

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

Date of decision: 20.09.2023

<b>NAME OF THE BUILDER</b>		<b>RAMPRASTHA PROMOTERS AND DEVELOPERS PRIVATE LIMITED.</b>	
<b>PROJECT NAME</b>		<b>THE SKYZ</b>	
<b>S. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>APPEARANCE</b>
1	CR/6713/2022	Dr. Vikas Taneja V/S M/s Ramprastha Promoter & Developers Private Limited	K.K Jain Advocate for the complainant R. Gayatri Mansa for the respondent
2	CR/6714/2022	Vishal Taneja V/S M/s Ramprastha Promoter & Developers Private Limited	K.K Jain Advocate for the complainant R. Gayatri Mansa for the respondent

**CORAM:**

Ashok Sangwan

Member

**ORDER**

1. This order shall dispose of the 2 complaints titled as above filed before this authority in form CRA 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 Skyz at Ramprastha City (group housing complex) being developed by the same respondent/promoter i.e., M/s Ramprastha Promoter & Developers Private Limited. The terms and conditions of the buyer's agreements fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.
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	Ramprastha Promoters and Developers Limited "The Skyz" Sector-37C, Village Gadauli Kalan, Gurugram.
<p><b>Possession Clause: - 15. (a) Time of handing over the Possession</b></p> <p><i>"Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over the possession of the Apartment by 31.08.2014 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."</i></p> <p style="text-align: right;"><b>(Emphasis supplied)</b></p>	
<p><b>Occupation certificate: -</b></p> <ul style="list-style-type: none"> <li>➤ OC received dated 13.12.2017 for towers/block- U, V, W, X, Y, Z for ground to 13<sup>th</sup> floor.</li> <li>➤ OC received dated 13.02.2018 for tower/block- I, J, K, L, M for ground floor to 19<sup>th</sup> floor and basement-1 (73568.049 sq. meter.)</li> </ul>	



- OC received dated 13.02.2020 for towers/block- H, N, O for ground floor and 19<sup>th</sup> floor and convenient shopping centre (block-B) and basement- B.

**Note:** Grace period is not included while computing due date of possession.

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of apartment buyer agreement	Due date of possession	Total Consideration / Total Amount paid by the complainants	Relief Sought
1.	CR/6713/2022 Dr. Vikas Taneja V/S M/s Ramprastha Promoter & Developers Private Limited.  Date of Filing of complaint 11.10.2022	Reply Received on 24.01.2023	1002, 10 <sup>th</sup> floor, tower /block -H (Page no. 29 of the complaint)	24.10.2011 (Page no. 25 of the complaint)	31.08.2014 [As per mentioned in the buyer's agreement]	Total Sale Consideration: - Rs.79,57,568/- Amount Paid: - RS.66,88,875/-	Refund the entire amount along with interest  Compensation  Pay interest paid by him to bank
2.	CR/6714/2022 Vishal Taneja V/S M/s Ramprastha Promoter & Developers Private Limited.  Date of Filing of complaint 11.10.2022	Reply Received on 24.01.2023	1003, 10 <sup>th</sup> floor, tower /block -H (Page no. 27 of the complaint)	24.10.2011 (Page no. 23 of the complaint)	31.08.2014 [As per mentioned in the buyer's agreement]	Total Sale Consideration: - Rs.79,57,568/- Amount Paid: - RS.66,88,875/-	Refund the entire amount along with interest  Compensation  Pay interest paid by him to bank

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
  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 also similar. Out of the above-mentioned case, the particulars of lead case **CR/6713/2022 Dr. Vikas Taneja V/S M/s Ramprastha Promoter and Developers Private Limited.** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.
- 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/6713/2022 Dr. Vikas Taneja V/S M/s Ramprastha Promoter and Developers Private Limited.**

S. N.	Particulars	Details
1.	Name of the project	"SKYZ", Sector 37C, Village Gadauli Kalan, Gurugram
2.	Project area	60.5112 acres



3.	Registered area	102000 sq. mt.	
4.	Nature of the project	Group housing complex	
5.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid upto 18.02.2025	
6.	Name of licensee	Ramprastha Builders Pvt. Ltd. and 11 others	
7.	Date of approval of building plans	12.04.2012 [As per information obtained by planning branch]	
8.	Date of environment clearances	21.01.2010 [As per information obtained by planning branch]	
9.	RERA Registered/ not registered	<b>Registered vide no. 320 of 2017 dated 17.10.2017</b>	
10.	RERA registration valid up to	31.03.2019	
11.	Extension applied on	26.03.2019	
12.	Extension certificate no.	<b>Date</b>	<b>Validity</b>
		<b>HARERA/GGM/REP/RC/320/2017/EXT/122/2019</b> In principal approval on 12.06.2019	30.03.2020
13.	Unit no.	1002, 10 <sup>th</sup> floor, tower/block-H (Page no. 29 of the complaint)	
14.	Unit area admeasuring (super area)	2025 sq. ft. (Page no. 29 of the complaint)	
15.	Date of execution of apartment agreement buyer	24.10.2011 (Page no. 25 of the complaint)	
16.	Possession clause	<b>15. POSSESSION</b> <b>(a) Time of handing over the Possession</b> Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the	



		<p>Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over <i>the possession of the Apartment by 31.08.2014</i> the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</p> <p><b>(Emphasis supplied)</b> (Page no. 38 of the complaint)</p>
17.	Due date of possession	31.08.2014 [As per mentioned in the buyer's agreement]
18.	Grace period	Not utilized
19.	Total sale consideration	Rs.79,57,568/- (page 29 of the complaint)
20.	Amount paid by the complainant	Rs.66,88,875/- (as alleged by complainant on page 19 of the complaint)
21.	Payment plan	Construction linked payment plan
22.	Occupation certificate /Completion certificate	Not yet received
23.	Offer of possession	Not offered
24.	Delay in handing over the possession till date of filing complaint i.e., 11.10.2022	8 years 01 months and 11 days

**B. Facts of the complaint**

8. The complainant has made the following submissions in the complaint: -
- I. That believing upon the assurances and promises made by the representatives of the respondent, the complainant booked a flat bearing no. H-1002 admeasuring 2025 sq. ft. super area in the project named "SKYZ" at Sector-37D, Gurugram, Haryana on 21.05.2011. Thereafter, an apartment buyer agreement was executed inter se the parties on 24.10.2011 for a total sale consideration of Rs.79,57,568/-and has paid an amount of Rs.66,88,875/- to the respondent as per its demands raised by the it.
  - II. That at the time of receiving the above said amount from the complainant, the officials of the respondent duly assured the complainant that the respondent would deliver the physical possession of the above mentioned flat by 31.08.2014. However, the respondent has miserably failed to handover the physical possession of the flat as agreed by the respondent. Further, the respondent did not adjust the penalty charges for the delayed possession for the said unit as per agreed terms and conditions.
  - III. That the project was construction linked and timely delivery of the project was the essence and decisive factor for the complainant at the time of booking the unit in the project. There is absolutely no definite answer/clarity from the respondent.
  - IV. That till date, the complainant is running pillar to post from 2014 onwards in order to get his unit but till date neither the respondent has delivered the unit, nor it has refunded any money.
  - V. That the respondent intentionally and wilfully wanted to usurp the hard-earned money of the complainant in an unlawful and illegal manner and

due to above said act and conduct on the part of the respondent, the complainant has suffered a huge economic loss, mental pain, agony.

- VI. That the complainant visited the site where the project to be developed by the respondent and was shocked to see that the construction work was not going on at the project site and the complainant is sure that the respondent will not be able to deliver the possession of flat in near future.
- VII. That in view of the delay in giving possession to the complainant, he is seeking refund of the entire amounts paid to the respondent in respect of the above said unit/space along with interest @24% per annum from the date of deposit till the realization of the amount along with penalty amount and towards mental harassment and agony caused by the respondent i.e. Rs.10,00,000/-and refund of Rs.30,00,000/- paid as interest amount to HDFC bank towards loan procured for the said property alongwith provision of compound interest over the said interest amount.

**C. Relief sought by the complainant: -**

9. The complainants have sought following relief(s)
- Direct the respondent to refund the paid-up amount along with the interest as per provision of section 18 of the Act, 2016 read with the rules of 2017.
  - To award the cost of Rs.15,00,000/- towards compensation, mental agony and litigation charges.
  - To pay the interest paid by the complainant to HDFC bank for the loan taken.
10. 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**

11. The respondent filed an application for rejection of complaint on the ground of jurisdiction along with reply. The respondent has contested the complaint on the following grounds.
- i. That the complainant having full knowledge of the uncertainties involved have out of their own will and accord have decided to invest in the present futuristic project of the respondent. Therefore, the complainant cannot be said to be genuine consumers by any standards rather he is a mere investor in the futuristic project of the respondent.
  - ii. That the complainant has deliberately failed to make the timely payment of installments within the time prescribed, which resulted in delay payment charges/interest. Further, the complainant cannot now suddenly show up and thoughtlessly file a complaint against the respondent on its own whims and fancies by putting the interest of the builder and the several other genuine allottees at stake. It is submitted that the respondent had to bear with the losses and extra costs owing due to delay of payment of installments on the part of the complainants for which they are solely liable.
  - iii. That further the reasons for delay are solely attributable to the regulatory process for approval of layout which is within the purview of the Town and Country Planning Department. Further, the complainant had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking dated 2011 was made by him towards a future potential project of the respondent and hence there was no question of handover of possession within any fixed time period as falsely claimed by him.

- iv. That there are various reasons which are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages, spread of covid-19 pandemic etc.
- v. That the respondent has applied for the mandatory registration of the project with the RERA Authority and has successfully received Registration Certificate No. 320 of 2017 and further has received an extension for completion and development of the project up till 31.12.2023 vide Memo no. 320 of 2017/7(3)/2021/4 dated 20.08.2021 for the project "SKYZ".
- vi. That the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed much prior to coming into force of said Act or said Rules.
- vii. That the complainant must consider that claims if allowed at this stage would not only stall the project but the consequences shall be irreparable and irreversible in terms of the interest of all homebuyers of the project.
- viii. That the relief sought by the complainant to the extent of seeking interest @24% p.a. on the amounts deposited is not legally maintainable and thus is liable to be set aside at the threshold.

**E. Jurisdiction of the authority**

12. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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**

13. 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**

14. 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.

15. 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.

16. 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. (Supra) 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."*

17. 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 objections raised by the respondent**

**F. I Objections regarding the complainant being investors.**

18. The respondent has taken a stand that the complainant is an investor and not consumer and therefore, they are not entitled to the protection of the



Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and paid total price of **Rs.66,88,875/-** to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

19. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is an allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be

“promoter” and “allottee” and there cannot be a party having a status of “investor”. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

**F. II Objection regarding jurisdiction of authority w.r.t. buyer’s agreement executed prior to coming into force of the Act.**

20. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer’s agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others, (Supra)* which provides as under:

“119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement

*for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....*

122. *We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

21. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

22. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance



with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature. Further, as per submissions made by the parties as well as documents available on record it is evident that OC/CC has not been issued to the project in question by the competent authority till date. Therefore, the project will be treated as an ongoing project as per section 3 of the Act of 2016 and the provisions of the act as well as rules are duly applicable on it. The same view has also been upheld by the Hon'ble Appellate Tribunal in case titled as *Emmar MGF Land Ltd. Vs. Ms. Simmi Sikka and Ors. (Appeal no. 52 & 64 of 2018) dated 03.11.2020*. Hence, in view of the same, objection w.r.t to jurisdiction of the authority stands rejected.

**G. Findings on the relief sought by the complainant**

**G.1 Direct the respondent to refund the paid-up amount along with prescribed rate of interest.**

23. 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.

Sec. 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)*

24. Clause 15(a) of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

**"15. POSSESSION**

**(a). Time of handing over the possession**

*Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over **the possession of the Apartment by 31/08/2014** the Allottee agrees and understands that RAMPRASTHA shall be entitled to a **grace period of hundred and twenty days (120) days**, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."*

25. The authority has gone through the possession clause and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.
26. 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 complainants not being in default under any provisions of these



agreements 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 allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's 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 his 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.

27. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 31.08.2014 and further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the promoter in the apartment buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 120 days cannot be allowed to the promoter at this stage.
28. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund of the amount paid by him at the prescribed

rate of interest 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.*

29. 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.
30. 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., 20.09.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
31. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 15(a) of the agreement executed between the parties on 24.10.2011, the possession of the subject apartment was to be delivered within stipulated time i.e., by 31.08.2014. As far as grace period is concerned, the same is disallowed for the reasons

quoted above. Therefore, the due date of handing over possession is 31.08.2014.

32. Keeping in view the fact that the complainant/allottee 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.
33. 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....."*

34. Further, 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. 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."*

35. 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). 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 he 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.
36. 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 him 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*.

**G. II To award a cost of Rs.15,00,000/- towards compensation, mental agony and litigation charges.**

37. 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 and litigation charges 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 and 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 and legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**G. III To pay the interest paid by the complainant to HDFC bank for the loan taken.**

38. The complainant is seeking refund of the interest paid by him to the HDFC Bank on the loan taken for purchasing the unit in question. However, the complainant has not placed even a single document on record vide which it can be determined that there is a privy of contract between the parties vide which the respondent is under an obligation to pay interest of the loan amount taken by him for purchasing the said unit. Hence, no relief can be granted in this regard due to lack of documents on record, thus no direction to this effect.

**H. Directions of the authority**

39. 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 amount received by it from each of the complainant(s) 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. 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/builder is directed not to create third party right against the unit before full realization of the amount paid by the complainant(s). If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant/allottees.
40. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
41. The complaints stand disposed of.
42. Files be consigned to registry.

  
**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.09.2023