



HARERA
GURUGRAM

Complaint No. 3828 of 2021

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

Complaint no. : 3828 of 2021
Date of complaint : 22.09.2021
Date of order : 23.08.2023

1. Anshul Bansal,
2. Pooja Bansal,
Both R/o: - Flat no.1001, PB,
Professional Hub, ½, Vaibhav Khand,
Near Shipra Mall, Indirapuram,
Ghaziabad, Uttar Pradesh-201010.

Complainants

Versus

1. Orris Infrastructure Pvt. Ltd.
Regd. Office at: J-10/5, DLF Phase-2,
MG Road, Gurugram, Haryana- 122002.
2. Bright Buildtech Pvt. Ltd.,
Regd. Office at: D-107, Panchsheel Enclave,
New Delhi-110017.

Respondents

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Neeraj Kumar (Advocate)
Charu Rustogi (Advocate)
Deeptanshu Jain (Advocate)

Complainants
Respondent No.1
Respondent No.2

ORDER

1. The present complaint has been filed by the complainant/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 allottees 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.N.	Particulars	Details
1.	Name of the project	'Woodsviw Residencies', sector-89-90, Gurugram
2.	Nature of project	Residential plotted colony
3.	RERA registered/not registered	34 of 2020 dated 16.10.2020
4.	DTPC License no.	59 of 2013 dated 16.07.2013
	Validity status	15.07.2021
	Name of licensee	Orris Land & Housing Pvt. Ltd. & 42 Ors.
	Licensed area	100.081 Acres
5.	Unit no.	B-87, First Floor [as per BBA on page 20 of complaint]
6.	Unit measuring	1090 sq. ft. (super area) [as per BBA on page 20 of complaint]
7.	Date of execution of builder buyer agreement	17.08.2015 (page 36 of reply)
8.	Possession clause in builder buyer agreement	5. Possession of Dwelling Unit 5.1 <i>Subject to Clause 5.2 and subject to the Buyer making timely payments, the Company shall endeavour to complete the construction of the Building Block in which the Dwelling Unit is situated within 36 months, with a grace period of</i>



		<i>6 (six) months from the date of issuance of Allotment Letter provided that all amounts due and payable by the Buyer has been paid to the Company in timely manner. The Company shall be entitled to reasonable extension of time for the possession of the Dwelling Unit in the event of any default or negligence attributable to the Buyer's fulfillment of terms & conditions of this Agreement.</i>
9.	Date of allotment	16.01.2015 (page 43 of complaint)
10.	Due date of possession	16.07.2018 (grace period is allowed being unqualified)
11.	Total Sale Consideration	Rs.98,17,053/- (as per payment plan on page 55 of reply)
12.	Total amount paid by the complainant	Rs.64,65,854/- (as admitted by respondent no.2 on page 7 of reply)
13.	Occupation certificate	Not yet received
14.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the complainants were allotted a unit bearing no. B-87-FF having an approximate super area of 1090 sq.ft. in the project of respondents named "Woodview Residences" at Sector 89 & 90, Gurgaon for a total sale consideration of Rs.98,17,053/- vide allotment letter dated 16.01.2015 and they have paid an amount of Rs.64,65,854/- in all. Thereafter a builder buyer agreement was executed between the parties on 25.07.2015.

- II. That as per clause 5.1 of the said agreement the possession of the unit in question was supposed to be given within 36 months from the date of allotment alongwith a grace period of 6 months which has already been expired in February 2019, but the same has not been handed over till date.
- III. That the complainant has exchanged emails with the respondent no.1 for cancellation of the said unit and refund of the entire amount on its failure to hand over the said unit in agreed time, but the same has not been bothered by it.
- IV. That the complainants, after losing all their hope from the respondent-builder are constrained to approach this authority for redressal of their grievance. Hence this complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - I. To refund the entire amount of Rs.64,65,854/- (Rupees Sixty-Four Lac Sixty-Five Thousand Eight Hundred and Fifty-Four only) along with prescribed rate of interest.
 - II. To pay cost of litigation.
5. 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 respondents.

6. The respondent no.1 vide reply dated 13.07.2022 contested the complaint on the following grounds: -



- i. That the complainants are not entitled to seek any reliefs against the answering respondent as the unit which has been allotted to them as per the allotment letter was by either Lotus Green or Bright Buildwell Pvt. Ltd. and the payment receipt acknowledgement as well as the buyer's agreement bears the signatures of Lotus Greens and Bright Buildwell Pvt. Ltd.
 - ii. That it is submitted that there is no iota of proof in the entire complaint wherein the complainants can point out that they have made any payment to Orris Infrastructure Pvt. Ltd. or the buyer's agreement or the allotment letter was signed or issued by the Orris Infrastructure Pvt. Ltd.
 - iii. That at the inception when the project 'Woodview Residencies' was launched, the respondent no.1 as well as the respondent no.2 used to sell their respective units under the same project name. But after the inception of RERA, when the registration became mandatory, the respondents got their project area registered under the name and style of 'Ace Palm Floors', bearing RERA registration no. RERA-GRG-PROJ-388-2019 and the said fact can be verified from the demand letters and the RERA registration certificate which bears the same account details of respondent no.2 and the respondent no.1 holds no liability or accountability towards the complainants.
 - iv. That from the facts as stated above, this complaint is liable to be dismissed against the respondent no. 1 as the complainants are not entitled to any reliefs as claimed in this complaint.
7. The respondent no.2 vide reply dated 09.08.2022 contested the complaint on the following grounds: -



- (i) That the complaint filed is not maintainable in the present form, unless the complaint is modified to meet the required criteria as specified under the RERA rules and regulations. The same is also not filed in the correct prescribed form i.e., form 'CRA-II'. In view of these technical objections, the present complaint originally filed under the old format of form in 'Form-CAO' before the Adjudicating Officer is not maintainable, unless the same is modified/amended/re-filed/ in "Form-CRA-II" before this Authority.
- (ii) That the complainants have approached the respondent for allotment of 'dwelling unit' in the project named "Woodsvew Residencies", situated in sectors 89 & 90, Gurugram, Haryana and a dwelling unit was provisionally allotted to them bearing no. B-87, first floor in the said project towards the total consideration of Rs.98,17,053/- including basic sale price plus EDC, IDC charges plus club members fee plus interest free maintenance security and they have claimed to have paid a sum of Rs.64,65,854/- in all.
- (iii) That a buyer's agreement was executed between the parties on 17.08.2015, as per which the possession of the 'dwelling unit' was to be given in terms of Clause 5.1 & 5.2 of the said agreement.
- (iv) That the respondent has appointed M/s. Ace Mega Structures Private Limited as 'development manager' for development, construction, sales and marketing of the project vide 'development management agreement' dated 23.05.2019 only with the objective of ensuring expeditious development of the project and to provide professionally proficient customer-care interaction.

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- (v) That the said project of respondent-builder was delayed due to 'force majeure' situation beyond its control as it has filed the application for change of developer with the concerned Authority i.e., Director General, Town and Country Planning (DGTCP) for the inclusion of the name of the 'co-developer' i.e., 'Bright Buildtech Pvt. Ltd.', which is pending adjudication before the concerned authority. However, despite all odds, the respondent alongwith development manager 'Ace' made all the efforts to complete the construction work at project site at full pace and is expecting to handover the possession very soon.
- (vi) That the delay in handing over the possession of the dwelling unit/ apartment has been caused due to the exponential increase in the cases of 'Covid-19', due to which the Central Govt. had imposed nationwide lockdown. However, due to the sudden outbreak of the pandemic and closure of economic activities, the respondent had to stop the construction work during the lockdown. Other various challenges being faced by the respondent are submitted for the kind consideration of this Authority;
- a) Non-booking of all apartments seriously affected the construction and several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent, henceforth, causing delay in the construction work of the project.
 - b) Lack of adequate sources of finance.
 - c) Shortage of labour.
 - d) Rising manpower and material costs.
 - e) Approvals and procedural difficulties.



- (vii) That in view of the above facts and circumstances the demand of the complainant for refund of the amount paid is baseless and the same cannot be allowed under any situation. It is respectfully submitted that whenever the construction activity has stopped at the project site, it is due to the above-said reasons of 'force-majeure' beyond the control of the respondent. If such prayers are allowed, the same will materially affect the construction works at site, besides the interests of all the other allottees who have booked flats in the said project. It is relevant to point out herein that at present, the respondent is focusing on the completion and delivery of the said project. The monies received from the allottees have been utilized in the construction activities and thus, there is no justification in the demand for refund. It is noteworthy to mention that the project of the respondent is at advanced stage of construction and is complete to the extent of 80% as the respondent has launched 420 number of independent floors to be constructed on 140 plots. Out of which 258 floors/units were sold by the company till date.
- (viii) That the complainants have applied for the allotment of the dwelling unit as investment and not for personal use which fact is abundantly clear and evident from their conduct. It is submitted that the complainants have invested in the unit with intent to have monetary gains by way of reselling the unit to a higher bidder at an appreciated value. Thus, in view of the constant precedents upheld by various Real Estate Regulatory Authorities across the country, the present complaint is not maintainable wherein, it is held unanimously that the investors of real estate projects are not entitled to relief from Real Estate Regulatory Authority.

(ix) That the instant complaint is not maintainable keeping in view the facts, circumstances and law relating thereto. It is further submitted that the complainants have failed to produce any evidence or specific averments worth its salt to prove its claims. Moreover, there is no quantification of claims as sought for by the complainant under prayer/compensation sought clause, and therefore, the instant complaint is liable to be dismissed at the threshold. It is further submitted that the complainant has filed the captioned frivolous complaint with false averments, only with a malafide intention to make illegal enrichment at the cost of the respondent. Since the captioned complaint is filed without any cause of action, the same is liable to be dismissed at the outset.

8. 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

9. The respondents have raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondents 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

10. 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

11. 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.

12. 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.
13. 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. 2021-2022(1) RCR(C), 357*** 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 and 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."

14. The application for refund filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement titled as ***M/s Newtech Promoters and Developers Pvt Ltd. Vs State of UP & Ors. (supra)***, the issue before authority is whether it should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case the allottee wish to withdraw from the project on failure of the promoter to give possession as per agreement for sale irrespective of the fact whether application has been made in form CAO/ CRA. It has been deliberated in the proceedings dated 10.5.2022 in CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP and observed that there is no material difference in the contents of the forms and the



different headings whether it is filed before the adjudicating officer or the authority.

15. Keeping in view the judgement of Hon'ble Supreme Court in case titled as *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. 2021-22(1) RCR (C), 357* the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/ CRA. The Hon'ble Supreme Court in case of *Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019* has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the pleading mentioned in the complaint and the reply received from the respondent and submissions made by both the parties during the proceedings.
16. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case 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 objections raised by the respondents.

F.I Objections regarding maintainability of complaint against respondent no.1.

17. The respondent no.1(Orris Infrastructure Pvt. Ltd.) vide reply dated 13.07.2022, contented that it is not concerned with the relief in the present complaint as it is not a party in the said buyer's agreement.



However, as per record available the respondent no.1 was granted licence by the Director, Town and Country Planning, Haryana vide licence no. 59 of 2013 to develop and construct the plotted colony in a parcel of land admeasuring 101.081 acres in Sector 89-90, Gurugram. Later respondent no.1 vide agreement dated 18.05.2013 transferred development rights of 50% in the subject land to respondent no.1(Bright Buildtech Pvt. Ltd.) and made it co-developer in the subject land. But, merely by executing the Development Agreement dated 18.05.2013 with respondent no.2, the respondent no.1 cannot escape its responsibility and obligations to the allottees of the project being licensee of the project and is covered under the definition of promoter within the meaning of 2(zk)(i),(v).

18. Promoter has been defined in section 2(zk) of the Act. The relevant portion of this section reads as under: -

"2. Definitions. — *In this Act, unless the context otherwise requires —*

(zk) "promoter" means, —

(i) *a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

(ii) xxx

(iii) xxx

(iv) xxx

✓



(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale;"

19. As per aforesaid provisions of law, respondent no.1 & 2 will be jointly and severally liable for the completion of the project. Whereas the primary responsibility to discharge the responsibilities of promoter lies with respective promoter in whose allocated share the apartments have been bought by the buyers. In view of the same, the contention/objection of respondent no.1 stands rejected.

F.II Objections regarding the complainant being investor.

20. The respondent no.2 took a stand that the complainants are investor and not consumer, therefore, are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer 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 consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & 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 it contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the documents available,



it is determined that the complainants are buyers and have paid a total price of Rs.64,65,854/- against the total sale consideration of Rs.98,17,053/- towards purchase of a unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(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;"

21. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement cum provisional allotment letter executed between promoter and complainants, it is crystal clear that they are allottees as the subject unit allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given 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) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of respondent no.2 that the allottees being investor are not entitled to protection of this Act also stands rejected.

F.III Objections regarding the circumstances being 'force majeure'



22. The respondent no.2 took an objection that the project was delayed because of the 'force majeure' situations like outbreak of Covid-19, ban on construction by competent authorities, delay on part of govt. authorities in granting approvals and other formalities, non-booking of apartments, lack of adequate source of finance, shortage of labour, shortage of bricks and water, demonetization policy by central govt. etc which were beyond the control of respondents. Therefore, as per the grounds mentioned above, the authority allows a grace period of 6 months to the respondent for handing over the possession of the said unit as per possession clause 10(a) of the application form and clause 5.2 of the buyer's agreement. Hence, the due date for handing over the possession of the said unit after granting a grace period of 6 months comes to 16.07.2018.

G. Findings on the relief sought by the complainants.

G.I To refund the entire amount of Rs.64,65,854/- paid by them alongwith prescribed rate of interest.

23. The complainants intend to withdraw from the project and are seeking refund of the amount paid by them 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)

23. Though, the complainants stated that before filing of this complaint they have sent several emails to the respondent no.1 to cancel their booking and to refund the paid-up amount due to non-compliance of terms of the buyer's agreement by the respondent, but the same was not bothered by it. However, there is no document available on the record to support their claim.
24. Further possession clause 5.1 of the apartment buyer's agreement annexed in complaint provides for handing over of possession and the same is reproduced below:

“5. POSSESSION OF THE DWELLING UNIT

5.1 Subject to Clause 5.2 and subject to buyers making timely payment, the company shall endeavor to complete the construction of the building block in which the dwelling unit is situated within 36 months with a grace period of 06 months from the date of issuance of allotment letter, provided that all amounts due and payable by the buyer has been paid to the company in timely manner. The company shall be entitled to reasonable extension of time for the possession of the dwelling unit in the event of any default or negligence attributable to the buyer's fulfillment of terms & conditions of this agreement.”

25. **Admissibility of refund along with interest at prescribed rate of interest:** However, the allottees intend to withdraw from the project and are seeking refund of the amount paid by them 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."

26. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
27. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.08.2023 is **08.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
28. 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;"*

29. The authority has observed that even after a passage of more than 8 years (i.e., from the date of allotment till date) neither the construction



is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoters. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them. Further, the respondent also shows its inability to deliver the unit to the allottees due to non-booking of flats by prospective buyers in the tower in question. The authority observes that there is no document placed on record from which it can be ascertained that whether the respondent-builder has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottees intend to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

30. Moreover, 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 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....."

31. 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. reiterated in case of M/s Sana Realtors Private***



Limited & other Vs Union of India & others (Supra), it was 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."*
32. 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) of the Act. The promoter has failed to complete or is 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 allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.
33. 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 complainants are entitled to refund of the entire paid-up amount of Rs.64,65,854/- 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*.

H. 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 entire amount i.e., Rs.64,65,854/- received by it from the complainants alongwith 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.

35. Complaint stands disposed of.

36. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.08.2023