

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

Complaint no.:	4746 of 2021
First date of hearing:	09.02.2022
Date of decision:	10.05.2023

Suresh Kumar

R/o ward no. 2, Near Jwahaar Navodaya School, Farrukh
Nagar, Gurugram

Complainant

Versus

Jubilant Malls Pvt. Ltd.

Office address: B-418, New Friends Colony, New Delhi-
110065

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Member
Member

APPEARANCE:

Complainant in person
None

Complainant
Respondent

ORDER

1. The present complaint dated 10.12.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"ILD ENGRACIA", Sector 37-D, Gurugram
2.	Unit no.	Plot no. A-12 [pg. 28 of complaint]
3.	Unit area admeasuring	392 sq. yd. [pg. 28 of complaint]
4.	Date of allotment letter	07.07.2018 [pg. 28 of the complaint]
5.	Date of execution of buyer's agreement	07.07.2018 [pg. 31 of the complaint]
6.	Possession clause	5. POSSESSION OF PLOT <i>5.1. Subject to clause 5.2 and subject to the buyer making timely payment, the company shall endeavour to complete the development of infrastructural facilities for the plot within 30 months, with an additional grace period of 6 (six) months (without liability for payment of any penalty/damages/ delay charges) from the date of the execution of this agreement provided that all amounts due and payable by the buyer have been paid to the company in timely manner. The company shall be entitled to reasonable extension of time for the possession of the plot in the event of any default or negligence attributable to the buyer's fulfilment of terms & conditions of this agreement.</i>



		<i>(Emphasis supplied)</i>
7.	Due date of possession	07.07.2021 Note: 6 months of grace period allowed being unqualified
8.	Total sale consideration as per BBA dated 07.07.2018 at page 34 of complaint	Rs. 1,25,63,672/-
9.	Amount paid by the complainant as per sum of receipts	Rs. 75,17,600/-
10.	Completion certificate	22.07.2022 [pg. 7 of reply]
11.	Offer of possession	02.08.2022 [pg. 8 of reply]
12.	Cancellation vide email	19.10.2022 [pg. 34 of reply]
13.	Conveyance deed in favor of a third party	10.11.2022 [pg. 42 of reply]

B. Facts of the complaint

3. The complainant has pleaded the complaint on the following facts:
- The complainant, Suresh Kumar, (hereinafter referred to as "complainant"), is a peace loving and law-abiding citizen of India, who nurtured hitherto an un-realized dream of having his own house on a plot in upcoming society with all facilities and standards, situated around serene and peaceful environment. The complainant always leads his life with full of honesty, simplicity and truthfulness and epitomizes utmost kindness and humanism.
 - The grievances of the complainant relate to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent in regard to the plot no. A-



12 admeasuring 392 square yards in the project "ILD Engracia" bought by the complainant paying his hard-earned money. The project called "ILD Engracia" is spread over the land measuring 3.93 acres located at village Basai, sector - 37D, Gurugram, Haryana.

- c. The respondent, Jubilant Malls Private Limited is the company duly incorporated under the Companies Act, 1956, as amended up to date and is being sued through its chairman cum managing director. The respondent is carrying out business as builder, promoter and colonizer and is inter alia engaged in development and construction activities.
- d. In the plot buyer agreement (hereinafter referred to as "agreement"), it is stated that the respondent possesses the land measuring 3.93 acres in khasra no.226/2 and 227/2 situated at village Basai, sector - 37D, Gurugram, Haryana. The directorate of urban local bodies, Haryana had issued requisite approvals and permissions to develop the said land into a residential plotted colony to be known as 'ILD Engracia.
- e. The complainant was approached by the sale representatives of the respondent, who made tall claims about the project 'ILD Engracia' as the world class project. The complainant was invited to the sales office and was lavishly entertained, and promises were made to him that the possession of his plot would be handed over in time including that of parking, horticulture, club and other common areas. The complainant was impressed by their oral statements and representations and ultimately lured to pay a total of



- rs.50,17,600/- (rupees fifty lakh seventeen thousand and six hundred) as the booking amount of the plot to the respondent, Jubilant Malls Private Limited via RTGS transfer on 5th July 2018. The respondent acknowledged the payment and issued two receipts, no. RD/18-19/00019 of ₹ 38,17,600/- and no. RD/18-19/00020 of rs.12,00,000/- on 5th July 2018 to the complainant.
- f. The respondent issued allotment letter dated 7th July 2018 to the complainant for allotment of plot no. A-12 admeasuring 392 square yards in the project 'ILD Engracia'.
- g. The plot buyer agreement was executed between the complainant and respondent on 7th July 2018 towards purchase of plot no. A-12 admeasuring 392 square yards at a total consideration of ₹ 1,25,63,672/- inclusive of EDC/ IDC at the rate of ₹ 4,660/-per square yard, interest free maintenance charges (IFMS) at the rate of ₹ 50/- per square yards, power back-up equipment charges (PBC) at the rate of ₹ 893/- per square yard and club membership amounting ₹ 75,000/- in the project "ILD Engracia".
- h. The date of handing over the possession of the plot as per clause 5.1 of the plot buyer agreement comes out to be 7th January 2021, calculated thirty (30) months from the date of execution of the said agreement.
- i. The complainant approached the respondent and pleaded for delivery of possession of his plot as per the plot buyer agreement on various occasions. The respondent did not reply to his letters, emails, personal visits, telephone calls, seeking information about



the status of the project and delivery of possession of his plot, thereby the respondent violated section 19 of the Act, 2016.

- j. The complainant has lost confidence and in fact has got no trust left in the respondent, as the respondent has deliberately and wilfully indulged in undue enrichment, by cheating the complainant besides being guilty of indulging in unfair trade practices and deficiency in services in not delivering the legitimate and rightful possession of the plot in time and then remaining non-responsive to the requisitions of the complainant.
- k. The complainant does not intend to withdraw from the project. As per the obligations on the respondent/promoter under section 18 of the Act, 2016 read with rules 15 and 16 of the Rules, 2017, the promoter has an obligation to pay interest on the delayed possession on the amount deposited by the complainant at the rate prescribed. The respondent has neglected its part of the obligations by failing to offer a legitimate and rightful possession of the plot in time.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:
 - a. Direct the respondent to complete the development of the plot.
 - b. Direct the respondent to handover the legal and rightful possession of the plot to the complainant after receiving CC.
 - c. Direct the respondent to pay delay possession charges.
 - d. Direct the respondent to provide fixed date of delivery of possession.

- e. Direct the respondent to not charge anything beyond the charges stipulated in the plot buyer agreement.
 - f. Direct the respondent to follow the schedule of payment as mentioned in PBA.
 - g. Direct the respondent to pay legal expenses of ₹ 1,00,000/-.
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 present reply is filed by Mr. Salman J. Akbar, aged about 29 years, S/o Sh. Alimuddin, authorized representative of the respondent, who is duly authorized to act on behalf of the respondent and make necessary statements on behalf of the respondent vide board resolution dated 15.04.2022.
 - b. That the present complaint, filed by the complainants, is bundle of lies and hence liable to be dismissed as it is filed on baseless grounds. That the complainants herein have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
 - c. At the outset, the complainant has erred gravely in filing the present complaint and misconstrued the provisions of the RERA Act. It is imperative to bring the attention of the Hon'ble Authority



- that the Real Estate Regulatory Act, (RERA), 2016 was passed with the sole intention of regularisation of real estate projects, promoters and the dispute resolution between builders and buyers.
- d. It is imperative to note, that the complainants learned about the project launched by the respondent titled as '**ILD ENGRACIA**' (*herein referred to as '**Project**'*) situated at Sector 37 D, Gurgaon and approached the respondent repeatedly to know the details of the said project. The complainants further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
- e. That after having keen interest in the project constructed by the complainant decided to invest, on 05.07.2018, booked a plot in the said project upon own judgement and investigation. And paid an amount of ₹ 50,17,600/- for further registration. It is imperative to mention herein that the complainants were aware of the exact status of the project in question and decided to book the plot upon own investigation without any protest or demur.
- f. It is submitted that the respondent is in the process of developing a residential plotted colony known as "ILD Engracia" on the land admeasuring 3.93 acres (Approx.) comprised in khasra no. 226/2 and 227/2 situated in revenue village of Basai, Sector-37D, Gurugram, Haryana. It is pertinent to mention here that the project "ILD Engracia" (*hereinafter referred to as "the Project"*) is registered with the Ld. Haryana Real Estate Regulatory Authority, Gurugram vide registration certificate no. 66 of 2017 dated 18.08.2017.



- g. It is pertinent to bring into the knowledge of the Ld. Authority that the respondent has availed the facility of the syndicated term loan from the Reliance Homes Finance Limited (*herein referred to as 'RHFL'*) for the sum of ₹ 19,50,00,000/- and the same was sanctioned vide sanction letter dated 28.02.2018. And, along with the sanction letter dated 28.02.2018, the respondent has also envisaged the terms and conditions of the said loan in writing, which is acknowledged by the aforesaid parties.
- h. That as per the terms and conditions of the loan facility, the RHFL has financed the said project whereby the residential plotted colony is being developed with saleable area of 148628 sq. ft. at khasra no. 226/2, 1081/225 and 227/2, revenue estate of village basai, Sector - 37D, Gurugram Haryana. And the same project/property has been kept as a security in lieu of the finance facility availed by the respondent.
- i. That during regular operations of the loan account, the respondent approached RHFL to recast/reschedule the loan account so outstanding instalments be paid and in spite of the said request and representation and having deposited the part amount, The RHFL was determined upon enforcement of security tendered by the respondent.
- j. Subsequently, the RHFL revised the repayment schedule of the loan facility vide letter dated 16.07.2019 and further withhold the disbursement of the undrawn amount of ₹ 4,39,52,010/- which hampered the development and completion of the project. It is a matter of fact that the respondent was regular in terms of the



repayment for the credit facility availed from the RHFL since the time of sanctioning the credit facility as the same is clear from the statement of account maintained by the RHFL in respect to the loan of the respondent. That so far, the respondent has made the payment of ₹ 5,42,15,643/- to the RHFL. That the respondent also sent various settlement proposals to the RHFL and for showing his bonafide intention made the payment of ₹ 88,09,768/- during 01.10.2019 till 31.12.2019 and ₹ 1,09,53,544/- during 01.01.2020 to 15.04.2020.

- k. That in blatant disregard to the proposal made by the respondent, RHFL under malafide intention on 13.12.2019; classified the account of the respondent no. 1 as NPA and thereafter, invoked the statutory provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFESI Act" and issued a notice under Section 13(2) the SARFESI Act on 17.12.2019.
- l. Further, that the acting upon the vindictive proceedings initiated by the RHFL against the respondent under SARFESI Act, the notice of possession dated 26.02.2020 was served to the respondent for taking illegal possession of the mortgaged premises in breach of the terms agreed between the parties in the loan agreement dated 03.03.2018.
- m. That the RHFL had further moved an application before the District Magistrate, Gurugram for taking action in terms of Section 14 of the SARFAESI Act. That the District Magistrate, Gurugram vide order dated 10.11.2020 had appointed the Naib-Tehsildar-cum-

- Executive Magistrate, Kadipur as receiver to take possession of the secured asset. The Duty Magistrate(receiver), Kadipur had issued notice to the respondent no. 1 dated 01.12.2020 and per the said notice the receiver was to come on 28.12.2020 at 11.30 am to take possession of the secured asset from the respondent.
- n. However, it is pertinent to mention here that the Ld. Authority in the interest and for preventing the rights of all the allottees of the project on 23.12.2020; put a stay on the scheduled action of taking over of secured asset as the RHFL has violated various provisions of the Act including the circular no. 01/RERA GGM Circular 2020 dt. 29.06.2020; issued by the Ld. Authority.
- o. It is to mention here that the respondent herein has addressed various mails to the RHFL for issuance of NOCs, however, the sheer disobedience of the RHFL to timely act upon it has strained the project cash flow due to which the irregularities occurred in the loan account. That further the respondent vide emails dated 28.02.2020 and 15.04.2020; sent the proposal to the RHFL for repayment of the facilities availed and requested for extension of only 8 months to repay the proposed amount, however, the RHFL with unfair intention did not pay any heed to that request of respondent.
- p. That the respondent herein intends to resolve the dispute with the RHFL and has also issued a notice of invocation of arbitration dated 17.11.2020, however, the RHFL vide its reply dated 25.11.2020 denied all the averments of the notice dated 17.11.2020 and stated

that there is no subsisting dispute which is arbitral and therefore, refused to appoint the arbitrator.

- q. That the possession to the allottees of their unit is being delayed in the said project due to the reasons mentioned hereinabove occurred due to the wrongful acts and conducts of the RHFL and other reasons beyond the control of the respondent. It is most humbly submitted before the Ld. Authority that in case the RHFL takes over the possession of the said project/land and sale it out for the recovery of outstanding dues, the interest of the allottees of entire project will be severely suffer.
- r. It is an evident fact, that if the RHFL succeeds with their ulterior motive, then there will be a gross violation of statutory provision of RERA Act read with public notice vide circular no. 01/RERA GGM circular 2020 dated 29.06.2020.
- s. The on 07.07.2018, a plot buyer agreement (*herein referred to as 'Agreement'*) was executed between the complainant and the respondent for the aforesaid plot. And the plot bearing no. A-12 admeasuring to 392 Sq. Yd. were allotted to the complainants for a basic sale consideration of ₹ 1,25,63,672/- in the said project of the respondent.
- t. It is submitted that the complainant was aware of terms and conditions under the aforesaid agreement and post being satisfied with every clause of the agreement and also with the payment plan and total sale consideration agreed to sign upon the same with free will and without any protest or demur. That the complainant being the habitual defaulter in terms of payment has failed to adhere to



the payment plan and violated the terms and conditions embodied under clause 4.6 of agreement.

- u. That in spite after knowing that payment has to be made as per the stage wise development of the allotted unit the complainant herein has breached the terms of the agreement. And, on account of not receiving payment from the complainant the respondent bound to issue payment reminders.
- v. It is pertinent to note, that since starting the respondent has made every effort to complete the project within time and has offered the possession of the said plot in question as per the proposed date. However, the construction of said unit was subject to certain circumstances beyond the control of the respondent.
- w. It is submitted that the present complaint is filed by complainants on baseless and absurd grounds. It is pertinent to note, that in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to time by the company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.
- x. In past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its



notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.

- y. The current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020, bearing no. 40-3/2020-DM-I (A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.



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 these undisputed documents.

E. Written submissions submitted of behalf of the complainant.

8. The complainant further submitted the following contentions in support of his complaint:

- a. That the complainant during the proceeding, has moved an application on 24.08.2022 before this Hon'ble Authority for interim directions to the respondent / builder as the builder has issued offer of possession on 02.08.2022 with exaggerated and arbitrary and illegal demand. Therefore, vide order dated 29.08.2022 this Hon'ble Authority passed the order / directions that the promoter is restrained from cancelling any unit as the complainant is ready to make balance payment to the builder within 7 days if demands are raised after adjusting delayed possession charges. The promoter shall not charge anything which is not part of BBA or otherwise held to be invalid by the Hon'ble Supreme Court of India.
- b. That thereafter the builder has issued fresh offer of possession with demand notice dated 08.10.2022, the said demand notice was again issued with incorrect calculations as the DPC is calculated from 07.07.2021 till 22.07.2022 i.e., the date when the CC was issued to the respondent. However, as per the order dated 29.08.2022, this Hon'ble Authority has also recorded in its order that the respondent produced a copy of the completion certificate which is not legible at all. This copy serves no purpose except to believe the counsel that on 22.07.2022 CC of this project has been



obtained. The promoter is obligated under proviso to section 18 (1) of the Act to pay the allottees delayed possession charges at the prescribed rate of interest i.e., 10% per annum from the due date of possession till the actual date of handing over of possession. If allottee does not come forward to take possession within 2 months as required under section 19 of the Act, then the obligation of the builder to pay delayed possession charges may be deemed to have come to an end after 2 months from the date of offering possession. The promoter is advised to issue demand letters regarding due payments on possession after adjustment of delayed possession charges as per provisions of the Act, 2016. The delayed period also covers the Covid-19 period, accordingly six months delayed payment interest cannot be paid and also shall not be charged for the delayed payment of installments, if any, by the allottee. The possession is to be given free from all encumbrances as per the provisions of the Act, 2016". Therefore, the builder has to calculate DPC till the actual date of handing over of possession and not till the date when completion certificate is issued. Therefore, the calculation issued vide possession letter dated 08.10.2022 is not correct and illegal.

- c. That the complainant thereafter written an email dated 12.10.2022, stating that the complainant is ready to take possession and also ready to make the final payment, however the calculation in the demand raised vide letter dated 08.10.2022 was not correct. Thereafter, in email dated 15.10.2022 the respondent wrote to the complainant to make your self-assessed amount to show your



bonafide, however the complainant was informed from his bank that the required loan amount against the plot in question was rejected as there was a report from the bank dated 05.10.2022 that M/s Jubilant Malls Pvt. Ltd. took a loan against the said land which was declared NPA and DM order dated 16.11.2020 was passed by the court of Mr. Amit Khatri, DM, Gurugram, under SARFAESI Act. Hence, I am of the opinion that creation of mortgage of for a property which was / is in litigation may not safeguard the interest of the bank in the said property. Thus, the loan was rejected from one bank. Thereafter, the complainant approached another bank for the disbursement of loan amount to be paid to the builder and vide email dated 19.10.2022 the complainant informed the respondent that his loan has been approved, sanction letter is attached, and DD shall be ready in a day or two.

- d. To the utter shock and surprise of the complainant, the respondent issued the cancellation of allotment letter dated 19.10.2022. Thereafter, the complainant approached the office of the respondent and also requested vide emails dated 21.10.2022, 31.10.2022 and 02.11.2022 to supply the copy of the documents as demanded by the bank so that DD can be handed over to the respondent.
- e. That to the further shock of the complainant an email dated 10.11.2022 was received from the bank stating that the promoter has informed the bank that the plot of the complainant was cancelled. The respondent recently again wrote a letter to the complainant vide email dated 14.11.2022 to take back the refund

amount as it stands cancelled. That the complainant has requested the respondent vide email dated 19.11.2022 for not cancelling the plot of the complainant narrating the facts and circumstances as enumerated above.

- f. That from the above background it is clear that the respondent has not raised correct demand vide letter dated 08.10.2022 as the respondent in its reply / email dated 15.10.2022 asked the respondent to make a self-assessed payment, therefore the respondent themselves agreed that the demand raised by the respondent on 08.10.2022 was not correct and illegal. In absence of correct demand, the order of the Hon'ble HARERA, Gurugram dated 29.08.2022 shall prevail and the promoter is restrained from cancelling any unit. Second, without taking no objection or clearing the refund to the first applicant / buyer the complainant in present case the promoter cannot sell the plot to the subsequent buyer. Third, on 19.10.2022 in the morning through email, the complainant had requested to supply documents as requested by the bank, but till date no such documents have been provided to the complainant. Therefore, because of the fault of the respondent, the plot of the complainant cannot be cancelled by the respondent.
- g. That on the date of hearing i.e., 16.11.2022, the respondent informed this Hon'ble Authority that the unit of the complainant has been cancelled and it has been sold to a third party. This act of the respondent is not only illegal, arbitrary, unjustified and against the principle of natural justice, fairness and equity, as the matter is still pending with this Hon'ble Authority and when the complainant

in the main prayer itself has prayed for taking delivery of possession on the justified amount, therefore there is no question that the complainant was not interested in taking possession of the unit or in making justified payment as per the order dated 29.08.2022.

F. Jurisdiction of the authority

9. 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

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 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.
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.*** 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."

14. 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."

15. 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.

G. Findings on the relief sought by the complainant.

G.I. Direct the respondent to complete the development of the plot.

G.II. Direct the respondent to handover the legal and rightful possession of the plot to the complainant after receiving CC.

G.III. Direct the respondent to pay delay possession charges.

G.IV. Direct the respondent to provide fixed date of delivery of possession.

G.V. Direct the respondent to follow the schedule of payment as mentioned in PBA.

16. The above-mentioned reliefs are being taken up together for adjudication. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges on the amount paid by him in respect of subject unit. 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)

17. In the present matter the promoter has proposed to hand over the possession of the plot according to clause 5.1 of the BBA within a period

of 30 months plus 6 months from date of sanction of plot buyers' agreement. The due date of possession is calculated from the date of PBA i.e., 07.07.2018. The period of 30 months expired on 07.01.2021. 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. Therefore, the due date of possession comes out to be 07.07.2021. However, the possession was offered to the allottee on 02.08.2022 after receipt of CC from the competent authority on 22.07.2022. Since in the present matter the complainant has paid an amount of ₹ 75,17,600/- towards the total consideration of the plot i.e., ₹ 1,25,63,672/- and is seeking possession of the said plot therefore during the course of hearing the respondent was directed to issue the fresh statement of account after adjustment of the DPC as the complainant agreed to pay the dues within 7 days from the date of that order and then handover the physical possession of the plot. In accordance with the direction made by the authority on 29.08.2022 the respondent raised the fresh demand on 08.10.2022 of ₹ 47,39,297/- after adjustment of the DPC from the due date of possession i.e., 07.07.2021 till date of receiving completion certificate i.e., 22.07.2022. Instead of clearing the dues the complainant disputed the date till which the DPC was calculated by the respondent was till completion certificate (22.07.2022) whereas it should have been till date of offer of possession plus two months i.e., till 02.10.2022. Thereafter in between the respondent cancelled the said unit on 19.10.2022 and requested the complainant to collect the DD of the refundable mount from the office of

- the respondent. Furthermore, the respondent also created third party rights on the plot and executed the conveyance deed on 10.11.2022.
18. Although the respondent's act of creating the third-party rights is wrong in the eyes of law to which the respondent has given an explanation in the affidavit dated 08.05.2023 that the respondent was facing financial crunch and was required to pay a loan amounting of ₹ 16.5 cr., and accordingly the respondent had to create third party rights on the said plot. Moreover, the reluctant behaviour of the complainant can also not be ignored as on one hand the complainant agreed to pay the outstanding dues within 7 days but did not do so. Since as of now third-party rights have already been created in the said plot and according to the affidavit submitted by the respondent on 08.05.2023 it is clearly mentioned that there is no unsold plot left in the project.
19. Now, the question that arises before the authority is as to whether the cancellation of the said plot is valid or not. The authority while going by the facts and the documents placed on record observes that the complainant has chosen time linked payment plan wherein the complainant has agreed to make payment of the 1st instalment i.e., 40% of the sale consideration on booking thereafter the second instalment of 20% within 60 days or road work completion and the last instalment of 40% upon offer of possession. Now according to the SOA dated 02.08.2022 the due date of payment of 2nd instalment for an amount of ₹ 24,23,814/- was 09.07.2019 whereas, the same was delayed by more than one year as the complainant paid it in two equal instalments of ₹ 12,50,000/- on 31.08.2020 and 15.09.2020. The 3rd instalment was made upon offer of possession dated 02.08.2022 of ₹ 48,47,628/- which

was to be paid within 21 days from the date of this offer letter. The same also remains unpaid. Thereafter, during the proceedings held on 29.08.2022 the authority directed the respondent to issue fresh statement of account after adjusting the DPC and the complainant agreed to make the payment as per fresh SOA within 7 days. However, the complainant failed to make payment within the agreed time after issuance of the fresh SOA on 08.10.2022. Subsequently, upon failure on part of the allottee in making payment within the specified time, the respondent cancelled the allotment of the subject plot on 19.10.2022. In view of the above, the authority hereby upheld the cancellation dated 19.10.2022 and the respondent is liable for refund the amount paid by the complainant after deducting 10% along with prescribed rate of interest i.e., 10.70% p.a. as per, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that:

"5. AMOUNT OF EARNEST MONEY

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money **shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be** in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.*

20. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainant against

the allotted unit and is directed to cancel the same in view of cancellation clause of the allotment by forfeiting the earnest money which shall not exceed the 10% of the basic sale consideration of the said unit as per payment schedule and shall return the balance amount along 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 cancellation i.e., 19.10.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

[Note: It has been inadvertently wrongly mentioned in the proceeding of the day as the respondent is directed to refund the amount after deduction of 10% along with prescribed rate of interest i.e., 10.70% per annum from the date of deposits till its realization whereas it should have been from the date of cancellation till actual date of refund which is being corrected in the detailed order.]

G.VI. Direct the respondent to not charge anything beyond the charges stipulated in the plot buyer agreement.

21. The above-mentioned relief stands redundant in view of the findings with respect to the above relief.

G.VII. Direct the respondent to pay legal expenses of ₹ 1,00,000/-

22. The complainant in the aforesaid head is seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & O* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and

section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

23. 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:


- i. The respondent is directed to refund the paid-up amount of ₹ 75,17,600/- after retaining 10% of the sale consideration of plot i.e., ₹ 1,25,63,672/- along with the interest at the prescribed rate i.e., 10.70% is allowed on the balance amount from the date of cancellation i.e., 19.10.2022 till date of actual refund.
- 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.

24. Complaint stands disposed of.

25. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Ashok Sangwan)
Member

Dated: 10.05.2023