



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

Complaint no. :	3805 of 2021
Date of filing complaint:	29.09.2021
Order Reserve On:	13.04.2023
Order Pronounced On:	06.07.2023

1. Vikas Pawriya 2. Pinki R/O: 1651, Ground Floor, Housing Board Colony, Sector-10A, Gurgaon, 122001	Complainants
Versus	
M/s ILD Millennium Pvt. Ltd. Regd. office: ILD Greens, Sector-37-C, Gurugram, Haryana	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Sumesh Malhotra (Advocate)	Complainants
Sh. Rishabh Gupta (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	ILD Grand Centra, Sector 37 C, Gurgaon, Haryana
2.	Nature of the project	Residential group housing project
3.	Project area	15.4829 acres
4.	DTCP license no.	13 of 2008 dated 31.01.2008
5.	Name of licensee	M/s Jubilant Malls Pvt. Ltd. and 3 others
6.	RERA Registered/ not registered	Registered For 64621.108 sq mtrs for towers 2,6 and 7 vide no. 60 of 2017 issued on 17.08.2017 up to 16.08.2018
7.	Unit no.	0105, 1st floor Tower GCA (page no. 73 of complaint)
8.	Unit area admeasuring (super area)	1300 sq. ft. (page no. 73 of complaint)
9.	Allotment letter	07.08.2015 (Page no. 56 of complaint)

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10.	Date of builder buyer agreement	01.01.2017 (page no. 71 of complaint)
11.	Possession clause	10.Possession of Apartment: 10.1 Subject to timely grant of all approvals, permissions, Certificates, NOC's permission to operate, full/part occupation certificate etc. and further subject to the Buyer having complied with all its obligations under the terms and conditions of this Agreement, and subject to all the buyers of the apartments in the project making timely payments including but not limited to the timely payment of the Total Sale consideration, Stamp duty and other charges, fees, IAC, Levies & Taxes or increase in Levies & Taxes, IFMSD, Escalation Charges, deposits, Additional Charges to the Developer and also subject to the Buyer having complied with all formalities or documentation as prescribed by the Developer, the Developer shall endeavor to complete the construction of the Said Apartment within 30(thirty) months from the date of execution of agreement and further extension/grace period of 6 months.
12.	Due date of possession	01.01.2020 [calculated as per possession clause including grace period of 6 months]
13.	Total sale consideration	Rs. 70,23,500/-



		(as per payment plan on page no. 124 of complaint)
14.	Amount paid by the complainants	Rs. 16,58,481/- (as alleged by complainants)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not obtained

B. Facts of the complaint:

3. That believing the representations, assurances and promises made by the respondent company, to be true and relying upon the same, the complainants, jointly applied for booking of unit vide application dated 09.01.2015. and paid an amount of Rs. 4,00,000/-.
4. That on 22.01.2015 respondent issued a welcome letter to the complainants citing small brief about the project and payment schedule. Subsequently on making certain payments provisional allotment letter dated 07.08.2015 was issued to them.
5. That after the booking of the unit, as per the payment schedule the respondent raised a demand for payment of Rs. 9,40,358/- less the booking amount against the allotted unit. The complainants paid an amount of Rs. 5,40,358/-.
6. Thereafter vide another demand dated 09.04.2015 respondent again raised a demand of Rs. 6,26,905/- under the head of payment within 120 days of the application i.e. 10% of the BSP. The complainants duly paid an amount of Rs. 6,29,905/-.

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7. That further the respondent raised demand of Haryana Value Added tax (H-VAT) amounting to Rs. 45,609/- against the allotted unit vide letter dated 11.03.2016 which was paid by the complainants on 22.03.2016.
8. That upon receipt of payments amounting to Rs 16,58,481/- as above, the respondent executed apartment buyers' agreement with the complainants on 01.01.2017 w.r.t the allotted unit, after delay of over 2 years.
9. That as per the apartment buyer agreement, the basic sale price of the allotted unit was Rs. 59,28,000/- computed on the basis of super area of 1300 square feet of the allotted unit. The total value inclusive of allied/supplemental charges, such as external development charges (EDC), infrastructure development charges (IDC), preferential location charges (PLC), car parking, club membership, power backup, registration charges and stamp duty charges, etc. as per the apartment buyer agreement was Rs. 70,23,500/-.
10. That as per clause 10 of the apartment buyer's agreement the respondent shall endeavour to complete the construction of the allotted unit within 30 months from the date of execution of the apartment buyer's agreement and further the respondent was eligible for extension/grace period of 6 months. Therefore, as per the terms of the apartment buyer's agreement the respondent was bound to deliver possession of the allotted unit on or before 01.01.2020. But the respondent has not handed over possession of the apartment to the complainants till date as no construction whatsoever has taken place on ground and the project in question has come to a standstill.
11. That after the apartment buyer agreement was executed, the respondent did not issue any demand notice as per the construction

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linked plan which substantiates the claim of the complainants that the respondent has not started construction of the allotted unit and that actual construction of the project is much behind the schedule.

12. That the respondent has already received an amount of Rs.16,58,481/- against the basic sale price of Rs. 59,28,000/- and total cost of Rs. 70,23,500/-. It means that the respondent has already received 27.98% of the basic sale price or 23.61% of the total cost of the unit from the complainants as per the agreed payment schedule, however, no corresponding development has taken place.
13. That the complainants visited the project site in January, 2020 and were shocked to see that the project is nowhere near completion. In fact, the construction activity stand still at the project site and the respondent company has no intentions to abide by the terms of delivery schedule as specified in the agreement as the due date had already elapsed.
14. That after the expiry of due date for delivery of possession the complainants made several calls to the office of the respondent company to know the status of the project. However, since the complainants did not receive any intimation or notice of possession from the respondent, they wrote an email dated 16.09.2020 seeking refund of the amount already paid along with interest.
15. That thus the complainants are demanding refund of the amount paid by them. They have suffered huge wrongful loss, enormous inconvenience, mental agony, mental torture and hardship at the hands of the respondent/promoter and its agents.

C. Relief sought by the complainants:

16. The complainants have sought following relief(s):

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- (i) Direct the respondent to refund the total amount of Rs. 16,58,481/- received by the respondent from the complainants with interest from the date of actual payment of each instalment by complainants till the date of refund of the entire amount.
- (ii) Direct the respondent to pay compensation to the tune of Rs. 5,00,000/- for mental agony, hardship, mental torture and inconvenience.
- (iii) Direct the respondent to pay cost of litigation to the complainants to the tune of Rs. 1,00,000/-.

D. Reply by respondent:

The respondent by way of written reply made following submissions:

17. At the outset in January 2015, the complainants herein, learned about the project launched by the respondent titled as 'ILD Grand Centra' 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.
18. That after having keen interest in the project constructed by the respondent, the complainants herein decided to book a unit no. 105, block GCA, type 2 BHK, super area 1300 sq. ft. for total sale consideration of Rs. 70,23,500/- in Grand Centra, sector-37C, Gurgaon, Haryana on vide application for provisional allotment dated 09.01.2015.
19. That the respondent issued a welcome letter dated 22.01.2015, to the complainants wherein the complainants were tentatively allotted flat no. GCA-105 admeasuring 1300 sq. ft. and the complainants opted for

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construction link plan facility for the above said unit and the allocation of the unit was subject to timely payments as per the payment plan to the complainants.

20. That the respondent issued a provisional allotment Letter dated 07.08.2015 to the complainants wherein provisionally allotting flat no. 105 admeasuring super area 1300 sq. ft. block/tower no. GCA, floor no. 1st in ILD Grand Centra, sector-37-C, Gurgaon, Haryana subject to final allotment letter/apartment buyer agreement and the balance payment was to be made as per the payment plan opted by the complainants. In case the payment was not received by the respondent as per the payment plan, it shall be presumed that the complainants are not interested in the booking and the tentative allotment, and the money deposited by the complainants will be return after forfeiting the earnest money.
21. That 01.01.2017, a builder buyer agreement herein referred to 'agreement was executed between the respondent and the complainants, wherein the unit bearing apartment no. 0105, 1st floor, tower- GCA having a super area admeasuring 1300 sq. ft., situated in "Grand Centra", sector-37C, Gurgaon, Haryana, was allotted to the complainants in the said project of the respondent for total sale consideration of Rs. 70,23,500/-. The complainants were aware of the project and were also satisfied with every proposal deemed necessary for the development of the project in question.
22. That time was essence in respect to the allottees obligation for making the respective payment. and, as per the agreement so signed and acknowledged the allottee was bound to make the payment of

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- installment as and when demanded by the respondent. But the complainants failed to make the said payments as per the payment plan.
23. That the project of the respondent got delayed due to reasons beyond control of the respondent. The major reason for delay for the construction and possession of project is lack of infrastructure in the said area. The twenty- four-meter sector road was not completed on time. Due to non-construction of the sector road, the respondent faces many hurdles to complete the project. For completion of road, the respondent totally dependent upon the Govt. Department/machinery and the problem is beyond the control of the respondent.
24. That the building plan has been revised on 16.06.2014 vide memo no. ZP370/AD(RA)/2014/16 date 16/06/2014 and further revised on 21.09.2015 vide memo no. ZP370/AD(RA)/2015/18145 dated 21/09/2015. The building plan has been changed for the benefit of the purchaser/allottee and due to this reason, the project got delayed.
25. 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.
26. That due to ban levied by the competent authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Despite, after

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lifting of ban by the Hon'ble Court the construction activity could not resume at full throttle due to such acute shortage.

27. That the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affected the progress of the project.
28. 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.
29. That the Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an

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acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.

30. The demonetization and new tax law i.e., GST, affected the development work of the project. In the view of the facts stated above it is submitted that the respondent has intention to complete the project soon for which the respondent is making every possible effort in the interest of allottees of the project.
31. Even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and such period shall not be added while computing the delay.
32. The Covid-19 pandemic has resulted in serious challenges for 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) recognized 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

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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.

33. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

34. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

35. 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

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

Section 11(4)(a)



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

Section 34-Functions of the Authority:

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

37. 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.
38. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** 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

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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."

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

F. Findings on the objections raised by the respondent:

F.I Objections regarding delay due to force majeure:

40. The respondent-promoter raised the contention that the construction of the project was delayed due to conditions beyond the control of the respondent/promoter such as non-construction of sector road by Government, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016 along with demonetization and new tax law i.e., GST, affected the development work of the project. First of all, the orders of High Court in the year 2012 does not have any impact on the project as the same was passed even before the apartment buyer's agreement was executed between the parties. Further, the orders banning construction and extraction of ground water were imposed for a very short duration and thus, a delay of such a long duration cannot be justified by the same. The plea regarding delay due to GST and demonetisation is also devoid



of merit and thus, all the pleas stand rejected. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Entitlement of the complainants for refund:

- (i) **Direct the respondent to refund the total amount of Rs. 16,58,481/- received by the respondent from the complainants with interest from the date of actual payment of each instalment by complainants till the date of refund of the entire amount.**

41. 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 as per section 18(1) of the Act and the same 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)

42. Clause 10 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

10. Possession of Apartment



"Subject to timely grant of all approvals, permissions, Certificates, NOC's permission to operate, full/part occupation certificate etc. and further subject to the Buyer having complied with all its obligations under the terms and conditions of this Agreement, and subject to all the buyers of the apartments in the project making timely payments including but not limited to the timely payment of the Total Sale consideration, Stamp duty and other charges, fees, IAC, Levies & Taxes or increase in Levies & Taxes, IFMSD, Escalation Charges, deposits, Additional Charges to the Developer and also subject to the Buyer having complied with all formalities or documentation as prescribed by the Developer, the Developer shall endeavor to complete the construction of the Said Apartment within 30(thirty) months from the date of execution of agreement and further extension/grace period of 6 months.."

43. The complainants had booked the unit in the project of the respondent company situated at sector 37-C for a total sale consideration of Rs. 70,23,500/-. The buyer's agreement was executed between the parties on 01.01.2017. As per possession clause 10.1 of the buyer's agreement, the possession of the unit was to be handed over by within 30 months from the date of agreement and further extension/grace period of 6 months. Therefore, the due date for handing over of possession comes out to be 01.01.2020 including the grace period of 6 months.
44. 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....."

45. 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 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."

46. 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) of the Act. 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.



47. 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.

48. **Admissibility of refund along with prescribed rate of interest:** The 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 respondent 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."

49. 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.

50. 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., 06.07.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

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51. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 16,58,481/- 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 Rules *ibid*.

(ii) Direct the respondent to pay compensation to the tune of Rs. 5,00,000/- for mental agony, hardship, mental torture and inconvenience.

(iii) Direct the respondent to pay cost of litigation to the complainants to the tune of Rs. 1,00,000/-.

52. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (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. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority:

53. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of

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obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/promoter is directed to refund the entire amount of Rs. 16,58,481/- 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-complainant.
54. Complaint stands disposed of.
55. File be consigned to the registry.

HARERA
GURUGRAM

V.I - [Signature]
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.07.2023