

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

Order reserved on : 10.05.2023

Date of pronouncement: 23.08.2023

NAME OF THE BUILDER		M/S ORRIS INFRASTRUCTURE PVT. LTD.	
PROJECT NAME		FLOREAL TOWERS	
S. No.	Case No.	Case title	APPEARANCE
1	CR/6415/2022	Rohit Yadav V/s Orris Infrastructures Pvt. Ltd.	Shri Amit Chahal Smt. Charu Rustagi
2	CR/6625/2022	Shakunt Yadav V/s Orris Infrastructures Pvt. Ltd.	Shri Amit Chahal Smt. Charu Rustagi

**CORAM:**

Shri Ashok Sangwan

**Member****APPEARANCE:**

Shri Amit Chahal

Counsel for the complainant

Ms. Charu Rustagi

Counsel for the respondent

**ORDER**

1. This order shall dispose of both the 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 in the above referred matters are allottees of the project, namely, "Floreal Towers" (commercial colony) being developed by the same respondent/promoter i.e., M/s Orris Infrastructure Pvt. Ltd. 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 award of refund the entire amount along with interest at the prescribed rate and unpaid amount of assured return alongwith compensation.
3. The details of the complaints, reply to 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	M/S ORRIS INFRASTRUCTURE PVT. LTD. "Floreal Towers" situated at Sector 83, Gurugram, Haryana
<b>11A. Schedule for Possession of the said Unit</b>	
The company based on its present plans and estimates and subject to all just exceptions, contemplates to hand over the possession of the building/ said unit <b>within the period of 36 months from the date of execution of the space buyer's agreement</b> by the company unless there shall be delay or there shall be failure due to reasons mentioned in clauses (13.1). (13.2). (11.3) and clause (35) or due to failure of allottee(s) to pay in time the price of the said unit along with all other charges and dues in accordance with the schedule of payments given in annexure B or as per the	

demands raised by the company from time to time or any failure on the part of the allottee(s) to abide by any terms or conditions of this space buyer's agreement."

**(Emphasis supplied)**

**Occupation certificate: - 16.08.2017 [annexure R1, page 17 of reply]**

Sno.	Complaint No. & Case Title	CR/6415/2022 Rohit Yadav V/s Orris Infrastructures Pvt. Ltd.	CR/6625/2022 Shakunt Yadav V/s Orris Infrastructures Pvt. Ltd.
1.	<b>Reply status</b>	Reply received on 05.01.2023	Reply received on 05.01.2023
2.	<b>Unit no. and size</b>	<b>721 &amp; 722, 7<sup>th</sup> floor, tower A measuring 1000 sq. ft.</b> [Annexure C2, pg. 69 of complaint] <b>[Note: Tower changed from Tower 'B' to 'A' vide letter dated 19.07.2018, page 21 of reply]</b>	<b>723 &amp; 724, 7<sup>th</sup> floor, tower A measuring 1000 sq. ft.</b> [Annexure C2, pg. 61 of complaint] <b>[Note: Tower changed from Tower 'B' to 'A' vide letter dated 19.07.2018, page 21 of reply]</b>
3.	<b>Date of MoU executed</b>	16.05.2008 [Page 21 of complaint]	16.05.2008 [Page 19 of complaint]
4.	<b>Sale Consideration / Amount paid by the complainant(s)</b>	SC: ₹ 74,18,000/- AP: ₹ 74,18,000/-	SC: ₹ 74,18,000/- AP: ₹ 74,18,000/-
5.	<b>Assured return clause as per MoU</b>	2. After receipt of consideration of Rs. 74,18,000/- (Rupees Seventy Four Lac Eighteen Thousand only) the	2. After receipt of consideration of Rs. 74,18,000/- (Rupees Seventy Four Lac Eighteen Thousand only) the



		Developer shall give an investment return @ 68/- per sq. ft. per month i.e. Rs.68,000/- (Rupees Sixty Eight Thousand only) with effect from 4 <sup>th</sup> May, 2008, on or before 7 <sup>th</sup> day of every month for which it is due upto the first 36 months after completion of the building or till the date the said Office Space is put on lease, which ever is earlier. [Page 23 of complaint]	Developer shall give an investment return @ 68/- per sq. ft. per month i.e. Rs.68,000/- (Rupees Sixty Eight Thousand only) with effect from 1 <sup>st</sup> June, 2008, on or before 7 <sup>th</sup> day of every month for which it is due upto the first 36 months after completion of the building or till the date the said Office Space is put on lease, which ever is earlier. [Page 21 of complaint]
6.	<b>Assured return paid by the respondent</b>	• <b>Rs.70,65,419/-</b> (Amount paid by the promoter for the period w.e.f. May 2008 till December 2016) [As admitted by the respondent on page 10 of reply]	• <b>Rs.70,65,419/-</b> (Amount paid by the promoter for the period w.e.f. May 2008 till December 2016) [As admitted by the respondent on page 10 of reply]
7.	<b>Date of space buyer agreement</b>	21.11.2016 [Page 33 of complaint]	21.11.2016 [pg. 27 of complaint]
8.	<b>Due date of possession</b>	26.11.2019	26.11.2019
9.	<b>Offer of constructive possession</b>	25.04.2018 [Page 77 of complaint]	26.04.2018 [pg. 67 of complaint]
10.	<b>Relief sought</b>	1. Refund the entire amount paid by the complainant along with the interest.	1. Refund the entire amount paid by the complainant along with the interest.

		<p>2. Direct the respondent to pay the amount of Rs.68,000/- per month to the complainant from January 2017 till refund of the amount as prayed hereinabove, along with interest at the rate of 12% p.a. calculated from the date on which the amounts became due and payable to the complainant.</p> <p>3. Direct the respondent to pay an amount of Rs.1,00,000/- as litigation expenses.</p>	<p>2. Direct the respondent to pay the amount of Rs.68,000/- per month to the complainant from January 2017 till refund of the amount as prayed hereinabove, along with interest at the rate of 12% p.a. calculated from the date on which the amounts became due and payable to the complainant.</p> <p>3. Direct the respondent to pay an amount of Rs.1,00,000/- as litigation expenses.</p>
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4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of the space 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 of entire amount along with interest at the prescribed rate and unpaid amount of assured return alongwith 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 both the complaints filed by the complainant/allottee are also similar. Out of the above-mentioned case, the particulars of lead case *CR/6415/2022 titled as Rohit Yadav V/s Orris Infrastructures Pvt. Ltd.* are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainant.

**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/6415/2022 titled as Rohit Yadav V/s Orris Infrastructures Pvt. Ltd.*

Sr. No.	Particulars	Details
1.	Name of the project	Floreal Towers, Sector 83, Gurugram, Haryana
2.	Project area	9.052 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no.	260 of 2007 dated 14.11.2007
	License valid till	13.11.2024
	Licensed area	9.05 acres

	License holder	M/s Seriatim Land & Housing Pvt. Ltd.
5.	HRERA registered/ not registered	<b>Not registered</b>
6.	MOU executed between the complainant and the respondent on	16.05.2008 [Page 21 of complaint]
7.	Assured Return clause	2. After receipt of consideration of Rs. 74,18,000/- (Rupees Seventy Four Lac Eighteen Thousand only) the <b>Developer shall give an investment return @ 68/- per sq. ft. per month i.e. Rs.68,000/- (Rupees Sixty Eight Thousand only) with effect from 4<sup>th</sup> May, 2008, on or before 7<sup>th</sup> day of every month for which it is due up to the first 36 months after completion of the building or till the date the said Office Space is put on lease, whichever is earlier.</b> [Page 23 of complaint]
8.	Payment of assured return by the respondent	Rs. 70,65,419/- paid w.e.f. May 2008 till January 2017 [As admitted by the respondent on page 10 of reply]
9.	Unit no. as per space buyer agreement	721 & 722 on 7 <sup>th</sup> floor, tower A (Annexure C2, page 69 of complaint)

		[ <b>Note:</b> Tower changed from Tower 'B' to 'A' vide letter dated 19.07.2018, page 21 of reply]
10.	Unit admeasuring	1000 sq. ft.  (Annexure C2, page 69 of complaint)
11.	Space buyer agreement executed between complainant and respondent	21.11.2016  [Page 33 of complaint]
12.	Possession clause as per clause 10.1 of the agreement	<p><b>11A. Schedule for Possession of the said Unit</b></p> <p>The company based on its present plans and estimates and subject to all just exceptions, contemplates to hand over the possession of the building/ said Unit within the period of <b>36 months from the date of execution of the Space Buyer's Agreement by the Company</b> unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (13.1), (13.2), (11.3) and Clause (35) or due to failure of Allottee(s) to pay in time the price of the said Unit along with all other charges and dues in accordance with the schedule of payments given in Annexure B or as per the demands raised by the Company from time to time or any failure on the part of the Allottee(s) to abide by any terms or conditions of this Space Buyer's Agreement.</p>





		[Page 47 of complaint]
13.	Due date of possession	26.11.2019
14.	Sale consideration as per MoU at pg. 23 of complaint	₹ 74,18,000/-
15.	Amount paid by the complainant as per statement of account dated 26.04.2018 at page 79 of complaint	₹ 74,18,000/-
16.	Occupation certificate	16.08.2017 [Annexure R1, page 17 of reply]
17.	Offer of constructive possession	25.04.2018 [Annexure C3, page 77 of complaint]

**B. Facts of the complaint**

8. The complainant has made the following submissions in the complaint:
- That the respondent is responsible for conceptualisation and development of commercial towers "A" and "B" in the commercial complex known as 'Floreal Towers'. The said project is being developed on part of land admeasuring 9.052 acres situated at Village Kherki Daula, Sector 83, Gurugram, Haryana.
  - That the complainant received a call, sometime in the year 2008, from the marketing department of the respondent for investing in the said project. It was stated by the respondent's representative that the respondent is an extremely successful builder/developer

which has conceptualized, implemented and developed various projects in India.

- iii. That lured and induced by the representations and assurances proffered by the respondent, the complainant applied for allotment of a unit in the said project on 01.05.2008. The respondent further promised to the complainant that if the complainant remits the total sale consideration, quantified at ₹ 74,18,000/-, to the respondent as a one-time payment for the said unit then the respondent would provide the complainant an assured return of ₹ 68,000/- per month from 4<sup>th</sup> of May 2008 up to the first 36 months after completion of the building or till date the said office space is put on lease, whichever is earlier. Accordingly, a Memorandum of Understanding on 16<sup>th</sup> of May 2008 (hereinafter "the said MoU") was executed by the respondent with the complainant and office space bearing no. 721 & 722 admeasuring 1000 sq. ft. super area on the 7<sup>th</sup> Floor in Tower B (hereinafter "the said office space/said unit") in the said project was allotted to the complainant. The respondent has specifically admitted and acknowledged in the said MoU that the total sale consideration for the unit in question amounting to ₹ 74,18,000/- had been paid by the complainant vide cheque bearing no. 929384 dated 01.05.2008 drawn on Axis Bank Ltd. The respondent had further undertaken to lease out the said office space at a minimum rental of Rs. 68/- per sq. ft. per month on behalf of the complainant and had expressly agreed to lease out the said office space at its own costs and expenses. The respondent had assured that any costs/charges on

account of leasing, including brokerage and any other incidental/legal costs as well as costs for any interior work shall be exclusively borne by the respondent. It goes without saying that the respondent was bound to inform the complainant about the terms and conditions of the lease upon finalisation of the same.

- iv. That in complete contravention of the terms and conditions of the said MoU, the respondent illegally stopped remitting the amount of Rs.68,000/- per month to the complainant from January 2017. Surprisingly, the respondent has deducted TDS on the complainant's name even after 2017.
- v. That it is submitted that insistence upon execution of the space buyer's agreement at the relevant time by the respondent was unwarranted in light of clause 11 of the said MoU. In fact, the complainant, at the relevant time, had specifically drawn attention of the respondent towards clause 11 of the said MoU. The complainant reminded the respondent that the space buyer's agreement cannot be executed prior to leasing out of the said unit whereas in the instant case even the construction of the said project was far from completion. Nevertheless, the respondent did not budge from its stance and threatened to cancel the allotment of the said unit if the complainant failed to execute the space buyer's agreement. In such circumstances and having paid the entire sale consideration for the said unit way back in 2008, the complainant was left with no other option but to execute the space buyer's agreement on 21.11.2016. As per clause 27 of the said agreement, the terms and conditions incorporated in the said MoU shall be

concurrent and conterminous with the terms and conditions of the said agreement and in the event of any inconsistency between any terms and conditions, the terms and conditions of the said MoU shall override and prevail. Therefore, the execution of the Space Buyer's Agreement has been performed in contravention of the terms and conditions of the said MoU and on that account the space buyer's agreement is not legally binding upon the complainant.

- vi. That the respondent vide letter dated 25.04.2018, the called upon the complainant to obtain 'constructive possession' of the unit. The respondent further directed the complainant to remit payments in accordance with a purported statement of account. The complainant was left completely confounded and bewildered upon receipt of aforesaid letter. The respondent had illegally and maliciously manipulated the contents of statement of account in order to obtain wrongful gain at the expense of the complainant and demanded an explanation regarding the so-called 'utility charges', EDC/IDC, electricity connection, IFMS, VAT charges etc. demanded by the respondent.
- vii. That the complainant further requested the respondent for clarification regarding the so-called "constructive possession" purportedly offered to the complainant vide letter dated 26.04.2018. The respondent, however, failed to provide any explanation regarding the discrepancies in the statement of account or provide any explanation regarding the so-called "constructive possession" purportedly offered by the letter dated 25.04.2018.

- viii. The letter dated 25.04.2018 has been issued by the respondent in direct contravention of the terms and conditions of the said MoU. In fact, the respondent has miserably failed to fulfil its duties and obligations enumerated in the said MoU and has generated the letter dated 25.04.2018 in order to create false evidence to the prejudice of the complainant. It is submitted that the complainant was under no obligation to obtain the so-called "constructive possession" of the said unit especially when the respondent had failed to lease out the said unit in accordance with its representations and promises.
- ix. That it is evident that despite retaining the actual possession of the unit in question since the inception of the transaction, the respondent has miserably failed to lease out the said unit or complete the said project on time. The entire sale consideration amounting to Rs. 74,18,000/- had been paid by the complainant to the respondent in the year 2008. However, the respondent has failed to provide any document to the complainant which indicates that the construction of the said project has been completed till date. The respondent has further failed to disclose to the complainant regarding any lease, if performed, in respect of the said unit. In fact, the respondent has deliberately and consciously refrained from communicating the progress of construction in the said project to the complainant or any lease of the said unit that may have been affected by the respondent. In consequence thereof, the complainant requested the respondent to refund the amount paid by the complainant as the faith of the complainant in the

respondent has been eroded irreversibly. However, the respondent refused to refund the amount paid by the complainant.

- x. That additionally, the respondent has maliciously and deliberately withheld the commitment charges/minimum guaranteed rent due and payable to the complainant. The aforesaid acts of the respondent are completely illogical and irrational in the facts and circumstances of the case. It needs to be highlighted that the complainant has always been ready and willing to fulfil her commitments and obligations under the said MoU. No default or lapse of any nature can be imputed to the complainant during the entire course of transaction. In fact, the complainant had remitted all the amounts due and payable by her in the year 2008. But the respondent failed to complete the project on time or lease out the said unit in accordance with the terms and conditions of the said MoU.
- xi. That it is submitted that the complainant is entitled to refund, commitment charges/assured return and compensation in the facts and circumstances of the case. The complainant has fulfilled her contractual obligations arising out of the said MoU. Nevertheless, the complainant has been penalised, harassed and victimised by the respondent without there being any fault whatsoever on his part. The complainant deserves to be compensated for loss of interest by the respondent and as well as for the harassment and mental agony undergone by him on account of deceitful and unfair trade practices adopted by the respondent. The complainant reserves his right to seek compensation apart

from the reliefs claimed hereunder from the appropriate forum. No cogent or plausible explanation has been tendered by the respondent as to why the respondent has miserably failed to adhere to and fulfil its commitments expressed in the said MoU.

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

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

- i. Direct the respondent to return of the entire amount paid by the complainant (₹ 74,18,000/-) received by the promoter in respect of the allotted unit with interest at the prescribed rate.
- ii. Direct the respondent to pay the amount of Rs.68,000/- per month to the complainant from January 2017 till refund of the amount as prayed hereinabove, along with interest at the rate of 12% p.a. calculated from the date on which the amounts became due and payable to the complainant.
- iii. Direct the respondent to pay an amount of Rs.1,00,000/- as litigation expenses.

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 has made the following submissions:

- i. That the present complaint is not maintainable in the court of law as per the MoU dated 16.05.2008 signed by both the parties and space buyer agreement dated 21.11.2016 wherein clause 46 of the

- space buyer agreement specifically provides that the adopted dispute resolution procedure through arbitration only.
- ii. That the complainant entered into a MoU dated 16.05.2008 wherein the respondent has allotted an office space in its project 'Floreal Towers' admeasuring the aggregate tentative super area of 1000 sq. ft. which was subject to final confirmation of area on completion of the proposed building/complex to the complainant for a total sale consideration of Rs.74,18,000/-. Thereafter, complainant was allotted unit no. 721 and 722, 7<sup>th</sup> floor in tower A having an approximate super area of 1000 sq. ft. in the said project.
  - iii. That the space buyer agreement was executed between the parties on 21.11.2016 wherein as per clause 11A of the agreement, the respondent was supposed to handover the possession within a period of 36 months from the date of execution of buyer's agreement.
  - iv. That thereafter, several obstructions had taken place which hampered the pace of the construction wherein in the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed framing of Modern Mineral Concession Rules. Reference in this regard may be made to the judgment of "*Deepak Kumar v. State of Haryana, (2012) 4 SCC 629*". The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce in the NCR as well ✓



as areas around it. Further, the respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various stay orders of **Hon'ble Punjab & Haryana High Court and National Green Tribunal** thereby stopping/regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the **National Green Tribunal** in several cases related to **Punjab and Haryana** had stayed mining operations including in **O.A No. 171/2013**, wherein vide order dated 02.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna Riverbed. These orders inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed above continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. That the above said restrictions clearly fall within the parameter "Delay due to reasons beyond the control of the respondent" as described under of clause 11.1 of the buyer agreement.

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- v. That in between, a writ petition was also filed in the **Hon'ble High Court of Punjab and Haryana** titled as "*Sunil Singh vs. Ministry of Environment & Forests Parayavaran*" which was numbered as **CWP-20032-2008** wherein the Hon'ble High Court pursuant to order dated 31.07.2012 imposed a blanket ban on the use of ground water in the region of Gurgaon and adjoining areas for the purposes of construction. That on passing of the abovementioned orders by the High Court, the entire construction work in the Gurgaon region came to stand still as the water is one of the essential parts for construction. That in light of the order passed by the Hon'ble High Court, the respondent had to arrange and procure water from alternate sources which were far from the construction site. The arrangement of water from distant places required additional time and money which resulted in the alleged delay and further as per necessary requirements STP was required to be setup for the treatment of the procured water before the usage for construction which further resulted in the delay in the construction of the project.
- vi. That orders passed by Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available sewerage treatment plants. However, there was lack of number of sewage treatment plants which led to scarcity of water and further delayed the project. That in addition to this, labour rejected to work using the STP water over their health issues because of the pungent and foul smell coming from the STP water ✓

- as the water from the S.T.P' s of the State/Corporations had not undergone proper tertiary treatment as per prescribed norms.
- vii. That on **19.02.2013**, the office of the executive engineer, HUDA Division No. II, Gurgaon vide memo no. 3008-3181, had issued instruction to all developers to lift tertiary treated effluent for construction purpose for Sewerage Treatment plant Behrampur. Due to this instruction, the respondent company faced the problem of water supply for a period of several months as adequate treated water was not available at Behrampur.
- viii. That despite all these litigations and obstructions, the unit in question was made ready and available for the complainant and the complainant was offered possession vide letter dated 25.04.2018 subject to payment of the outstanding dues on the part of the complainant. The respondent had issued the said letter because occupation certificate was already applied for by the respondent and the same was also received by the respondent on 16.08.2017.
- ix. That immediately after the receipt of the OC, the complainant was apprised about the fact that the OC has been duly received and the complainant was thereby offered possession vide letter dated 25.04.2018 and requested the complainant to comply with all the possession formalities and execution of the conveyance deed and thereafter, another letter dated 19.07.2018 was sent to the complainant informing him about the pending dues amounting to Rs.9,38,529/- and outstanding amount of the assured returns to the tune of Rs.9,18,000/- and it was understood that since the outstanding amount to be paid on behalf of the complainant is more ✓

than the amount of the assured returns, the same shall be adjusted and the complainant was requested to make the balance payment of Rs.20,529/- so that the complainant take the possession of the unit in question.

- x. That the letter dated 19.07.2018, it was clarified that the occupation certificate bears that the Tower A comprised of office space from ground floor to eighteenth floor and Tower B was comprised of retail space from Ground Floor to second floor and the complainant was belonging to Tower A. Further, it is pertinent to note that the complainant is not coming forward to take the possession of the unit in question due to which the respondent is burdened with maintaining the unit in question. The complainant has ignored all the communications by the respondent due to which the respondent is bound to levy delay penalty accrued on the outstanding amount along with holding charges.
- xi. That the parties are bound by the terms and conditions mentioned in the agreement. The said agreement was duly signed by the complainant after properly understanding each and every clause contained in the agreement. The complainant was neither forced nor influenced by respondent to sign the said agreement. It was complainant who after understanding the clauses signed the said agreement in complete senses.
- xii. That the respondent company cannot be made liable for the delay. As per clause 10.1 of the space buyer's agreement, the respondent shall be entitled to extension of time for delivery of possession of the said premises if such performance is prevented or delayed due ✓

to conditions as mentioned therein. The answering respondent has acted in accordance with the terms and conditions of the buyer's agreement executed between the parties on their own free will. That the complainant was duly informed about the schedule of possession as per clauses 11A of the buyer's agreement entered into between the complainant and respondent.

- xiii. That there was a change in the zoning plan due to which the area/size of the units was also increased but not more than 10 % and the land owner company, i.e., Seratium Land and Housing Pvt Ltd ("Seratium") had sent a letter regarding the approval from Director General Town and Country Planning Haryana vide letter dated 14.03.2014 wherein it was also requested grant of occupation certificate and to deposit compounding charges as per prevailing policies. On 22.05.2015, a letter from DTCP, Haryana was received by the Seratium wherein the amount of the compounding fees was informed and vide letter dated 06.09.2014, Seratium informed DTCP regarding payment of the requisite fees along with the details. Again, the respondent as well as Seratium vide letters dated 17.11.2014 and 21.04.2016 respectively requested for grant of occupation certificate but the same was issued by the statutory authority on 16.08.2017. that the final approval of the building plans/ zonal area was received by the respondent on 24.01.2017 by the DTCP, Haryana.
- xiv. That the respondent has already paid assured return amounting to Rs.70,65,419/- from May 2008 to December 2015. Further an amount of Rs.1,83,600/- was adjusted by the respondent at the

time of offer of possession for the period April 2017 to June 2018. Therefore, the complainant has already received a total amount of Rs.81,67,019/-.

- xv. That the respondent has made the payment of assured return to the complainant up to June 2018 as per the definition of deposit under the Companies Act, 2013 read with the Companies (Acceptance of Deposits) Rules, 2014. There is no provision in the Real Estate (Regulation and Development) Act, 2016 which empowers the authority to grant assured return or interest on assured return. From the facts narrated above, the present complaint is liable to be dismissed and the complainant is not entitled to any reliefs.
12. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

**E. Jurisdiction of the authority**

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

**E.1 Territorial jurisdiction**

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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 completed territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

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

**Section 11(4)(a)**

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

**Section 34-Functions of the Authority:**

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

16. 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.
17. Further, the authority has no hitch in proceeding with the complaint and to grant a relief 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(C), 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* and 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."*

18. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

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

**F.I. Direct the respondent to return of the entire amount paid by the complainant (₹ 74,18,000/-) received by the promoter in respect of the allotted unit with interest at the prescribed rate.**

**F.II. Direct the respondent to pay the amount of ₹ 68,000/- per month to the complainant from January 2017 till refund of the amount as prayed hereinabove, along with interest at the rate of 12% p.a. calculated from the date on which the amounts became due and payable to the complainant.**

19. The complainant was allotted units bearing no. 721 & 722, 7<sup>th</sup> floor in tower A for a sale consideration of ₹ 74,18,000/- and the complainant has paid a sum of ₹ 74,18,000/- as is evident from clause 1 and 2 of the MoU



dated 16.05.2008. Thereafter, a space buyer agreement was executed on 21.11.2016 and as per clause 11(a) of the said agreement, the respondent was under an obligation to deliver the possession of the subject space on or before 26.11.2019 as is computed in table referred in para 3 of this order.

20. Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, the allottee wishes to withdraw from the project and demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.
21. The due date of possession as per space buyer's agreement as mentioned in the table above is 21.11.2019. The respondent obtained the occupation certificate for the said project on 16.08.2017 and offered constructive possession of the subject unit to the complainant on 25.04.2018. Despite being offered possession of the subject unit, the complainant filed a present complaint on 07.10.2022 for refund of amount paid along with interest before the authority. The complainant has pleaded that the possession is delayed, and the construction is still incomplete. The plea of the complainant, however, is devoid of merit. At the cost of repetition, it is highlighted that the occupation certificate has already been granted by the concerned authority and thus, it is unfair to say that the project is still incomplete.

22. The allottee in this case has filed present complaint on 07.10.2022 which is after possession of the subject unit was offered to him after obtaining occupation certificate by the promoter. The allottee never earlier opted/wished to withdraw from the project and only when offer of possession was made to him and demand for due payment was raised, thereafter he has filed present complaint before the authority.
23. The right under section 18(1)/19(4) accrues to the allottees on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The promoter has already invested in the project to complete it and offered possession of the allotted unit. 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 that-

*"25. The unqualified right of the allottees 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 allottees, 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 allottees/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 allottees 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."*

24. 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 allottees as per agreement for sale. This judgement of the Supreme Court of India recognized unqualified right of the allottees and liability of the promoter in case of failure 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. It is observed by the authority that the allottee invest in the project for obtaining the allotted unit and when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottees in case of failure of promoter to give possession by due date either by way of refund if opted by the allottees or by way of delay possession charges at prescribed rate of interest for every month of delay.

25. In case allottee wishes to withdraw from the project, the promoter is liable on demand to the allottee to return the amount received by the promoter with interest at the prescribed rate if promoter fails to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale. The words 'liable on demand' need to be understood in the sense that allottee has to make his intentions clear to withdraw from the project and a positive action on his part to demand return of the amount with prescribed rate of interest. If he has not made any such demand prior to receiving occupation certificate and unit is ready, then impliedly he has agreed to continue with the project i.e. he does not intend to withdraw from the project and the proviso to section 18(1) automatically comes into operation and allottee shall be paid by the promoter interest at the prescribed rate for every month of delay. This

view is supported by the judgement of Hon'ble Supreme Court of India in case of **Ireo Grace Realtech Pvt. Ltd. Versus Abhishek Khanna and Ors. (Civil appeal no. 5785 of 2019)** and also in consonance with the judgement of Hon'ble Supreme Court of India in case of **M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of U.P. and Ors. (supra)**.

26. In the present complaint, there is no delay in handing over the possession as due date of possession was 26.11.2019 and the offer of constructive possession was made on 25.04.2018. The complainant has approached the authority for the refund of his deposited amount at a very belated stage. The authority is thus of the view that forfeiture of earnest money is necessary to make good for the losses of the respondent who has completed the project and even offered possession of the unit. The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states as under-

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

27. Hence, the authority hereby directs the promoter to return the paid-up amount of ₹ 74,18,000/- to the complainant after deduction of 10% of the

sale consideration i.e., ₹ 74,18,000/- along with an interest on the balance amount 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 surrender i.e., 07.10.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017. Since, the respondent has paid assured return of an amount of ₹ 70,65,419/-, the same shall also be adjusted. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

**G. Directions of the authority**

28. Hence, the authority hereby passes this order and issues the following directions under section 37 of the act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to return the paid-up amount of ₹ 74,18,000/- to the complainant after deduction of 10% of the sale consideration.
  - ii. The respondent is further directed to pay an interest on the balance amount 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 surrender i.e., 07.10.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the rules. Since, the respondent has paid

assured return of an amount of ₹ 70,65,419/-, the same shall also be adjusted.

iii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

29. The complaint stands disposed of.

30. Files be consigned to registry.



(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 23.08.2023

**HARERA**  
GURUGRAM