



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

**Date of decision: 16.08.2023**

NAME OF THE BUILDER		JMD Ltd.	
PROJECT NAME		JMD Suburbio II	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/876/2022	Vandana Bhatia V/s JMD Ltd.	Shri Sunil Kumar, Adv. Shri Pankaj Chandola and Gunjan Kumar, Advocates
2.	CR/875/2022	Jaikishan Tilwani V/s JMD Ltd.	Shri Sunil Kumar, Adv. Shri Pankaj Chandola and Gunjan Kumar, Advocates
3.	CR/877/2022	Ashish Bhatia V/s JMD Ltd.	Shri Sunil Kumar, Adv. Shri Pankaj Chandola and Gunjan Kumar, Advocates

**CORAM:**

Shri Ashok Sangwan

**Member**

**ORDER**

1. This order shall dispose of all the three complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.



2. The core issues emanating from these complaints are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "JMD Suburbio II" being developed by the same respondent/promoter i.e., **M/s JMD Ltd.** The terms and conditions of the buyers' agreement that had been executed *inter se* the parties are also almost similar with some additions or variation. The fulcrum of the issue involved in all these complaints pertain to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking return of the amount paid by the allottee along with interest at the prescribed rate as per section 18 of the Act.
3. The details of the complaints, reply status, plot/unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project: JMD Suburbio II</b>					
<b>Possession clause 15:</b> That the possession of the said premises is proposed to be delivered by the company to the unit allottee(s) within forty-two (42) months from the date of sanction of building plan/revised building plan or environmental clearance or any such sanctions & approvals required for commencement of construction of building/complex, whichever is later or further extended period of six (6) months after expiry of forty-two (42) months as agreed above except the force majeure circumstances...					
Date of environment clearance: 17.06.2013					
Occupation certificate granted on: 28.06.2022					
<b>Table for all the three complaints</b>					
Sr. no	Complaint No., Case Title, and Date of filing of complaint and reply	Unit no. and size	Date of execution of buyer's agreement	Due date of possession & Offer of possession	Total sale consideration and amount paid by the complainant



1.	CR/876/2021 Vandana Bhatia V/s JMD Ltd.  <b>DOR-</b> 16.03.2022  <b>Reply filed respondent on</b> 13.09.2022.	A-304, 3 <sup>rd</sup> floor.  613 sq. ft.	29.10.2014	17.06.2017  <b>IOP-</b> 04.07.2022	<b>TSC:</b> Rs. 41,99,068  <b>AP:</b> Rs. 38,62,327
2.	CR/875/2021 Jaikishan Tilwani V/s JMD Ltd.  <b>DOR-</b> 16.03.2022  <b>Reply filed respondent on</b> 13.09.2022.	A-308, 3 <sup>rd</sup> floor.  613 sq. ft.	07.04.2014	17.06.2017  <b>IOP-</b> 04.07.2022	<b>TSC:</b> Rs. 40,34,159  <b>AP:</b> Rs. 37,02,054
3.	CR/877/2021 Ashish Bhatia V/s JMD Ltd.  <b>DOR-</b> 16.03.2022  <b>Reply filed respondent on</b> 13.09.2022.	A-303, 3 <sup>rd</sup> floor.  613 sq. ft.	29.10.2014	17.06.2017  <b>IOP-</b> 04.07.2022	<b>TSC:</b> Rs. 41,99,040  <b>AP:</b> Rs. 38,62,328

**Note: In the table referred above certain abbreviations have been used.**

**They are elaborated as follows:**

DOR- Date of receiving of complaint.

TSC- Total sale consideration

AP- Amount paid by the allottee(s)

IOP- Intimation of possession



4. The facts of all the complaints filed by the complainant/allottee are also similar. So, out of the above-mentioned cases, the facts of the lead case bearing no. **CR/876/2022 titled as Vandana Bhatia V/s JMD Ltd.** are being taken into consideration for determining the rights of the complainant-allottee(s) qua return of the amount paid along with interest as sought by the complainant in the abovementioned complaints.

**A. Unit and project related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	"JMD Suburbio II", Sector 67, Gurugram
2.	Nature of the project	Commercial Complex
3.	DTCP license no.	107 of 2011 dated 11.12.2011
	Validity of license	10.12.2017
	Licensed area	2.17 acres
4.	HRERA registered/ not registered	312 of 2017 dated 17.10.2017
	HRERA registration valid up to	31.12.2019
5.	Occupation certificate granted on	28.06.2022 [page 42 of reply]
6.	Unit no.	304, 3 <sup>rd</sup> floor. [Page 30 of complaint]



7.	Area of the unit	613 sq. ft
8.	Date of execution of buyer's agreement	29.10.2014 [page 28 of complaint]
9.	Possession clause	<p><b>15. POSSESSION</b></p> <p><i>THAT the possession of the said premises is proposed to be delivered by the Company to the Unit Allottee(s) within Forty-Two (42) months from the date of sanction of Building plan/Revised Building Plan or Environmental Clearance or any such sanctions &amp; approvals required for commencement of construction of Building/Complex, whichever is later or further extended period of six (6) months after expiry of Forty-Two (42) months as agreed above except the force majeure circumstances. The Company shall not incur any liability if it is unable to deliver possession of the said premises by the time aforementioned, if the completion of the said complex is delayed by reason of non-availability of steel and/or cement or other building materials or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the Company, or non-payment of timely instalments by Unit Allottee(s) civil commotion or by reason of war, or enemy action, or earthquake or any act of God, or if non-delivery of possession is as a result of any act, notice order, rule or notification of the Government and /or any other public or competent authority or for any delay made by Government authorities in grants of necessary sanctions and approvals or for any other reason beyond the control of the Company and in any of the aforesaid events, the Company shall be entitled to a reasonable extension of time for delivery of possession of the said premises to the Unit Allottee(s). In the event of any such contingency arising/happening, the Company shall have</i></p>



		<p><i>right to alter or vary the terms and conditions of allotment, or if the circumstances, beyond the control of the Company, so warrant, the Company may suspend the Scheme for such period as it may consider expedient and no compensation of any nature whatsoever can be claimed by the Unit Allottee(s) for the period of suspension of the Scheme. If for the aforesaid or any other reason the Company is forced to abandon the whole or part of the Scheme, then and in such a case, the Company's liability shall be limited to the refund of the amount paid by the Unit Allottee(s) without any interest or any compensation whatsoever.</i></p> <p>(Emphasis supplied) [page 34-35 of complaint]</p>
10.	Due date of possession	13.05.2017 <b>[Note:</b> Due date of delivery of possession is calculated from the date of environmental clearance being later . Further grace period of 6 months is included being unqualified and unconditional]
11.	Basic consideration as per buyer's agreement at page 29 of complaint	₹ 35,18,250/-
12.	Total sale consideration as per calculation sheet at page 51 of reply	₹ 41,99,068/-
13.	Total amount paid by the complainant as per calculation sheet at page 51 of reply.	₹ 38,62,327/-
14.	Offer of possession	04.07.2022 [Page 48 of complaint]

4





**B. Facts of the complaint**

3. The facts of the complaint are as follows:

- a. The grievances of the complainant relate to breach of contract, false promises, gross unfair trade practices and deficiency in the services committed by the respondent, JMD Limited in regard to showroom/ other space/service apartment no. "A-304", 03<sup>rd</sup> floor, having approx. area of 613 sq. ft. in project 'JMD SUBURBIO II' situated at Sector 67, Sohna Road, Revenue Estate of Village Badshahpur, Gurugram, Haryana. The Director, Town and Country Planning, Haryana, Chandigarh (DGTCP) has granted licences bearing no. 107 of 2011 dated 11.12.2011 for promotion and developing a commercial complex. Commercial shop/space/unit was booked by the complainant, by paying her hard-earned money amounting to Rs. 4,00,000/- on 10.01.2012 as token/ advance but unfortunately there was no progressive steps taken by the respondent company. Further, the complainant visited several times at office of the respondent company and made several phone calls and address e-mail request, for execution of buyer's agreement but all in vain for almost 2.9 years but respondent failed to execute buyer's agreement from January 2011 till October 2014. During the lapse of 2 years and 9 months, there was no interest offered/paid on advance/ booking amount paid by the complainant to the respondent.
- b. Eventually, buyer's agreement was executed between the complainant and respondent on 29.10.2014, it is clearly stated and



accepted by the respondent that "The possession of allotted unit shall be given to the allottee by the developer by October 2018". The developer agreed to offer possession of the booked unit to the buyer by that time.

- c. That complainant has paid hard- earned money, as and when demanded by the respondent and a total sum of Rs. 38,62,327/- has been paid to the respondent till now. The respondent has failed to offer possession of the subject unit till now. Moreover, the construction activities of the project in which the complainant had booked a space/unit have not yet completed and are left unattended. The failure of the respondent in finalising construction activities even after more than ten years of booking, and thereafter abandoning the project and fooling the complainant, and fraudulently retaining their hard-earned money is unlawful and proves the mala fide intention of the respondent. The respondent has failed to perform his part of obligation rightfully and legally by neither offering possession of the unit/shop nor refunding the deposited amount with interest at the prescribed rate as per the Act and the Rules.
- d. The respondent has failed to start the offering possession even after more than nine years and eleven months (approx.) since booking and has cheated the complainants due to which the complainants have lost complete faith in the respondent. Another point of breach of trust is that the complainant had booked and paid for super area which was 613 sq. ft., but on actual ground, the carpet area space is 360 sq. ft. which is only 58.7% of total super





area. Thus, the complainant seeks the refund of the entire amount deposited by them with interest at the prescribed rate. The complainants have lost faith in the respondent; hence, the complainant has filed the present complaint.

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

4. The complainant has sought following reliefs:

- a. Direct the respondent to return/refund the total sum of Rs.38,62,327/- to the complainant with interest from the date of the receipts at the prescribed rate as per the provisions of the Act.
- b. Direct the respondent to pay legal expenses of Rs. 50,000/- incurred by the complainant.
- c. Consider the possession date of unit from the booking amount demanded by the respondent and paid by the complainant Rs. 4,00,000/- since January 2012. As after several visiting's, calls, emails respondent executed buyer's agreement in October, 2014.
- d. Liberty to the complainant for seeking compensation if any against loss of money appreciation and value cost and harassment and agony and pain given by the respondent to the complainant from the competent authority or AO in further.
- e. Any other damages, interest, relief which the Hon'ble Authority, may deem fit and proper under the circumstances of the case may kindly be passed in the favour of the complainants and against the respondent.

5. On the date of hearing, the authority explained to the respondents/promoter about the contravention as alleged to have been



committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent has contested the complaint on the following grounds:
- a. That the respondent is a real estate company engaged in the business of the development and construction of the real estate projects and is one of the reputed companies in the real estate sector. The complainant with the intention of investing in a real estate property approached a real estate agent. Accordingly, the real estate agent informed the complainant about the pre-launch of a proposed project to be developed by the respondent and thereby the complainant submitted an application form.
  - b. That after the launch of the project, the unit bearing no. A-304, 3<sup>rd</sup> floor admeasuring approx. 613 sq. ft. in the project 'JMD SUBURBIO II' was allotted to the complainant for a basic sale consideration of Rs. 35,18,250/- (excluding taxes) and a buyer's agreement dated 29.10.2014 was executed by the complainant after carefully reading and understanding all the terms and conditions contained therein.
  - c. That the start of construction of the project was committed towards the timely completion of the project. It is further submitted that the respondent had undertaken to deliver the possession of the allotted unit within forty-two (42) months and extended period of six (6) months after the expiry of forty-two (42) months, to the complainant. That the buyer's agreement was executed with the complainant on 29.10.2014, therefore the due date of possession



was 28.10.2018. However, due to reasons and circumstances which are absolutely beyond the control of the respondent, such as, orders passed by National Green Tribunal to stop construction to prevent the emission of dust in the month of April 2015 and again in November 2016, adversely affected the progress of the project. That despite such hurdles, the respondent has tried its level best to completed on a timely manner. The respondent fulfilled their obligations completion of construction and thereafter, made an application on 04.11.2019 for issuance of occupancy certificate before the competent authority.

- d. That there was a delay on the part of the competent authority in granting the occupancy certificate. For this very reason, the respondent again sent a subsequent letter dated 24.08.2021 to the competent authority, requesting for the grant of the occupation certificate. That the occupation certificate for the project was finally granted by the competent authority on 28.06.2022 to the respondent. It is humbly submitted that the delay was not due to any default of the respondent or due to submission of any incomplete applications. The respondent had submitted all the necessary documents for obtaining the occupation certificate with the competent authority. Therefore, the delay in receiving the occupation certificate cannot be attributed to the respondent and thus does not amount to the delay on the part of the respondent.
- e. That after completing the construction of the said project and applying for the grant of occupation certificate, the respondent had sent a letter dated 11.12.2019 to the complainant offering the unit

for fitout/Interior Works etc. Thereafter several reminders to the complainant regarding the offer of fit outs/interior works of the allotted unit were sent to the complainant. However, the complainant ignored all the reminders of the respondent and never replied to the same i.e., never accepted the offer for fitout, which clearly indicates the malafide intention of the complainant to violate the terms and conditions of the buyer's agreement and thereby extracting money from the respondents by putting false allegations.

- f. That after receiving the occupation certificate, the respondent has sent the offer of possession letter dated 04.07.2022 to the complainant, requesting to complete all formalities and take over the possession of the unit. However, the complainant again with a malafide intention ignored the offer of possession and has failed to take over the possession thereof.
- g. That by not taking over the possession, the complainant is violating the provisions of the Act which clearly mentions that the allottee has to take the physical possession of the said unit within a period of 2 months from the date when the occupancy certificate issued for the said unit. That as per clause 16 of the buyer's agreement, the complainant is obligated to take over the possession of the unit within thirty days of the company dispatching the offer of possession letter intimating that the unit is ready for use. Since, the complainant is himself at default therefore, now he cannot take advantage of his own wrong and raise frivolous grievances and



blackmail to extract illegitimate monetary benefits from the respondent.

- h. That section 19(6) of the Act lays down the duty on the allottee to make necessary payments pertaining to the allotment of the unit as per the payment schedule and in timely manners as per the demand raised. That the complainant has been in blatant violation of section 19(6) of the Act as he has failed to pay the due instalments on time against the sale consideration amounts payable towards the unit. It is pertinent to mention herein that the complainant has opted for Progress Linked Instalment Plan and the respondent accordingly have raised their demands on achievement of relevant milestones. However, instalments have not been paid as per the payment plan. Further, there is an amount of Rs. 3,36,741/- still payable by the complainant against the said unit. Time is always an essence in respect to the allottee's obligation for making payment with respect to the allotted unit. And, as per the buyer's agreement, signed and acknowledged, the complainant was bound to make the payment of instalments as and when demanded by the respondent.
  - i. That the respondent had to incur the entire expenditure/ cost of development and completing the unit allotted to the complainant from its own fund and resources. For this very reason, the respondent had to suffered huge loss and thereby the project construction was hampered.
7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.



**E. Jurisdiction of the authority**

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

**E.I. Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II. Subject matter jurisdiction**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance





of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on 11.11.2021 wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

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

*"23) The supreme court has already decided on the issue pertaining to the competence/power of the authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest*

*for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.*

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

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

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, and the division bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Vs Union of India and others. (supra)**", the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee along with interest at the prescribed rate.

**F. Findings on the relief sought by the complainant.**

15. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject plot along with interest at prescribed rate as per provisions of



section 18 of the Act. Section 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)*

16. **Due date of handing over possession:** Clause 15 of the buyer's agreement provides the time period for handing over of possession and is reproduced below for the reference:

*"That the possession of the said premises is proposed to be delivered by the company to the unit allottee(s) within forty-two (42) months from the date of sanction of building plan/revised building plan or environmental clearance or any such sanctions & approvals required for commencement of construction of building/complex, whichever is later or further extended period of six (6) months after expiry of forty-two (42) months as agreed above except the force majeure circumstances. The Company shall not incur any liability if it is unable to deliver possession of the said premises by the time aforementioned, if the completion of the said complex is delayed by reason of non-availability of steel and/or cement or other building materials or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the Company, or non-payment of timely instalments by Unit Allottee(s) civil commotion or by reason of war, or enemy action, or earthquake or any act of God, or if non-delivery of possession is as a result of any act, notice order, rule or notification of the Government*

*and /or any other public or competent authority or for any delay made by Government authorities in grants of necessary sanctions and approvals or for any other reason beyond the control of the Company and in any of the aforesaid events, the Company shall be entitled to a reasonable extension of time for delivery of possession of the said premises to the Unit Allottee(s). In the event of any such contingency arising/happening, the Company shall have right to alter or vary the terms and conditions of allotment, or if the circumstances, beyond the control of the Company, so warrant, the Company may suspend the Scheme for such period as it may consider expedient and no compensation of any nature whatsoever can be claimed by the Unit Allottee(s) for the period of suspension of the Scheme. If for the aforesaid or any other reason the Company is forced to abandon the whole or part of the Scheme, then and in such a case, the Company's liability shall be limited to the refund of the amount paid by the Unit Allottee(s) without any interest or any compensation whatsoever."*

17. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant



position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

18. **Due date of handing over possession and admissibility of grace period:** The respondent/promoter has raised the contention that the construction of the project was badly affected on account of the orders passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, may be harmful to the public at large without admitting any liability in the month of April 2015 & November 2016.
19. The respondent has proposed to handover the possession of the said unit within a period of forty-two (42) months from the date of sanction of building plan/revised building plan or environmental clearance or any such sanctions & approvals required for commencement of construction of building/complex, whichever is later or further extended period of six (6) months after expiry of forty-two (42) months as agreed above except the force majeure circumstances. As per the documents available on record, the environmental clearance was granted by the competent authority on 17.06.2013. The due date of possession i.e., period of forty-two (42) months is calculated from the date of environment clearance i.e., 17.06.2013 as the date of building plan approval is not known. Also, the grace period of 6 months is allowed to the respondent being unqualified and unconditional. Therefore, the due date of handing over possession comes out to be 17.06.2017.
20. 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.*

21. 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).
22. The counsel for the complainant states that the respondent had initially allotted plot no. Y-32 to the complainant. However, due to certain orders passed by the Hon'ble High Court of Punjab and Haryana, the license for the part plotted colony was cancelled. Subsequently, on 10.4.2019 the respondent offered possession of an alternate unit no. J-9. The complainant vide e-mail dated 17.07.2020, requested for completion certificate and occupation certificate before taking any action towards this plot. Subsequently, the respondent in place of giving the said clarification, sent repeated reminders for payment of dues and ultimately sent pre-cancellation notice dated 06.04.2021.



23. The counsel for the complainant states that the complainant had booked the unit of the respondent on 10.01.2012 and the allotment was made two years later on 12.02.2014 and further the BBA was executed on 29.10.2014. The due date for handing over of possession as per the BBA was 28.10.2018. The complainant has paid an amount of Rs. 38,62,327/- which is more than 95% of the total sale consideration (basic sale price was Rs. 35,18,250/-). The OC for the project has been received on 28.06.2022 and the offer of possession was made on 04.07.2022. The complainant who is the single lady is seeking refund of the amount deposited vide the present application filed on 16.03.2022 which is after the due date of possession and before offer of possession.
24. The authority observes that the present complaint was filed on 16.03.2022 whereby the complainant is seeking refund of the amount paid by her to the respondent as the respondent has failed to deliver possession of the subject unit within the stipulated time period and has demanded the return of the amount in terms of section 18 of the Act. The occupation certificate was granted by the competent authority on 28.06.2022 and thereafter, the possession of the subject unit was offered by the respondent to the on 04.07.2022, which is subsequent to the filing of the present complaint. 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....."

25. 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 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."

26. The respondent/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) of the Act. The respondent/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 respondent/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.

27. 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.

28. **Admissibility of refund along with prescribed rate of interest:**

Section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the promoter shall refund of the amount paid by the allottee 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.”***

29. 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.

30. 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., **16.08.2023** is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

31. The authority hereby directs the respondent/promoter to return the amount received by it from the complainant allottee 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 Rules *ibid*.

**G. Directions of the authority**

32. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- The respondent is directed to refund the entire amount paid by the complainant along with prescribed rate of interest @ 10.75% p.a. as prescribed under rule 15 of the rules from the date of each payment till the date of refund of the deposited amount.
  - 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.
33. This decision shall *mutatis mutandis* apply to cases mentioned in para 3 of this order.
34. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
35. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.08.2023

