

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

Complaint no.:	7806 of 2022
First date of hearing:	26.05.2023
Date of decision:	26.05.2023

1. Pankaj Mehra
2. Puja Mehra
Through GPA holder Mr. Narain Prasad
R/o Hno. 458, Sector 5, Gurugram

Complainants

Versus

M/s New Look Builders & Developers Pvt. Ltd. formerly
known as Ansal Phalak Infrastructure Pvt. Ltd.
Office address: 1202, Antriksh Bhawan16, Kasturba
Gandhi marg, new delhi-110001

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri Sukhbir Yadav (Advocate)
Shri Deeptanshu Jain (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 22.12.2022 has been filed by the complainants/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 as provided under the

provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"Sovereign Floors, Esencia", Sector- 67, Gurugram
2.	Nature of project	Residential Plotted Colony
3.	RERA registered/not registered	Registered vide registration no. 336 of 2017 dated 27.10.2017 valid upto 31.12.2019
4.	DTPC License no.	21 of 2011 dated 24.03.2011
	Validity status	23.03.2019
	Name of licensee	Mangat Ram & others
	Licensed area	28.556 acres
5.	Unit no.	E-2194GF, Ground Floor [page 46 of complaint]
6.	Unit area admeasuring	2491 sq. ft. [page 46 of complaint]
7.	Allotment letter	17.05.2011 [page 40 of complaint]
8.	Builder buyer agreement	04.08.2011 [page 44 of complaint]
9.	Building plan approval	Not placed on record

10.	Possession clause	<i>Subject to clause 5.2 and further subject to all the buyers of the dwelling units in the said sovereign floors, esencia, making timely payment, the company shall endeavour to complete the development of residential colony and the floor as far as possible within 30 months with an extended period of 6 months from the date of execution of this floor buyer agreement or the date of sanction of the building plans whichever falls the later.</i>
11.	Due date of possession	04.08.2014 [calculated from date of BBA i.e., 04.08.2011 as the date of building plan is not known + 6 months grace period allowed being unqualified]
12.	Total sale consideration	₹ 92,98,200/- [pg. 74 of complaint]
13.	Amount paid by the complainants as per sum of receipts	₹ 38,73,545/-
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainants pleaded the complaint on the following facts:
- That the complainants **Pankaj Mehra and Puja Mehra** are law-abiding citizens, and both are currently R/o H No. 458, Sector-5, Gurugram. That the respondent New Look Builders and Developers Pvt Ltd. (formerly known as Ansal Phalak Infrastructure Pvt Ltd.) is a company incorporated under the Companies Act, 1956 having a registered office at first floor, the great easter centre 70, Nehru Place behind IFCI Tower, New Delhi-110019, corporate office at marketing centre, B-block Esencia, Sec-67, Gurgaon 122102 and

the project in question is known as Sovereign Floors at Alba, Esencia in Sector-67, Gurugram, Haryana.

- b. That as per Sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent falls under the category of "Promoter" and is bound by the duties and obligations mentioned in the said act and is under the territorial jurisdiction of this Hon'ble Regulatory Authority.
- c. That the complainants came to know about the project Sovereign Floors at Alba, Esencia in Sector-67, Gurugram, promoted by New Look Builders and Developers Pvt Ltd. (Formerly known as Ansal Phalak Infrastructure Pvt Ltd.) i.e., the respondent party through a real estate agent/ authorize agent of the respondent.
- d. That the complainants along with their family members visited the project site and local marketing office of the respondent. The location was excellent, and they consulted the local representative of the developer. The local representatives of the developer represented a glazy picture of the project and allured the complainants with a proposed specification of the project and handed over a beautiful brochure of the said project to the complainants. One of the representatives of the respondent gave a pre-printed application form and price list to the complainants.
- e. That being allured by the representations of the marketing staff of the respondent and believing on the words of the respondent, on 17.05.2011, the complainants / allottees, Pankaj Mehra and Puja Mehra booked a residential floor/apartment along with a basement in the said project of the respondent namely "Sovereign Floors at Alba, Esencia in Sec-67, Gurugram for a total sale

consideration of ₹ 8,00,000/- under construction linked payment plan. In addition, the complainants made a payment of ₹ 9,02,660/- against the booking amount through cheque no. 054601 dated 16.05.2011 drawn on HSBC Bank and the respondent issued the payment receipt for the same on 27.05.2011.

- f. That on 17.05.2011, the respondent issued an allotment letter in favour of the complainants, and as per the said allotment letter a dwelling unit bearing no. E 2194 GF on the ground floor with a basement having an area of 2491 sq. ft. on plot no. 2194 in block – E was allotted to the complainants. It is pertinent to mention here that as per said allotment letter, the total cost of the floor was ₹ 88,00,000/-.
- g. That on 01.07.2011, the complainants further made two payments as per the payment plan via two cheques bearing no 906345 and 54603 dated 01.07.2011 drawn on Axis Bank Ltd and Hongkong and Shanghai Bank at New Delhi of amount ₹ 5,00,000/- and ₹ 4,02,660/- respectively. The respondent issued the payment receipts for both payments on 05.07.2011.
- h. That after a long follow-up, on 04.08.2011, a pre-printed, arbitrary, unilateral floor buyer agreement/ agreement to sell (hereinafter referred to as BBA/FBA) was executed inter-se the respondent and the complainants. As per clause 3.1 of the floor buyer's agreement, the total cost of the floor was ₹ 88,00,000/- and as per clause 5 sub-clause 5.1 of the BBA, the respondent has to give possession of the said unit within 30 months with an extended period of 6 months from the date of execution of BBA or the date of sanction of the building plans whichever is later. It is pertinent to mention here

that the building plans of the project were approved before the execution of BBA, therefore, the due date of possession was 04.08.2014.

- i. That on 12.08.2011, the complainants made a payment of ₹ 10,27,209/- through cheque no. 54614 dated 12.08.2011 drawn on Hongkong and Shanghai Bank at New Delhi in favour of the respondent against the instalments as per the payment plan. The respondent issued a payment receipt for the same on 12.08.2011.
- j. That on 13.01.2016, the complainants made a further payment of ₹ 10,41,015/- through cheque no. 069426 dated 13.01.2016 drawn on Hongkong and Shanghai Bank at Gurgaon in favour of the respondent against EDC, Service Tax, and instalment as per the payment plan. The respondent issued payment for the same on 13.01.2016.
- k. Since August 2014, the complainants kept on visiting the office of the respondent as well as the construction site and made several efforts to get possession of the allotted unit, but all in vain. It is pertinent to mention here that despite several visits made by the complainants and telephonic conversations, the complainants have never been able to understand/know the actual status of the construction of the project. The respondent fails to raise the construction of the Tower/on the Plot in which the unit was allotted to the complainants. The office-bearers of the respondent never gave a satisfactory reason for the delay in raising the construction.
- l. That the complainants sever times visited the project site of the respondent and it was a great shock to see that the respondent has

abandoned the project/unit and it was in the same state as it was earlier. It is pertinent to mention here that the complainants have paid more than 40% of the total sale consideration of the unit and have got nothing in return but suffered mentally and financially as well. It is further pertinent to mention here that it can be seen that the respondent has malafide intentions since the very initial stage to get the benefit from the hard-earned money of its innocent allottees.

- m. That the main grievance of the complainants in the present complaint is that the complainants have paid more than 40% i.e., ₹ 38,73,545/- of the actual total sale consideration, but the respondent has failed in completing the construction of the said project i.e., "Sovereign Floors" and the unit allotted to the complainants.
- n. That the complainants had purchased the floor with the intention that after purchase, their family will live on their floor. That it was promised by the respondent party at the time of receiving payment for the floor that the possession of a fully constructed floor along with a basement and other amenities or facilities as shown in the brochure at the time of sale, would be handed over to the complainants by August 2014.
- o. That it has been more than 8 years from the due date of possession, and the construction of the project has not been completed yet. Moreover, the respondent abandoned the project without any intimation so that the respondent party could absorb all the money paid by the complainants.

- p. That there is an apprehension in the mind of the complainants that the respondent party has been playing fraud and there is something fishy that which respondent party is not disclosing to the complainants just to embezzle the hard-earned money of the complainants and others. It is highly germane to mention here that nowadays many builders are being prosecuted by the court of law for siphoning off funds and scraping the project mischievously.
- q. That due to the above acts of the respondent and the terms and conditions of the builder buyer agreement, the complainants have been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainants on account of the aforesaid act of unfair trade practice.
- r. That for the first-time cause of action for the present complaint arose in August 2011, when the unilateral, arbitrary, and one-sided terms and conditions were imposed on the complainants. The second time cause of action arose in August 2014, when the respondent party failed to hand over the possession of the unit as per the buyer agreement. Further, the cause of action again arose on various occasions, including in May 2015; August 2016; February 2018, June 2020, Jan. 2021, April 2022, and on many times till date, when the protests were lodged with the respondent party regarding the possession of the floor. The cause of action is alive and continuing and will continue to subsist till such time, as this Hon'ble Authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

- s. That the complainants want to withdraw from the project as the promoter has not fulfilled his obligation therefore as per obligations on the promoter under sections 18(1) & 19(4), the promoter is obligated to refund the paid amount along with the prescribed rate of interest.

C. Relief sought by the complainants:

4. The complainants have sought following reliefs:
 - a. Direct the respondent to refund entire amount paid by the complainants along with the interest.
5. Any On the date of hearing, the authority explained to the respondents/promoters 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 contended the complaint on the following grounds:
 - a. It is stated at the outset that all the averments made in the complaint under reply may be considered to have been replied to and all the allegations contained therein may be considered to have been specifically denied and controverted, unless admitted hereinafter.
 - b. The respondent, i.e., New Look Builders and Developers Pvt. Ltd. is engaged in the business of construction and development of real estate projects. The instant reply to the captioned complaint on behalf of the answering respondent is being filed through Mr. Anil Kansal who have been duly authorized by the answering respondent vide board resolution dated 26.08.2021, inter alia, to defend the answering respondent in various proceedings initiated

- against it, verify and sign pleadings and other documents etc. and do all such acts, deeds, things as may be considered necessary to represent and act for and on behalf of the answering respondent.
- c. It is humbly submitted that the complainants through the captioned complaint have prayed for directions of refund of Rs. 38,73,545/- along with interest to the respondent, which were paid by the complainants towards the allotment of unit no. E 2194, ground floor in the project "Soveriegn Floors, Esencia" in Sector 67, Gurugram, Haryana.
- d. It is humbly submitted that the complainants have made a total payment of Rs. 38,73,494/- till date toward the allotment of the Unit out of basic sale consideration of Rs. 88,00,000/- excluding EDC, IDC, club members fee and interest-free maintenance charges and service charges. Therefore, it is evident that the complainants have paid less than 50% of the basic sale consideration despite repeated request from the respondent company towards the unit.
- e. That the present complaint is not maintainable under the provisions of the Real Estate (Regulation and Development) Act, 2016 as the complainant has not raised any demand seeking refund of the amount which is prerequisite for filing of complaint. It is pertinent to mention herein that as per Section 18(1) of the Real Estate (Regulation and Development) Act, 2016, any allottee has to first raise a demand before filing a complaint. Admittedly, no such demand has been raised by the complaint in the subject matter. Therefore, the captioned complaint is liable to be dismissed.
- f. That the instant complaint deserves to be dismissed at the threshold in view of the conduct of the complainants. It is the first

and foremost principle of law that the party approaching any legal forum/court for dispensation of justice must approach with clean hands. The complaint under reply is not only gross abuse of process of law but the same is filed with mala fide intentions of maligning the reputation and goodwill of the answering respondent. The contents of the instant complaint would reveal that the complainant has suppressed material facts that are extremely relevant to the adjudication of the instant complaint. The courts have on all occasions come down heavily on litigants who have approached courts suppressing material facts. That the complainants by way of the present complaint are attempting to mislead this Hon'ble Authority by fabrication and concealment of facts which never existed and trying to unduly gain at the cost of the answering respondent, for which the complainants are not entitled under the law.

- g. The answering respondent while considering the application of the complainants, allotted the unit in favor of the complainants and executed the floor buyer agreement dated 04.08.2011.
- h. Admittedly, as per clause 5.1 of the FBA, the answering respondent was obligated to deliver the possession of the unit to the complainants within a period of 36 months from the date of receiving the sanction plan for the project or from the date of execution of the floor buyer agreement, *whichever is later*, subject to timely payment of dues by the complainants and force majeure circumstance.
- i. As matter of fact, the building plans of the plot, where the unit is situated, was approved by the District Town Planner, Gurugram on



31.12.2012. Since the approval for building plans was received after the execution of FBA, the due date of possession is to be calculated 36 months from the date of receiving approvals for building plans. Therefore, the due date of possession of the Unit was 31.12.2015 (i.e., 36 months from 31.12.2012).

- j. It is submitted that in terms of clause 5.4 of FBA, in case of delay in handing over the unit the answering respondent is liable to pay delay compensation @ Rs. 10/- per sq. ft. per month to the complainants. Therefore, the complainants are not entitled to any form of compensation/ interest from the answering respondent, beyond which is already agreed upon by both the parties. Hence, it is clear that the captioned complaint is nothing, but, just an afterthought, filed to unlawfully gain at the cost of answering Respondent and malign its reputation in the market.
- k. Without prejudice to the above, it is humbly stated that the construction of project of the answering respondent is dependent upon the amount of money being received from the booking made and money received henceforth, in form of installments by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the answering respondent at the time of launch of the project. That, reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the installment or cancelled booking in the project, resulted in less cash flow to the answering respondent henceforth, causing a delay in the construction work of

the project. Therefore, the delay in completion of the project is not attributable to the answering respondent.

- l. It is submitted that the answering respondent had tried to contact the complainants telephonically for allotment of an alternate unit and to handover the possession of the unit. However, the complainants did not come forward to the answering respondent for taking possession of the unit. Therefore, the complainants cannot benefit from their own wrong.
- m. It is submitted that the answering respondent is making all efforts to complete the construction work at the project site at full pace and is expecting to hand over the possession very soon, once the present situation of pandemic 'Covid-19' gets over and situation normalizes. That due to the exponential increase in the cases of 'Covid-19', the Central Govt. had imposed nationwide 'lockdown' w.e.f. 25.03.2020 which has been extended till 30.06.2020, resultantly, the same has caused a serious impact on the economy posing difficult challenges for everyone. It is pertinent to mention that prior, to this unprecedented situation of pandemic 'Covid-19', the respondent along with the development manager had been carrying out the construction of the project at full pace and was expecting to deliver the units to the buyers by the end of the year 2020, 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', as such, amid this difficult situation of 'force majeure' the answering respondent are not in a position to adhere to the arbitrary demands of the complainants for

cancellation of the allotment and refund of the monies along with interest due to the reasons mentioned hereinabove.

- n. That owing to the present situation, the real estate sector is severely affected due to the implementation of nationwide 'lockdown' w.e.f. 22.03.2020 and amid this prevailing situation of the pandemic the slowing economy is also posing difficult challenges for the answering respondent. Although, considering the seriousness of the situation and prevailing circumstances caused due to implementation nationwide 'lockdown' to contain the spread of 'Covid-19', the Govt. of India has already extended the project completion deadlines of all the projects across the nation, by another six (6) months from the scheduled deadline of completion as per the agreements. Therefore, the answering respondent expects to complete the entire project within the said extended time period and expects to deliver the flat/ unit to the complainant very soon.

E. Jurisdiction of the authority

7. 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

8. 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

9. 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.

10. 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.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:

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

12. Hence, in view of the authoritative pronouncement of the Hon’ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants.

F.I. Direct the respondent to refund entire amount paid by the complainants along with the interest.

13. 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. 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)

14. Clause 5.1 of the BBA dated 04.08.2011 provides for the handing over of possession and is reproduced below for the reference:

*"Subject to clause 5.2 and further subject to all the buyers of the dwelling units in the said sovereign floors, esencia, making timely payment, the company shall endeavour to complete the development of residential colony and the floor as far as **possible within 30 months with an extended period of 6 months from the date of execution of this floor buyer agreement or the date of sanction of the building plans whichever falls the later.**"*

15. At the outset, it is relevant to comment on the pre-set 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 this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its



meaning. The incorporation of such clause in the flat buyer agreement by the promoters are 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.

Admissibility of grace period: The promoter has proposed to hand over the possession of the apartment within a period of 30 months plus 6 months from date of agreement or date of building plan whichever is later. The due date of possession is calculated from date of BBA i.e., 04.08.2011 as the date of building plan is not known. The period of 30 months expired on 04.02.2014. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Accordingly, the due date of possession comes out to be 04.08.2014.

16. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid along with interest at the prescribed rate. However, the allottee 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."

17. 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.
18. 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., **26.05.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
19. Keeping in view the fact that the allottee complainants 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. Moreover, during the hearing dated 26.05.2023 the counsel for the respondent stated that they are ready to give the refund along with interest at prescribed rate i.e., 10.70% per annum from the date of each deposit till its realization.
20. Also, 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..."

21. 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"

22. 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.

23. 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.
24. Accordingly, the authority upon consideration of the documents placed on record hereby directs the promoter to return the amount received by him i.e., ₹ 38,73,545/- with interest at the rate of 10.70% (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

25. 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 promoters as per the functions entrusted to the authority under section 34(f):
 - i. The respondent/promoter is directed to refund the entire amount of ₹ 38,73,545/- paid by the complainants along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount.



- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.
26. Complaint stands disposed of.
27. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.05.2023