

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

Complaint no.: 1765 of 2022
Order reserved on: 12.10.2023
Order pronounced on: 16.11.2023

Shri Himanshu Kumar

R/o: - Kumar Kutir, 1st floor, 42-C, Gandhi Nagar, Bareilly
U.P- 243122

Complainant

Versus

1. M/s International Land Developers Private Limited.
Through its Managing Director
Regd. office at: - B-148, New Friends Colony, New Delhi –
110025
Also at: - 9th Floor, ILD Trade Centre, Sector- 47, Sohna
Road, Gurugram Haryana - 122018
2. Investors Clinic Infratech Private Limited.
Through its Managing Director
Office At: - Tapasya Corp-Heights, Floor, No.-5, E to H,
Raipur, Khadar, Sector- 126, Noida U.P.- 201301
3. Sh. Birjesh, S/o Late Satbir Singh S/o Late Munsi Ram
4. Sh. Sanjeev S/o Late Satbir S/o Late Munsi Ram
Both RR/o: - House No. 24, Village Sultanpur, Mehrauli,
Delhi - 110030
5. Mridul Dhanuka (HUF) Through its Karta Sh. Mridul
Dhanuka
6. Sh. Mridul Dhanuka Karta Mridul Dhanuka (HUF)
Both RR/o: - 95-E-2, Eastern Avenue, Sainik Farms, New
Delhi - 110062
State Bank of India (Formerly State Bank of Bikaner and
Jaipur) Through its Managing Director
Regd. Office at: - Ahimsa Bhawan, Shankar Road, New
Rajender Nagar, New Delhi
Also at: - Sector- 5, Khasra no. 2774, Shitla Mata Road,
Gurugram

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Mukal Kumar Sanwaria (Advocate)	Complainant
Shri Rishabh Gupta (Advocate)	Respondent no. 1
Shri Prajan Patel (Advocate)	Respondent No. 2
None	Respondent no. 3 to 7

ORDER

- This 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 thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. 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

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5.	Name of licensee	International Land Developers Private Limited and 2 others
6.	RERA Registered/ not registered	Registered vide no. 06 of 2019 dated 08.02.2019 valid up to 02.07.2022
7.	Unit no.	1402, 13 th Floor, Tower C (Page no. 105 of the complaint)
8.	Unit area admeasuring (super area)	1275 sq. ft. (Page no. 105 of the complaint)
9.	Allotment letter	05.04.2014 (Page no. 91 of the complaint)
10.	Date of builder buyer agreement	26.06.2014 (Page no. 103 of the complaint)
11.	Possession clause	10 Possession of apartment <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</i>

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		<i>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>
12.	Due date of possession	26.12.2018 (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.73,50,575/- [As per payment plan on page no. 168 of the complaint]
14.	Amount paid by the complainant	Rs.49,04,511/- [as alleged by complainant]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not obtained
17.	Delay in handing over the possession till date of filing complaint i.e., 11.05.2022	3 years 4 months and 15 days

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the respondents are the business of real estate development business, thus, in its usual course of business, purchase the land, enter into joint ventures, enter in collaboration agreement, enters into

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marketing and development agreements etc. with various stakeholders including but not limited to land owners.

- II. That the project namely i.e., "ARETE" is a residential colony being developed by respondents, situated in the revenue estate of village Dhunela, Sector - 33, Sohna, Gurugram, Haryana wherein the complainant had booked a unit/ flat/ floor of 1150 - 1250 sq. ft. in the said project. The Director, Town and Country Planning (DTCP), Haryana has granted licence No. 44 dated 04.06.2013 to develop and construct said residential colony in favour of the owners.
- III. That the respondent nos. 1, 3, & 4 entered into collaboration agreement with regard to the project land. And the respondent nos. 1 and 5 entered into collaboration agreement with regard to the project land.
- IV. That the respondents gave advertisement in newspapers as well as through their channel partners and showed a rosy picture about the project. The complainant relied upon the advertisements and visited the project site. The respondent representative's made promise and commitments at the time of site visit and solicit the complainant to invest their hard earned in respondent's project.
- V. That the complainant booked/registered a unit at a basis sale price of Rs.4,800/- per square foot with the respondents having tentative super area of 1150 sq. ft. to 1250 sq. ft. vide application for registration letter dated 15.12. 2013 and paid registration amount of Rs.3,00,000/- vide cheques bearing no.s 519801 amounting to Rs.1,90,000/- and 416302

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amounting to Rs.1,10,000/- both dated 15.12.2013. The receipts dated 28.12.2013 of the payment of registration amount of Rs.3,00,000/- were issued by the respondents with regard to envisaging the project and unit to be allotted to the complainant i.e., unit flat no. C - 1402, in Tower-C, in the said project.

- VI. That the respondents issued allotment letter dated 05.04.2014 to the complainant against the registration and allotment of above mentioned unit on construction linked plan for a total sale consideration of Rs.73,50,575/- being developed by the respondents. The sale price for purchase of the said unit including EDC, IDC, IFMS, PLC, CMC, car parking, maintenance charges, club membership charges etc.
- VII. That after the respondents issued covering letter dated 04.06.2014 along with apartment buyer agreement, which was executed on 26.06.2014 for the unit no. C-1402, 13th floor, in tower C admeasuring 1275 sq. ft., PLC - park facing, car parking - one lower, for a total sum of Rs.73,50,575/- inclusive of EDC and IDC as per clause 4.2 and as per clause 10.1 due date of possession within 48 months from the date of execution of the agreement and further extension/grace period of 6 months.
- VIII. That the respondent no. 7 namely State bank of Bikaner and Jaipur sanctioned the loan and issued a sanction letter dated 15.09.2014 to the complainant and loan amounting to Rs.30,00,000/- was sanctioned. Tripartite agreement was also executed but he respondents didn't

supply the copy of the same to the complainant. The respondent no. 7, also issued a loan arrangement letter dated 12.12.2014 to the complainant.

- IX. That the agreement was construction linked plan so, strict time lines has to be observed by all the parties to fulfill their liabilities as per the terms and conditions as stipulated in the agreement. Due date of possession excluding grace period of six months was 26.06.2018 and excluding grace period of six months was 26.12.2018. So, the committed date of delivery expired on 26.06.2018 and now in month of November, 2021 i.e. delay of more than 3 years from date of commitment, only 45% project is completed and construction of the unit has even not started yet thus the respondents are delaying the possession of deliberately or for reasons known best to them. Such uncalled act is leaving complainant in a lurch where he has left with no option but to be an aggrieved person/victim in the hands of the respondents.
- X. That the complainant has paid an amount of Rs.49,04,511/- i.e., nearly 68% of payment out of total consideration agreed at the time of execution of apartment buyer's agreement till date.
- XI. The complainant has suffered losses or damages by reasons false and incorrect statement or commitment made by the respondent for delivering the possession of unit within stipulated time. The said project has been abandoned by the respondent. Thus the respondents are liable

to cancel the booking of the unit and return the amount along with interest under the provisions of the Act, 2016.

C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the payment made in lieu of unit/till date amounting to Rs.49,04,511/- along with prescribed rate of interest from the date of booking of the said unit till date of realization as per provisions of Section 18 and Section 19(4) of the Act of 2016.
- ii. To award cost of these proceeding amounting to litigation charges Rs.4,00,000/- (out of which Rs.80,000/- already paid) to the complainant (or directly to his counsel) against the respondent.
- iii. To impose penalty upon the respondent as per the provisions of section 60 of the Act of 2016 for wilful default committed by him.
- iv. Direct the respondent to refund the amount collected from the complainant in lieu of interest, penalty for delayed payments under rule 21(3) of the rules 2017.
- v. To issue directions to make liable every officer concerned i.e., Director, Manager, Secretary, or any other officer of the respondents company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in section 69 of the Act of 2016 and read with rules of 2017.
- vi. To recommended criminal action against the respondent for the criminal offences of cheating, fraud and criminal breach of trust under section 420, 406, and 409 of the Indian Penal Code.

5. The present complaint was filed on 11.05.2022 in the authority. On 09.08.2022, 6.11.2022, 06.07.2023, 12.08.2023, and 12.10.2023 the counsel for the respondent no. 1 put in appearance and was directed to file the reply within 2 weeks in the registry of the Authority. However, despite specific directions and providing an opportunity of being heard, no written reply has been filed by the respondent's no. 1 and 3 to 7. Thus, keeping in view the opportunity given to the respondent's no. 1 and 3 to 7, that despite lapse of one year the respondents have failed to file the reply in the registry. Therefore, in view of order dated 16.11.2023, the defence of the respondent no. 1 was struck off. Further, respondent no. 3 to 7 failed to put in appearance before the authority and has also failed to file reply. In view of the same, the matter is proceeded ex-parte against respondent no. 3 to 7.

D. Reply by respondent no. 2

6. The respondent no. 2 by way of written reply made following submissions:-
- I. That M/s Investors Clinic Infratech Pvt. Ltd. (ICIPL) is a real estate consultancy company that works with various developers on Exclusive/Non- Exclusive basis.
 - II. That ICIPL does not accept/receive any payments from the customers/clients on behalf of the developers. All the payments are made directly in favor of the concerned developer.
 - III. That it is also worthwhile to mention that ICIPL works/worked for more than 150 (approximately) developers until date. In this regard it may be noted that ICIPL is neither a part of nor in any way connected

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with the business/decisions including but not limited to financial decisions, statutory and regulatory approvals required for a project and most importantly the payments towards the cost of the property are directly given by the concerned client in favor of the developer. It may also be noted that in case the client intends to sell the unit, the company (ICIPL) issues a NOC in favor of the client with intimation to the developer qua the factum of such issuance (of NOC).

IV. That ICIPL otherwise invests substantially in form of the salaries which are paid to the staff (both sales and back-end staff), rent of the office premises, expenses towards promotion of the project etc. In this backdrop, ICIPL only facilitates the clients who may want to invest in a particular property. The information qua a particular project is based on the literature/information brochure shared by the developers with ICIPL and ICIPL or its employees do not make any representation that may be beyond the ambit of the information provided for by the developer. At the same time it is also worthwhile to note that ICIPL does not enter into any kind of definitive documentation with the clients and the respective clients who may choose to invest in a particular property the documents that are the booking form etc. which is published/circulated/provided for by the developer.

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

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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, 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:

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)(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:

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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 complainant 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

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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 cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant.

F. I. Direct the respondent to refund the payment made in lieu of unit/till date amounting to Rs.49,04,511/- along with prescribed rate of interest from the date of booking of the said unit till date of realization as per provisions of Section 18 and Section 19(4) of the Act of 2016.

F.II Direct the respondent to refund the amount collected from the complainant in lieu of interest, penalty for delayed payments under rule 21(3) of the rules 2017.

14. 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 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,

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*till the handing over of the possession, at such rate as may be prescribed.”
(Emphasis supplied)*

15. As per clause 10 of the buyer’s agreement dated 26.06.2014 provides for handing over of possession and 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.”***

16. At the outset, it is relevant to comment on the preset possession clause of the booking form wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government /regulatory authority’s action, inaction or omission and reason beyond the control of the seller. 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 him in making payment as per the plan 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 a clause in the booking application form by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his

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right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

17. Due date of handing over possession and admissibility of grace period:

As per clause 10.1 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by June 2018. However, considering the ground in above mentioned clause of handing over possession which led to delay in completion of the project, in the present case, the grace period of 6 months is allowed.

18. Admissibility of refund along with prescribed rate of interest: The complainant is seeking refund the amount paid by him at the prescribed rate of interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by him 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

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which the State Bank of India may fix from time to time for lending to the general public.

19. 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.
20. 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., 16.11.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
21. 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 10.1 of the agreement to sell executed between the parties on 26.06.2014, the possession of the subject unit was to be delivered within a period of 48 months from the date of execution of buyer's agreement which comes out to be 26.06.2018. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 26.12.2018.
22. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to

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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.

23. The due date of possession as per agreement for sale as mentioned in the table above is **26.12.2018** and there is delay of 3 years 4 months and 15 days on the date of filing of the complaint. The authority has further, observes that even after a passage of more than 4.10 years till date neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to it and for which they have paid a considerable amount of money towards the sale consideration. It is also pertinent to mention that complainant has paid more than 66% of total consideration till 2016. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

24. 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 allottees cannot be expected

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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....."

25. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

26. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and

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regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

27. 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 complainant is entitled to refund of the entire amount paid by them 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*.

F. III To award cost of these proceeding amounting to litigation charges Rs.4,00,000/- (out of which Rs.80,000/- already paid) to the complainant (or directly to his counsel) against the respondent.

28. The complainant is seeking above mentioned 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. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be

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decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense 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 & legal expenses.

F.IV. To impose penalty upon the respondent as per the provisions of section 60 of the Act of 2016 for wilful default committed by him.

29. The project is now registered with the authority vide registration no. 06 of 2019 dated 08.02.2019, valid up to 02.07.2022. No details have been provided to haul up the respondent for violations of the provisions of section 4 of the Act, 2016.

F.V To issue directions to make liable every officer concerned i.e., Director, Manager, Secretary, or any other officer of the respondents company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in section 69 of the Act of 2016 and read with rules of 2017.

30. In the absence of particulars for proceeding under section 69 of the Act 2016, no directions can be issued.

F.VI To recommended criminal action against the respondent for the criminal offences of cheating, fraud and criminal breach of trust under section 420, 406, and 409 of the Indian Penal Code.

31. In the absence of any particulars for initiating for criminal proceedings, no direction as sought by the complainants can be issued.

H. Directions of the authority

32. 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):

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- i. The respondent/promoter is directed to refund the entire paid-up amount i.e., Rs.49,04,511/- received by it from the complainant 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 realization of the 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 full realization of the paid-up amount along with interest thereon to the complainant and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee-complainant.
33. Complaint stands disposed of.
34. File be consigned to registry.

Dated: 16.11.2023

v.1 - 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram