



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

Complaint no. :	4142 of 2022
Date of filing complaint:	17.06.2022
Order Reserve On:	13.04.2023
Order Pronounced On:	06.07.2023

Ankit Singla R/O: H. no. 112, Ward no. 12, Near Shiv Kund, Sohna, District Gurugram	Complainant
Versus	
M/s International Land Developers Pvt. Ltd. Office: 9 th Floor, ILD Trade Centre, Sector-47, Sohna Road, Gurugram-122018	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Shri Sanjay Pahuja (Advocate)	Complainant
Shri Rishabh Gupta (Advocate)	Respondent

ORDER

1. The present complaint 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 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 complainant, 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	"Arete" at Sector 33, Sohna Gurugram
2.	Nature of the project	Group Housing Colony
3.	Project area	11.6125 acres
4.	DTCP license no.	44 of 2013 dated 04.06.2013 valid up to 03.06.2019
5.	Name of licensee	International Land Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered Vide no. 06 of 2019 valid up to 02.07.2022
7.	Unit no.	1102, 11th Floor, Tower-B (page no. 22 of complaint)
8.	Unit area admeasuring (super area)	1998 sq. ft. (page no. 22 of complaint)
9.	Allotment letter	06.04.2014 (page no. 15 of complaint)
10.	Date of builder buyer agreement	08.12.2014 (page no. 19 of complaint)
11.	Possession clause	10 Possession of apartment

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		<p><i>10.1 Subject to timely grant of all approvals (including revisions thereof). permissions. certificates. NOCs, 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 48(Forty-Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months.</i></p>
12.	Due date of possession	08.06.2019 (Calculated as 48 months from date of execution of BBA plus 6 months grace period as the same is unqualified)
13.	Total sale consideration	Rs. 96,16,874/- [as per payment plan on page no. 75 of complaint]
14.	Amount paid by the complainant	Rs. 53,52,523/- [as alleged by complainant]
15.	Occupation certificate	Not obtained



16.	Offer of possession	Not offered
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B. Facts of the complaint:

3. That the complainant booked a unit in the project named "Arete" in sector 33, Sohna Gurugram by paying an advance amount of Rs. 17.95 Lacs to the respondent by submitting application form on 26.12.2013. As per terms mentioned in the said application form, the respondent had committed to offer the possession of the unit to the complainant within 4 years from the date of booking.
4. That, accordingly, the complainant was allotted a unit no. B-1102, floor - 11th tower - B, admeasuring 1998 sq. ft. for a total sale consideration of Rs. 96.16 Lacs.
5. That at the time of applying for the unit, it was informed to the complainant by the respondent that it had the complete right, title and authorization on the project, land and also had the requisite sanctions and approvals from the relevant authorities to undertake such construction. It was further informed that the project will be completed within a period of 48 months from the date of booking and the complainant will be handed over possession of the unit in question within the said time period. It was on the basis of such representations that the complainant had booked the unit and had paid the above said booking amount.
6. That after the booking of the unit, no buyer's agreement was executed though earlier it was assured that buyer's agreement will be executed within 30 days of booking.



7. That after expiry of 1 year from the date of booking, the respondent executed the buyer's agreement on 08.12.2014 in favour of the complainant.
8. That it was further represented by the respondent that development plans had also been approved and based on such approvals, the respondent is competent and entitled to execute the project. Believing such representations to be true the complainant executed the buyer's agreement dated on 08.12.2014. The respondent has cleverly and with malafide intentions has changed the date of offer of possession from 4 years from the date of booking to 4 years from the date of buyer's agreement, meaning thereby the respondent had already delayed the committed period of offer of possession from 4 years to 5 years from the date of booking and now it's almost more than 8 and ½ years and the respondent has till date not even completed the project.
9. That upon execution of the agreement, the respondent continued to issue demand letters purportedly as per the stage of construction and the complainant continued to make payments in respect of the same as evidenced by various receipts issued during the contemporary period.
10. That till date the complainant had made payment of Rs. 53,52,523/- to the respondent towards the sale consideration of the above stated booked unit.
11. That now lately receiving no status update from the respondent, the complainant started making enquiries from other allottees who were similarly situated in the project and were shocked to learn that neither did the respondent have any right in and over the land at the time of booking, nor did the respondent have requisite sanctions or approvals from the concerned authorities. As such all the representations

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provided by the respondent in terms of the buyer's agreement were found to be deceptive and false.

C. Relief sought by the complainant:

12. The complainant has sought following relief(s):

- (i) Direct the respondent to refund an amount of Rs. 53,52,523/- alongwith interest calculated at such rates as may be prescribed from the date of respective deposit till the date of actual receipt.

D. Reply by respondent/promoter:

The respondent/promoter by way of written reply made following submissions:

13. That at the outset each and every averment, statement, allegation, contention of the complainant which is contradictory and inconsistent with the reply submitted by the respondent/promoter is hereby denied and no averment, statement, allegation, contention of the complainant shall deem to be admitted save as those specifically admitted being true and correct. It is respectfully submitted that the same be treated as a specific denial of the complaint. The respondent/promoter is a leading real estate company aiming to provide state of art housing solutions to its customers and have achieved a reputation of excellence for itself in the real estate market.
14. That the present complaint, filed by the complainant, is bundle of lies and hence liable to be dismissed as it is filed on baseless grounds.
15. That the complainant herein, have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainant is



raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.

16. At the outset in 2013, the complainant herein, learned about the project launched by the respondent/promoter titled as 'Arete' (herein referred to as 'Project') and approached the respondent/promoter repeatedly to know the details of the said project. The complainant further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
17. That after having keen interest in the project constructed by the respondent/promoter the complainant herein booked a flat unit B-1102, floor-11th, tower B, admeasuring 1998 sq. ft. in the project Arete, Sector-33, Sohna Haryana.
18. That respondents issued the provisional allotment letter to the complainant on 06.04.2014, against their booking in the said project.
19. That on 08.12.2014, a builder buyer agreement (herein referred to agreement') was executed between the complainant and the respondent wherein the unit no. B-1102, tower B, on 11th floor, admeasuring 1998 sq. ft. in the project of the respondent Arete, Sector-33, Tehsil Sohna, Gurugram.
20. 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 installment as and when demanded by the respondent/promoter. The relevant clause 8 of the said agreement.
21. That the project of the respondent/promoter got delayed due to reasons beyond control of the respondent. It was further submitted that



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 the Govt. Department/machinery and the problem is beyond the control of the respondent/promoter. The aforementioned road has been recently constructed.

22. That the building plan has been revised on 16.06.2014 vide Memo No. ZP370/AD(RA)/2014/16 dated 16/06/2014 and further revised on 21.09.2015 vide Memo No. ZP370/AD(RA)/2015/18145 dated 21/09/2015. It is further submitted that the building plan has been changed for the benefit of the purchaser/allottee and due to this reason the project got delayed.
23. 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.
24. 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 lifting of ban by the Hon'ble court the construction activity could not resume at full throttle due to such acute shortage.
25. 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.

26. 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.
27. 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 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.

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28. 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/promoter has intention to complete the project soon for which they are making every possible effort in the interest of allottees of the project.
29. 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.
30. 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 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

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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.

31. After such obstacles in the construction activity and before the normalcy could resume the entire nation was hit by the World wide 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.
32. That the current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. That on 24.03.2020, the Ministry of Home Affairs, GOI vide notification bearing no. 40-3/2020-DM- I (A) recognized that entire nation was threatened with Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. Subsequently, 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. It is to note, various State Governments, including the Government of Haryana have also imposed strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities.
33. The respondent/promoter herein had been running behind the complainant for the timely payment of instalment due towards the respective unit in question. That in spite being aware of the payment schedule the complainant herein has failed to pay the instalment on time.

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34. That the respondent/promoter is committed to complete the development of the project at the earliest for which every necessary action is being taken by the respondent/promoter. It is further submitted that as the development of the project was delayed due to the reasons beyond the control of the respondent/promoter, the complainant is not entitled for compensation in any which way and the same was agreed into between the complainant and the respondent/promoter under clause 10.1, 10.2, 10.3, 10.4, and clause 18. Therefore, the complainant is not entitled for compensation for delay.
35. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent/promoter are nothing but an afterthought and a concocted story, hence, the present complaint filed by the complainant deserves to be dismissed with heavy costs. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Ld. Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
36. All other averments made in the complaint were denied in toto.
37. 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 those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

E. Jurisdiction of the authority:

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



E. I Territorial jurisdiction

39. 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

40. 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.

41. 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 complainant at a later stage.



42. 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 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."

43. 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/promoter:

F.I Objections regarding delay due to force majeure:

49. 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 complainant for refund:

(i) Direct the respondent to refund an amount of Rs. 53,52,523/- alongwith interest calculated at such rates as may be prescribed from the date of respective deposit till the date of actual receipt.

44. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him 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)

45. 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

*"10.1 Subject to timely grant of all approvals (including revisions thereof). permissions. certificates. NOCs, 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 **48 (Forty-Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months."***

46. The complainant booked a unit in the respondent's project and was allotted unit no. 1102, 11th floor in tower B vide allotment letter 06.04.2014. The BBA was executed between the parties on 08.12.2014.

A As per clause 10 of the said BBA, the possession of the unit was to be given within a period of 48 (forty-eight) months from date of execution



of the agreement along with a grace period of 6 months. Given the fact that the grace period was unqualified, the due date of possession comes out to be 08.06.2019.

47. 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....."

48. 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."

49. 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.
50. 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.
51. **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."

52. 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.
53. 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%.
54. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 53,52,523/- 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*.

H. Directions of the Authority:

55. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of 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. 53,52,523/- paid by the complainant 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.

56. Complaint stands disposed of.

57. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.07.2023

HARERA
GURUGRAM