

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

Date of decision: 09.08.2023

NAME OF THE BUILDER		M/S IMPERIA STRUCTURE LIMITED	
PROJECT NAME		THE ESFERA	
S. No.	Case No.	Case title	Appearance
1	CR/2370/2022	Regina Ranjani Devi Gupta and Sunil Gupta V/S M/s Imperia Structures Limited	Ms. Nisha Bhalla Ms. Antra Mishra
2	CR/4282/2022	Sunil Gupta and Regina Ranjani Devi Gupta V/S M/s Imperia Structures Limited	Ms. Nisha Bhalla Ms. Antra Mishra

CORAM:

Shri Ashok Sangwan

Member

ORDER

1. This order shall dispose of the two complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, The Esfera situated at Sector-37-C, Gurugram being developed by



the same respondent/promoter i.e., M/s Imperia Structures Limited. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the amount paid along with interest.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"The Esfera" at sector 37C, Gurgaon, Haryana.
Project area DTCP License No. Name of Licensee	17 acres 64 of 2011 dated 06.07.2011 valid upto 15.07.2017 M/s Phonix Datatech Services Pvt. Ltd. and 4 others
RERA Registration	Registered vide no. 352 of 2017 issued on 17.11.2017 upto 31.12.2020
Possession Clause: 10.1. SCHEDULE FOR POSSESSION	
<i>"The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3, and clause 41 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in annexure C or as per the demands raised by the developer from time to time or any failure on the part of the allottee to abide by all or any of the terms or conditions of this agreement."</i>	
Occupation Certificate: Not obtained	

Sr. No	Complain t No., Case Title, and Date of filing of	Date of apartme nt buyer agreeme nt	Unit No.	Unit adme asurin g	Due date of Possessi on	Total Sale Conside ration / Total Amount	Relief Sought
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	complaint					paid by the complainant	
1.	CR/2370/2022 Ratan Sikchi and Sarita Sikchi V/S M/s Imperia Structures Limited DOF: 03.06.2022 Reply Status: 15.03.2023	06.06.2013	1401, 14th Floor, Block C (page no. 38 of the complaint)	1650 sq. ft.	06.12.2016	TSC: - Rs. 80,42,215/- AP: - Rs. 64,25,790/-	Refund
2.	CR/4282/2022 Sudesh Gupta and Naresh Kumar Gupta V/S M/s Imperia Structures Limited DOF: 13.06.2022 Reply Status:	06.10.2014	203, 2nd Floor, Block B (page no. 19 of the complaint)	2400 sq. ft.	06.04.2018	TSC: - Rs. 1,33,65,326/- AP: Rs. 39,82,387/- (as per SOA on page no. 13 of reply) (as per receipts annexed with complaint)	Refund



	15.03.2022 3						
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:
Abbreviation Full form
TSC Total Sale consideration
AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking refund of the amount paid along with interest.
 5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
 6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/2370/2022 Ratan Sikchi and Sarita Sikchi V/S M/s Imperia Structures Limited** are being taken into consideration for determining the rights of the allottee(s) qua refund.
- A. Project and unit related details**
7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

**CR/2370/2022 Ratan Sikchi and Sarita Sikchi V/S M/s Imperia
Structures Limited**

S. N.	Particulars	Details
1.	Name of the project	"The Esfera" Phase II at sector 37-C, Gurgaon, Haryana
2.	Nature of the project	Group Housing Complex
3.	Project area	17 acres
4.	DTCP license no. and validity status	64 of 2011 dated 06.07.2011 valid upto 15.07.2017
5.	Name of licensee	M/s Phonix Datatech Services Pvt Ltd and 4 others
6.	RERA Registered/ not registered	Registered vide no. 352 of 2017 issued on 17.11.2017 up to 31.12.2020
8.	Unit no.	1401, 14th Floor, Block C (page no. 38 of complaint)
9.	Unit area admeasuring	1650 sq. ft. (page no. 38 of complaint)
10.	Allotment Letter	01.03.2012 (page no. 26 of complaint)
11.	Date of builder buyer agreement	06.06.2013 [page no. 32 of complaint]
12.	Due date of possession	06.12.2016 [calculated as per possession clause]
13.	Possession clause	10.1. SCHEDULE FOR POSSESSION



		<p>“The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3, and clause 41 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in annexure C or as per the demands raised by the developer from time to time or any failure on the part of the allottee to abide by all or any of the terms or conditions of this agreement.”</p>
14.	Letter of refund by complainants	18.04.2022 (page no. 85 of complaint)
15.	Total sale consideration	Rs. 80,42,215/- [as per the statement of account on page no. 13 of reply]
16.	Amount paid by the complainants	Rs. 64,25,790/- [as per the statement of account on page no. 13 of reply]
17.	Offer for fit out	11.08.2021 (page no. 82 of complaint)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

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B. Facts of the complaint

The complainants have made the following submissions in the complaint: -

20. That complainants after believing the statement of the representative of respondent booked a unit on 24.09.2011 and paid a booking amount of Rs. 2,00,000/-.
21. That thereafter, a letter dated 01.03.2012 was issued by the respondent in favor of the complainants whereby a residential unit bearing no. C-1401 in Tower C admeasuring 1650 sq. ft. super area in the said project (hereinafter "the said unit") was allotted to the complainants.
22. That however contrary to the aforesaid representations and promises, the respondent unjustifiably and unreasonably delayed in delivering a copy of the buyer's agreement to the complainants for reasons best known to it. Eventually a copy of buyer's agreement was provided to the complainants after a delay of almost 18 months from the date of the allotment. The total sale consideration for the said unit had been quantified at Rs. 73,62,500/-. The respondent had obtained an amount of Rs. 20,00,116/- from the complainants much before providing a copy of the buyer's agreement to them.
23. That the complainants, after perusing the said buyer's agreement, were shocked and dismayed upon realizing that the respondent has surreptitiously incorporated various terms and conditions therein which were not intimated to the complainants at the time of receiving the booking amount from them.
24. That the respondent had unilaterally modified the total sale consideration determined at the time of booking of the unit in question by incorporating



clauses 1.2 in the buyer's agreement. In terms of the aforesaid clauses, the respondent has sought to charge "escalation charges" from the complainants. These terms were never intimated to complainants at the time of receiving the booking amount nor at any time thereafter.

25. That in clause 1.5 the respondent has unlawfully and unauthorizedly charged an amount of Rs. 1,65,000/- on the pretext of PLC (preferential location charges) against "club". It needs to be highlighted that the said amount was supposed to be levied on the units which were park facing and the same had been expressly admitted by the respondent vide its letter dated 01.03.2012, referred to above. The respondent has collected additional amount of Rs. 6,18,750/- towards Development Charges without even informing the complainants about the scope of the said amount. Furthermore, the respondent had collected an amount of Rs. 1,00,000/- towards membership of the club.
26. That in clause 4 of the buyer's agreement the respondent has wrongly and illegally quantified earnest money at 15% of the basic sale price. The said clause of the buyer's agreement is completely whimsical, absolutely unlawful and completely illogical. It is trite that earnest money cannot be more than 10% of the basic sale price.
27. That there are stark incongruities in the buyer's agreement between the remedies available to the complainants and the respondent thereunder. The respondent has reserved unrestricted rights to cancel the allotment of the unit in question and forfeit the amount paid by the complainants even at slightest of omissions by the complainants. The said clauses unambiguously establish the abuse of its dominant position by the respondent.

28. That the force majeure clause has been made applicable only to the respondent and not to the complainants for unintended delays in remittance of the installments due to reasons beyond the control of complainants. The bias and inequality in the rights and obligations of the parties is manifest from the perusal of the aforesaid clause.
29. That, furthermore, the respondent had sought to levy sweeping taxes and charges on the allottees including the complainants. The respondent has levied taxes and charges on pro rata basis calculated on the basis of "super area" which is illegal, arbitrary and unjust in light of the fact that the right and ownership of the common area has been retained by the respondent.
30. That, furthermore, the respondent had unilaterally extended the timeline for delivery of possession of the said unit to the complainants in terms of clause 10.1. The respondent, at the time of obtaining the booking amount from the complainants, had promised and assured the complainants that possession of the unit in question would be delivered to the complainants within 3 years. The respondent had clandestinely and cleverly modified the time period to be three and a half year from the date of execution of the buyer's agreement in order to utilize the money collected from the complainants for its own purposes.
31. That the complainants accordingly raised objections against the aforesaid clauses incorporated in the buyer's agreement, but the respondent did not pay any heed to the legitimate, fair and just demands of the complainants and threatened the complainants with cancellation of the allotment of the said unit if they fail to execute the buyer's agreement. The respondent upto this point in time had demanded and collected an amount of Rs. 20,00,116/- from the complainants. As a result, the complainants had no



choice but to go ahead and execute the apartment buyer's agreement on 06.06.2013.

32. That in terms of clause 10.1 of the buyer's agreement the due date for delivery of possession of the said unit was December, 2016. But the respondent failed to offer possession of the said unit to the complainants within the stipulated period.
33. That the complainants, after passing of the due date for delivery of possession of the said unit, have visited the office of the respondent on various occasions and have requested the respondent's officials' multiple times to disclose the exact status of the construction of the said project but to no avail. The complainants have till date made payment of total sum of Rs. 64,25,790/- to the respondent.
34. That after receipt of the amounts, referred to above, the respondent wantonly stopped communicating with the complainants. No demand letter or any other communication was addressed by the respondent to the complainants after the year 2017. The complainants kept on requesting the respondent to disclose the status of construction. However, the respondent kept on evading the requests of the complainants on one pretext or the other.
35. That it is submitted that the construction of the said project is far from completion. In fact, no construction activity has been performed at the project site from 2017. The complainants have been defrauded and left in lurch on account of the deceitful conduct adopted by the respondent. Moreover, the project is devoid of the basic amenities till date.

C. Relief sought by the complainants: -

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

- I. Direct the respondent to refund the amount of RS. 64,25,790 alongwith interest at the prescribed rate calculated from the date of receipt of the respective instalments by the respondent till the date of remittance of the same to the complainants.
- II. Direct the respondent to pay an amount of Rs. 1,00,000/- towards cost of litigation.

37. 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

The respondent has contested the complaint on the following grounds.

38. That the complainants, after making independent enquiries and only after being fully satisfied about the project, had approached the respondent company for booking of a residential unit in respondent's project "The Esfera" located in sector-37-C, Gurugram, Haryana. The respondent company provisionally allotted the unit bearing no. Tower C 1401 in favor of them for a total consideration amount of Rs. 80,42,215/- including applicable tax and additional miscellaneous charges vide booking dated 24.09.2011 and opted the construction-linked payment plan on the terms and conditions mutually agreed by them.
39. That the respondent company had successfully completed the construction of the said project, way before the agreed timeline, and has applied to the competent authority for issuance of occupancy certificate on 15.04.2021 itself, after complying with all the requisite formalities, and the same is awaited to be procured anytime now between month of March to May.

40. That consequently respondent company entered into builder buyer agreement dated 06.06.2013 with the complainants in interest of the booked unit. The BBA duly covers all the liabilities and rights pertaining to both the parties involved. That the complainants haven't approached this authority with clean hands or with bonafide intentions and the same is depicted in their actions as they have not paid the outstanding instalments in time and it must be noted that till this day a large sum of amount is pending to be paid by the complainants, despite numerous reminders which were issued to the complainants by the respondent company.
41. That payment of consideration amount as and when asked for is a necessary consideration and obligation which was supposed to be fulfilled by the complainants. The BBA executed between the parties have clearly depicted the intention of the respondent company with respect to schedule of payment.
42. That the terms of the BBA were agreed to and signed by the complainants and, as such, the parties are bound by the terms and conditions mentioned in the said agreement. As per the clause of the BBA entered between the parties, time was agreed to be a matter of essence in the BBA and the allottees were bound to make timely payments of the installments due as per the payment plan opted by the complainants. The said BBA was duly acknowledged by the complainants after completely and thoroughly understanding each and every clause therein. The complainants were neither coerced nor influenced by the respondent company to sign the said BBA. It was the complainants who voluntarily and knowingly breached the provisions of the said agreement.

43. That despite numerous reminders, the complainants failed to comply by the obligations laid down by the BBA they willingly entered into. Herein it is pertinent to mention that an exorbitant sum of Rs. 16,02,709/- is still due to be paid by the complainants.
44. That it is a trite law that the terms of the BBA are binding between the parties. The Hon'ble Supreme Court of India in the case of Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704 observed that a person who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. It is has been observed that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract. Thus, it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the signed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.
45. That the Hon'ble Apex Court, in the case of Bihar State Electricity Board, Patna and Ors. Vs. Green Rubber Industries and Ors. AIR (1990) SC 699 held that a person who signs a document, which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect.
46. That the complainants have not approached this Hon'ble Authority with clean hands. It is submitted that the complainants are attempting to raise non-issues in order to acquire benefits for which the complainants are not entitled in the least.

47. That the default of the complainants in paying the outstanding amount and honoring the payment plan, in addition to default in payment by various other buyers in the said project, the respondent company has incurred huge losses/damages. on account of the breach of the terms of the agreement by the complainants, and other buyers in the said project, the respondent company had no option left but to resort to availing a last mile funding of Rs.99 crores from SWAMIH Investment Fund-I. The said Alternate Investment Fund (AIF) was established under the Special Window by the Hon'ble Finance Minister to provide priority debt financing for the completion of stalled, brown field, RERA registered residential developments that are in the affordable housing /mid-income category, are net-worth positive and require last mile funding to complete construction. After long overdue application to the said policy, the respondent company was finally granted a sanction on 23.09.2020. It is pertinent to mention that this act of the respondent company depicts the will and bona fide intention of completing the said project and delivering their duties.
48. That it must be brought to light that despite the obstructions and impediments faced in completion of the said project, the respondent company had completed the construction and development of the said project way before the agreed timeline and has already applied to the competent authority on 15.04.2021 for the issuance of occupancy certificate after complying with all the requisite formalities.
49. That the terms under buyer's agreement delineates the respective obligations of the complainants as well as of the respondent as an aftermath of breach of any of the conditions specified therein.

50. That this provision was also confirmed and agreed to by the complainants, who are now attempting to put on an innocent facade to escape their responsibilities and liabilities. This complaint has been made to injure and damage the interest and reputation of the respondent and that of the said project. Therefore, the instant complaint is liable to be dismissed in limine.
51. That delay was caused in completion of construction of the said project due to certain unforeseeable circumstances.
52. Firstly, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court directed a ban on construction activities in the said region from November 4, 2019 onwards, which was a huge hurdle to realty developers in the city. The Air Quality Index (AQI) at the time was running as high as 900 PM, which is severely unsafe for the health. Later, in furtherance of declaration of the AQI levels as 'not severe' by the Central Pollution Control Board (CPCB), the Hon'ble Supreme Court lifted the ban conditionally on December 9, 2019, allowing construction activities to be carried out between 6 a.m. and 6 p.m. and consequently, the complete ban was lifted by the Hon'ble Supreme Court on 14th February, 2020. It is submitted that this had caused the project to be delayed and thus, there was a delay in application for Occupancy Certificate. Secondly, when the complete ban was lifted on 14.02.2020, the Government of India imposed National Lockdown on 24.03.2020 due to pandemic COVID-19, and later lifted the lockdown, conditionally, on 17.05.2020. It must be pertinent to mention herein that the pandemic COVID-19 has caused immense delay and obstruction to the construction of the building, as the procurement of labour and raw material proved to be highly challenging. The whole



situation led to a reverse migration of workers, who left cities and returned back to their villages, for safety of themselves and their families. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers are stuck in relief camps.

53. The aftermath of lockdown or post lockdown periods have left great impact on the realty sector for resuming their respective constructions. Thus, causing delay in the completion of the said project, which was already hampered by the non-payment of outstanding dues by numerous allottees, including the complainants.

54. That the respondent company had allotted the unit to the complainants at the price prevalent in the market on the assurance that the complainants will make timely payments and honor the terms of the BBA. However, the complainants defaulted in making payment despite several opportunities given by the respondent company to complete the payment and thus, the respondent company could not allot the said unit to any third party, who was willing to book the said unit at a higher price. The complainants have caused the respondent company to incur loss of opportunity & cost, and are thus, liable to indemnify the respondent company towards the same. It is no longer a res integra that failure on the part of the complainants to perform their contractual obligations disentitles them from any relief. It is a well settled proposition of law that the courts cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract leaving the responsibility of the court to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract rather than metamorphosing the nature of the contract.

Thereafter, the complainants are not entitled to get any relief, as has been sought for in this complaint.

55. 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 submission made by the parties.

E. Jurisdiction of the authority

56. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

57. 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

58. 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.

59. 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.

F. Findings on the objection raised by respondent:

F.I Objection regarding force majeure conditions:

60. 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 orders of the NGT, High Court and Supreme Court, demonetisation, govt. schemes and non-payment of instalment by different allottee of the project but all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 06.12.2016. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. 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. Findings on the relief sought by the complainants

- I. Direct the respondent to refund the amount of Rs. 64,25,790/- alongwith interest at the prescribed rate calculated from the date of receipt of the respective instalments by the respondent till the date of remittance of the same to the complainants.
61. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

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

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

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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

(Emphasis supplied)

62. Clause 10.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

10.1.

*The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the **construction of the***

said building/said apartment within a period of three and half years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3, and clause 41 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in annexure C or as per the demands raised by the developer from time to time or any failure on the part of the allottee to abide by all or any of the terms or conditions of this agreement."

63. The complainants had booked the unit in the project of the respondent company situated at sector 37-C for a total sale consideration of Rs. 80,42,215/-. The buyer's agreement was executed between the parties on 06.06.2013. As per possession clause 10.1 of the buyer's agreement, the possession of the unit was to be handed over within a period of three and half years from the date of execution of agreement. The due date for handing over of possession comes out to be 06.12.2016.
64. 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....."

65. 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.”

66. 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.
67. 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.

68. 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.”

69. 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.

70. 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., 09.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

71. The authority hereby directs the promoter to return the amount received by them i.e., Rs. 64,25,790/- with interest at the rate of 10.75% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment

till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.

II. Award a cost of Rs. 10,00,000/- towards litigation expenses in favour off the complainants.

72. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

73. 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/promoter is directed to refund the entire amount paid by the complainants in all the above-mentioned cases along with prescribed rate of interest @ 10.75% 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.
74. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
75. The complaints stand disposed of.
76. Files be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2023

HARERA
GURUGRAM