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal No.0006000000010557 titled as *M/s Srushti Sangam Developers Pvt Ltd. Vs Sarvapriya Leasing (P) Ltd. and anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant:

G.1 Direct the respondent to refund the paid amount along with interest.

29. 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 at @24% p.a. 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)

30. In the present complaint, the complainant booked a unit in the above said project on 11.11.2012 for a total sale consideration of Rs. 1,78,00,000/- and allotted a plot no. 12, ST E-11, block E admeasuring 400 sq. yards. No buyer's agreement was executed between the parties despite that till date the complainant has paid an amount of Rs. 1,58,00,000/.
31. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and 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.
32. The due date of possession as per agreement for sale as mentioned in the table above is 22.11.2016 and there is delay of 5 years 3 months 16 days on the date of filing of the complaint.
33. 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 allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by *Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt.*



Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021

“ ... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

34. 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

35. 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). 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 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 the unit with interest at such rate as may be prescribed.

36. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
37. The authority hereby directs the promoter to return to the complainant the amount received i.e. Rs.1,58,00,000/- 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*.

G. Directions of the Authority:

38. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i. The respondent/promoter is directed to refund the entire amount of Rs. 1,58,00,000/- paid by the complainant 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. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
- iii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

39. Complaint stands disposed of.

40. File be consigned to the Registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Vijay Kumar Goyal)

Member

Dated: 25.07.2023

HARERA
GURUGRAM