



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

Complaint no. : 5423 of 2022
Date of complaint : 01.08.2022
Order pronounced on: 04.10.2023

1. Gaurav Mukhija
2. Sonia Mukhija
Both R/o: - J-3/19, DLF City -2,
Gurugram Haryana- 122002.

Complainants

Versus

M/s Revital Reality Private Limited.
Regd. Office at: 1114, 11th Floor,
Hemkunt Chamber, 89,
Nehru Place, New Delhi- 110019.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Dharmender Sehrawat (Advocate)
Bhriugu Dhami (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainant/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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.N.	Particulars	Details	
1.	Name of the project	"Supertech Basera" sector- 79&79B, Gurugram	
2.	Project area	12.11 area	
3.	Nature of project	Affordable Group Housing Project	
4.	RERA registered/not registered	Registered vide no. 108 of 2017 dated 24.08.2017	
5.	RERA registration valid upto	31.01.2020	
6.	RERA extension no.	14 of 2020 dated 22.06.2020	
7.	RERA extension valid upto	31.01.2021	
8.	DTPC License no.	163 of 2014 dated 12.09.2014	164 of 2014 dated 12.09.2014
	Validity status	11.09.2019	11.09.2019
	Name of licensee	Revital Reality Private Limited and others	
9.	Shop no.	0004, upper ground floor, type- shop (Page no. 14 of the complainant)	
10.	Unit measuring	346 sq. ft [super area]	
11.	Date of execution of provisional allotment letter cum buyer's agreement	29.06.2016 (Page no. 14 of the complainant)	
12.	Date of execution of memorandum of understanding	01.07.2016 (Page no. 32 of the complainant)	
13.	Possession clause	E. POSSESSION OF THE UNIT 26 The possession of the unit shall be	



		<p>given by April 2019 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Allottee/s @ Rs. 5.00/- (five rupees only) per sq. ft. of super area of the commercial unit per month for any delay in handing over possession of the unit beyond the given period plus the grace period of 6 months and up to the offer letter of possession or actual physical possession whichever is earlier. However, any delay in project execution or its possession caused due to force majeure conditions and/or any judicial pronouncement shall be excluded from the aforesaid possession period. The compensation amount will be calculated after the lapse of the grace period and shall be adjusted or paid, if the adjustment is not possible because of the complete payment made by the Allottee till such date, at the time of final account statement before possession of the unit. The penalty clause will be applicable to only those Allottees who have not booked their unit under any special/beneficial scheme of the company i.e. No EMI till offer of possession, Subvention scheme, Assured return etc and who honour their agreed payment schedule and make timely payment of due installments and additional charges as per the payment given in Allotment Letter.</p> <p>(Page no. 32 of the complaint)</p>
14.	Due date of possession	30.04.2019 (Note: - as mentioned in the possession clause)
15.	Assured return clause	C. The Developer shall pay an



		assured return of 12% p.a. on the 98% of the unit/ space to the buyer. The service tax will be charged extra as applicable. The assured return shall be paid to the buyer till offer of the possession of the unit/space. The payment shall be made through 12 (twelve) post-dated cheques issued in a year. (Page no. 34 of the complaint)
16	Total sale consideration	Rs.40,73,600/- (As per payment plan page no. 15 of the complaint)
17.	Total amount paid by the complainant	Rs.43,36,441/- (As per averment of complainant at page no. 8 of the complaint)
18.	Occupation certificate	Not yet obtained
19.	Offer of possession	Not offered
20.	Whether any amount of assured return paid as per clause C of the MOU.	The respondent paid the assured return amount till March 2020. No specific amount is mentioned.
21.	Delay in handing over possession till the date of filing of this complaint i.e., 01.08.2022	3 years 3 months and 2 days

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the representative of the respondent approached the complainants and represented that a commercial project in Sectors 79 & 79B, Gurgaon is being developed and constructed by the Respondent under the name of "Supertech Mart". The respondent with their aggressive sale strategies and advertisement of their



project compelled the complainant to book the shop/unit and to make initial payments for the said shop/unit.

- II. That the complainants agreed to buy a unit in the said project and thereafter, a provisional allotment letter was issued by the respondent in favour of the complainants on 29.06.2016 wherein its unit no. C034UGF0004/Shop#0004 was allotted for the price of Rs.40,73,600/- including IFMS, electricity charges, power backup charged but excluding tax. Thereafter the respondent and complainants had entered into memorandum of understanding dated 01.07.2016, for the allotted unit.
- III. That the MOU clearly states that when 98% of the of basic consideration of the unit is paid by them then the respondent shall pay fixed return @12% p.a. on the 98% amount received till the possession is offered. Thereafter, the complainants made the payment of the full consideration amount of Rs.43,36,441/- by 14.09.2017.
- IV. That the representatives of respondent informed and assured the complainants that the construction of the project will commence soon, and that the possession of the unit will be handed over maximum by April 2019 and did not handover the possession of the unit till date. Thus, the complainants had no option but to believe the empty promises and assurances of the respondent and its officials.
- V. Thereafter, the complainants visited the site of the said project, the complainant were shocked to see that the construction has not even begun. However, the officials of the respondent assured that



the project would be completed, and the possession would be handed over.

- VI. That the complainants time to time contacted the officials of the respondent to know the status of the construction of the project but the representative of the respondent always assured that the possession will be handed over on time without any delay and default i.e., by April 2019, further if there is any default then respondent will compensate as per the allotment letter. Further the respondent assured that assured return will also be given till the date of the possession of the unit. The complainants even requested the respondent to refund the amount, however, the respondent kept giving false hopes and assurances to the complainants.
- VII. That there has been a delay of 3 years and 3 months and the construction of the project has not even started and the complainants have no hopes from the respondent as the respondent does nothing but make excuses. It is also pertinent to note that a huge amount of **Rs.43,36,441/-** is stuck with the respondent. Further, after all these years, the respondent has also failed to get a builder buyer agreement executed between the respondent and the complainants, which clearly points out towards the ill intention of the respondent.
- VIII. That the respondent has not only delayed the possession of the unit but has also stopped paying the assured return as per the MOU. The assured return has not been paid from the month of March 2020 which is in grave violation of the MOU. An amount of **Rs.10,52,838/-** has been pending towards the assured returns and



a sum of Rs.66,558/- is pending towards the interest of unpaid assured returns @ 24% p.a.

- IX. That as huge time has been lapsed, the complainants therefore made several calls to the customer care and marketing departments to seek status of the construction, but the complainants were never provided with a satisfactory response and the respondent's officials made false and frivolous statements and gave false assurances that the construction is in full swing, and the unit shall be handed over within the agreed time.
- X. That almost a period of 3 years has lapsed from the date of possession as mentioned in the allotment letter. Despite passing of huge time the respondent had deliberately failed to handover the possession of any of the unit as promised to the complainant. From the act and conduct of respondent the complainants have constrained to file the present complaint for the refund of Rs.43,36,441/-.
- XI. That as per clause 19(4) of the 2016 the allottee is entitled to claim for compensation with interest in the event that the project is delayed.
- XII. That the complainants avert that in view of the principle of the parity the respondent is also liable to pay interest as per the Act of 2016 in case of any default on his part. They are also liable to pay pendent lite interest and further interest till date on which the amount is fully realized.
- C. Relief sought by the complainants:**
4. The complainants have sought following relief(s).



- I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest from the date of deposit till realization as per Act of 2016.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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: -
 - i. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favor of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
 - ii. That in view of the *force majeure* clause, it is clear that the occurrence of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by the respondent for completion of the project is not a delay on account of the respondent for completion of the project, stay order(s) issued by the various courts judicial and/or quasi-judicial authorities, demonetizations etc. are not a delays on account of respondent for completion of the project.
 - iii. That the buyer's agreement, the time stipulated for delivering the possession of the unit was on or before April 2019 plus a grace period of 6 months, i.e., October 2019. The delivery of a project is a dynamic process and heavily dependent on various



circumstances and contingencies. In the present case also, the respondent had endeavored to deliver the property within the stipulated time. The respondent earnestly has endeavored to deliver the properties within the stipulated period but for reasons stated in the reply could not complete the same due to reasons beyond its control.

iv. That apart from the defaults on the part of the allottee, like the complainant herein, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the respondents: -

- Shortage of labour/workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/State Government under NREGA and JNNURM Schemes;
- that such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex. The respondent cannot be held solely responsible for things that are not in control of the respondent.

v. The respondent has further submitted that the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. It is no more *res integra* that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the *negligence or malfeasance* of a party,



which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, in light of the aforementioned, it is submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the allotment letter/BBA.

- vi. It is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the demonetisation of the Indian economy, on the real estate sector. The real estate sector is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector and whereby the respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the aftereffects of demonetisation, which caused a delay in the completion of the project. The said delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.
- vii. That the possession of the said premises was proposed to be delivered by the respondent to the allottee by October 2019. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees.



Due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was/has been stopped for a considerable period day due to high rise in pollution in Delhi NCR.

- viii. That the enactment of the Act of 2016 is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect their interest in the real estate sector market. The main intention of the respondent is just to complete the project. The project is ongoing project and construction is going on.
- ix. That in today's scenario, the Central Government has also decided to help bonafide Builders to complete the stalled projects which are not constructed due to scarcity of funds. The Central Government announced Rs.25,000 Crore to help the bonafide builders for completing the stalled/unconstructed projects and deliver the homes to the homebuyers. The respondent/promoter, being a bonafide builder, has also applied for realty stress funds for its Gurgaon based projects.
- x. That compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCF. region. It would be apposite to note that the 'Basera' project was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. Similar stay orders have been passed during winter period in the preceding years as well, i.e., 2017-2018 and 2018-2019. A complete ban on construction activity at site invariably results in a long-term halt



in construction activities. As with a complete ban, the concerned labour is laid off and the travel to their native villages or look for work in other states. Thus, the resumption of work at site becomes a slow process and a steady pace of construction is realized after long period of time.

- xi. Graded response action plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-2019, These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.
- xii. That the circumstances have worsened for the respondent and the real estate sector in general. The pandemic of Covid 19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July 2020. In fact, the entire labour force employed by the respondent was forced to return to their hometowns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such, the respondent has not been able to employ the requisite labour necessary for completion of its projects.



- xiii. That the parties have duly contracted and locked their legal obligations by way of the buyer's agreement, no relief over and above the clauses of the agreement can be granted to him. The buyer's agreement duly provides that for any period of delay beyond the contracted date of offer of possession, subject to force majeure clause.
- xiv. That the project is an ongoing project and orders of refund at a time when the real-estate sector is at its lowest point, would severally prejudice the development of the project which in turn would lead to transfer of funds which are necessary for timely completion of the project. Any refund order at this stage would severally prejudice the interest of the other allottees of the project as the diversion of funds would severally impact the project development. Thus, no order of refund may be passed by this authority in lieu of the present prevailing economic crisis and to safeguard the interest of the other allottees at large.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire



Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 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."

13. 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 Objection regarding the project being delayed because of force majeure circumstances and contending to invoke the force majeure clause.

14. From the bare reading of the possession clause of the flat buyer agreement, it becomes very clear that the possession of the apartment was to be delivered by **30.04.2019**. The respondent in its reply pleaded the force majeure clause on the ground of Covid- 19. The High Court of Delhi in case no. **O.M.P (I) (COMM.) No. 88/2020 & I.As. 3696-3697/2020 title as M/S HALLIBURTON OFFSHORE SERVICES**



INC VS VEDANTA LIMITED & ANR. 29.05.2020, held that the past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself. Thus, this means that the respondent/promoter has to complete the construction of the apartment/building by 22.01.2020. The respondent/promoter has not given any reasonable explanation as to why the construction of the project is being delayed and why the possession has not been offered to the complainant/allottee by the promised/committed time. The lockdown due to pandemic in the country began on 25.03.2020. So, the contention of the respondent/promoter to invoke the force majeure clause is to be rejected as it is a well settled law that ***"No one can take benefit out of his own wrong"***. Moreover, there is nothing on record to show that the project is near completion, or the developer applied for obtaining occupation certificate. Thus, in such a situation, the plea with regard to force majeure on ground of Covid- 19 is not sustainable.

F. II Objection regarding force majeure conditions:

15. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as delay in shortage of labour, implementation of various social schemes by Government of India, demonetisation, lockdown due to covid-19 various orders passed by NGT, weather conditions in Gurugram and



non-payment of instalment by different allottees of the project. But all the pleas advanced in this regard are devoid of merit. It is observed the plea advanced cannot be taken as the complainant was never a party to said contract and thus, there was no privity of contract. Further, the respondent has taken a plea that there was a delay in construction of the project on account of NGT orders, orders by EPCA, orders by Hon'ble Supreme Court of India, etc but did not particularly specify for which period such orders has been made operative. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest from the date of deposit till realization as per Act of 2016.

16. 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 at the prescribed rate as provided under section 18(1) of the Act. Section. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other



remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

17. As per clause E (26) of the Provisionally allotment letter form provides for handing over of possession and is reproduced below: -

E Possession if the unit

26. The possession of the unit shall be given by April 2019 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Allottee/s @ Rs. 5.00/- (five rupees only) per sq. ft. of super area of the commercial unit per month for any delay in handing over possession of the unit beyond the given period plus the grace period of 6 months and up to the offer letter of possession or actual physical possession whichever is earlier. However, any delay in project execution or its possession caused due to force majeure conditions and/or any judicial pronouncement shall be excluded from the aforesaid possession period. The compensation amount will be calculated after the lapse of the grace period and shall be adjusted or paid, if the adjustment is not possible because of the complete payment made by the Allottee till such date, at the time of final account statement before possession of the unit. The penalty clause will be applicable to only those Allottees who have not booked their unit under any special/beneficial scheme of the company i.e. No EMI till offer of possession, Subvention scheme, Assured return etc and who honour their agreed payment schedule and make timely payment of due installments and additional charges as per the payment given in Allotment Letter".

18. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottees in fulfilling



formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer developer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused its dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

19. **Due date of handing over possession and admissibility of grace period:** As per clause E (26) of the provisional allotment letter, the possession of the allotted unit was supposed to be offered by the April 2019 with a grace period of 6(six) months i.e., October 2019. There is nothing on record to show that the respondent has completed the project in which the allotted unit is situated and has applied for occupation certificate by April 2019. So, in view of these facts, the developer can't be allowed grace period of 6 months more beyond April 2019 as mentioned in clause E (26) in the provisional allotment letter.
20. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the rate of interest per annum. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by her 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.

21. 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.
22. 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., 04.10.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
23. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1)**, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause E (26) of the provisional allotment agreement executed between the parties on 29.06.2016, the possession of the subject apartment was to be delivered within stipulated time period i.e., April 2019 plus 6 months grace period. The grace period of 6 months is disallowed in the present complaint for the reasons mentioned above. Therefore, the due date of handing over possession comes out to be 30.04.2019.
24. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure



of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.

25. The due date of possession as per agreement for sale as mentioned in the table above is 30.04.2019 and there is delay of 3 years 3 months and 2 days till the date of filing of the present complaint. The due date of possession as per clause E (26) of the provisional allotment letter clearly mentioned 30.04.2019. It is pertinent to mention over here that even after a passage of more than 3.3 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observed that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project.
26. Moreover, 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....."



27. 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. and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others (supra)*** 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."*

28. 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 is 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 she 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.

29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by her at the prescribed rate of



interest i.e., @ 10.75% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the authority

30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to refund the amount i.e., Rs.43,36,441/- received by it from the complainants along with interest at the rate of 10.75% p.a. 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 deposited amount.
- ii. The amount paid on account of assured return may be adjusted from the refundable amount and shall return the balance amount to the complainants.
- iii. 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.
- iv. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the



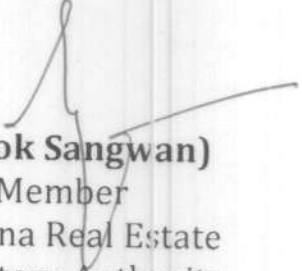
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receivables shall be first utilized for clearing dues of allottee/
complainants.

31. Complaint stands disposed of.
32. File be consigned to registry.

Dated: 04.10.2023


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



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