

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

Date of decision: 13.09.2023

NAME OF THE BUILDER		M/S NINANIYA ESTATES LIMITED	
PROJECT NAME		FIVE STAR HOTEL AND SUITES COMPLEX	
S. No.	Case No.	Case title	Appearance
1.	CR/3399/2021	Penny Bhandari V/s Ninaniya Estates Limited	Siddharth Arora Advocate (Complainant)
2.	CR/3416/2021	Kusum Dungalay V/s Ninaniya Estates Limited	Shagun Singla Advocate (Respondent)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of the 2 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, Five Star Hotel and Suites situated at Gwal Pahari, Sector-2, Gurugram being developed by the same respondent/promoter i.e., M/s Ninaniya Estates 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 unit 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	"Five Star Hotel and Suites" at Gwal Pahari, Sector-2, Gurgaon, Haryana.
Project area DTCP License No. Name of Licensee	10.5875 acres Memo no. G-1791-8DP-2007/25396 dated 09.10.2007 M/s Ninaniya Estates Ltd.
RERA Registration	Not Registered
Possession Clause: 9	<i>"The buyer shall be entitled to the possession of the said unit only after the payment of entire sale consideration as payable under this agreement The buyer shall execute an undertaking to pay External Development charges, Internal Development charges as demanded by the company."</i>
Occupation Certificate:	Not obtained

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Date of apartment buyer agreement	Unit No.	Unit admeasuring	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/3399/2021 Penny Bhandari V/s Ninaniya Estates Limited DOF: 25.08.2021 Reply Status: 08.06.2022	02.01.2014 MOU: - 02.01.2014	1320, 13 th floor, Prism Suites	650 sq. ft.	02.01.2017 [Calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]	Total Sale Consideration: Rs.32,50,000/- Amount Paid: - Rs.25,00,000/- Assured Return Received: - Rs.13,00,000/-	1. Refund 2. Litigation on cost
2.	CR/3416/2021 Kusum Dungle V/s Ninaniya Estates Limited DOF: 25.08.2021 Reply Status: 08.06.2022	19.12.2013 MOU: - 19.12.2013	1322, 13 th floor, Prism Suites	650 sq. ft.	19.12.2016 [Calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]	Total Sale Consideration: Rs.32,50,000/- Amount Paid: - Rs.30,00,000/- Assured Return Received: - Nil	1. Refund 2. Litigation on cost

4. The aforesaid complaints were filed by the complainant 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 total paid up amount.

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/3399/2021 Penny Bhandari V/s M/s Ninaniya Estate Limited*** are being taken into consideration for determining the rights of the allottee(s).

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/3399/2021 Penny Bhandari V/s M/s Ninaniya Estate Limited

S. N.	Particulars	Details
1.	Name and location of the project	Five Star Hotel and Suites Complex, Gwal Pahari, Sector 2, Gurgaon-Faridabad Road, Gurgaon (India)
2.	RERA Registered/ not registered	Unregistered
3.	Unit no.	1320, 13 th floor, Prism Suites (Page 30 of complaint)
4.	Unit area admeasuring (super area)	650 sq. ft. (Page 30 of the complaint)
5.	Allotment Letter	02.01.2014 (Page 27 of complaint)

6.	Date of Suite buyer agreement	02.01.2014 (Page 28 of the complaint)
7.	MoU	02.01.2014 (Page 44 of complaint)
8.	Possession Clause	Clause 9 "The buyer shall be entitled to the possession of the said unit only after the payment of entire sale consideration as payable under this agreement The buyer shall execute an undertaking to pay External Development charges, Internal Development charges as demanded by the company".
9.	Due date of possession	02.01.2017 [Calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]
10.	Total sale consideration	Rs.32,50,000/- (page 30 of complaint)
11.	Amount paid by the complainant	Rs.25,00,000/- (Page 27 of complaint)
12.	Occupation certificate	Not received
13.	Offer of possession	Not offered
14.	Assured return clause	Clause 7 of MoU: "The developer shall pay an assured investment return @ Rs.37,500/- p.m on or before 3 rd of every month after the expiry of the month for which it shall fall due w.e.f. 03.01.2014 till possession of the fully furnished suite under reference is handed over to the buyer..."
15.	Amount received by complainant	Rs.13,00,000/- (page 48 of reply)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -

- I. That on 02.01.2014, the complainant applied for an allotment of suite/unit admeasuring 650 sq.ft. in the project named "Prism Office Space" forming part of Five Star Hotel Complex & Office Space situated at Gwal Pahari, Sector-2, Gurgaon for a total sale consideration of Rs.32,50,000/- and had paid an amount of Rs.25,00,000/- in all. Thereafter a suites buyer agreement was executed between the parties on 02.01.2014 vide which a unit bearing no. POS 1320, 13th floor was allotted to her in the said project.
- II. That in terms of the buyer's agreement duly executed between the parties, the balance payment of Rs.7,50,000/- on account of the sale consideration was payable by the complainant at the time of handing over the possession of the unit in question by the respondent.
- III. That as per clause 2 of the buyer's agreement, the respondent was bound to give an assured return on the investment @1.5% per month amounting to Rs.37,500/- to the complainant till the date of possession or for a period of 78 months, whichever is later. Further, the parties has also entered into a Memorandum of Understanding dated 02.01.2014 vide which the respondent acknowledged the amount of Rs.25,00,000/- paid by her on account of the sale consideration for the unit and also vide clause 7 of the said MOU, it confirmed its liability to pay the assured return of Rs.37,500/- duly payable per month to the complainant on the amount paid w.e.f. January, 2014 for a period of 78 months or till date the possession of the fully furnished unit is handed over to her, whichever is later and shall be liable to pay a penal interest of 1.5% per month over and above the amount of the assured return.
- IV. That when the complainant approached the respondent company for enquiring about the status of the project and completion of the unit, it always

misleads her and gave false assurances regarding progress and completion of the project and handing over of the unit in question.

- V. That, the respondent company had been paying to the complainant the sum of Rs.37,500/- as envisaged and agreed upon in terms of the buyer's agreement and the Memorandum of Understanding till September 2017. However, post September 2017, it failed to pay the assured return as agreed which is in complete contravention of the terms of the buyer's agreement and the MOU.
- VI. That on 28.02.2020 and 24.09.2020, after rigorous follow up by the complainant, the respondent company in order to clear the back log of the assured return made a RTGS transfer of Rs.10,00,000/- and Rs.3,00,000/- to the complainant respectively.
- VII. That till date, the respondent has not exercised its right to buy back the unit in question nor has handed over the physical possession of the unit to the complainant. Further, the complainant several times approached the respondent either to clear its balance on account of assured return in terms as agreed or handover the possession of the unit or purchase the unit from her in terms of clause 4 of the buyer's agreement, but in vain.
- VIII. Since the respondent had failed to fulfill its contractual obligations stipulated in the buyer's agreement and the MOU, the complainant through her counsel, issued a notice dated 26.06.2021, calling upon the respondent, *inter alia*, either to hand over the possession of the unit in question or in the alternative to refund the entire amount paid by the complainant, along with interest thereupon.
- IX. However, despite service of the aforesaid legal notice through speed post and email, the respondent company chose not to reply to the same and

neither have till date offered the possession of the unit in question nor refunded the paid-up amount to the complainant. Thus, the present complaint.

C. Relief sought by the complainant: -

The complainant has sought following relief(s):

- I. Direct the respondent to refund the paid-up amount along with prescribed rate of interest.
 - II. Direct the respondent to pay an amount of Rs.1,00,000/- towards cost of litigation.
9. 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

10. The respondent has contested the complaint on the following grounds: -
- i. That the complainant has already received a sum of Rs.30,00,000/- towards the payment of assured return in respect of the unit in question and a sum of Rs.13,00,000/- towards refund of principal amount in respect of unit in question. Thus, the complainant is not entitled for the relief which she is seeking under the provisions of the Act of 2016.
 - ii. That the present complaint is not maintainable as it is crystal clear from reading the complaint that the complainant is not an 'allottee', but is an 'investor', who is attempting to seek an advantage of the slowdown in the real estate sector and trying to seek undue advantage by concealing the true facts.
 - iii. That the complainant alleged that the respondent has not developed and completed the project as per sanctioned plans, layout plans and

specifications. However, the project in question is completed in all aspects and it has also obtained the occupation certificate in respect of the unit in question in April 2017.

- iv. That the complainant is just for the non-payment of interest, refund of principal amount, assured returns, compensation for mental pain, agony and harassment, which shows the intent of the complainant was limited to earn profits and not to use the unit in question for any personal purpose for herself.
 - v. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent. Hence, the present complaint deserves to be dismissed with heavy costs.
11. 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

12. The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection 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. 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."

17. The application for refund filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement titled as ***M/s Newtech Promoters and Developers Pvt Ltd. Vs State of UP & Ors. (supra)***, the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case the allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale irrespective of the fact whether application has been made in form CAO/CRA. It has been deliberated in the proceedings dated 10.5.2022 in CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP and observed that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.
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 objections raised by the respondent

F.I. Objections regarding the complainant being investor.

19. The respondent has taken a stand that the complainant is a investor and not consumer, therefore, she is 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 preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time, 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 the promoter 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 she has paid a total price of Rs.25,00,000/- to the promoter towards purchase of a unit in its project and the rest of amount was to be payable on handing over of possession. 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;"

20. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the suites buyer's agreement executed between promoter



and complainants, it is crystal clear that the complainant is a allottee as the subject unit was allotted to her 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 the protection of this Act stands rejected.

G. Findings on the relief sought by the complainant

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

21. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her 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)



22. Clause 9 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

Clause 9

"The buyer shall be entitled to the possession of the said unit only after the payment of entire sale consideration as payable under this agreement The buyer shall execute an undertaking to pay External Development charges, Internal Development charges as demanded by the company".

3. 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. 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. The incorporation of such clause in the suits buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused its dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines. However, the respondent has cleverly omitted to mention the due date for handing over of possession. Therefore, the due date has been calculated keeping in view the judgment of the Hon'ble Supreme Court in the case of **Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018** observed that:

"15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014."



23. In the instant case, the unit was provisionally allotted vide allotment letter dated 02.01.2014 and suites buyer's agreement was executed between the parties on 02.01.2014. In view of the above-mentioned reasoning, the date of signing of the buyer's agreement ought to be taken as the date for calculating the due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 02.01.2017.
24. The respondent in its reply contended that the construction of the Tower/Block in the unit of the complainant is situated is complete and it has duly obtained the occupation certificate/completion certificate of the respective tower/block. However, after going through the documents available on record, it cannot be ascertained in which tower/block the unit of the complainant is situated and whether OC/CC of the unit in question has been obtained by it or not. Further, there is nothing on record to support the claim of the respondent. Therefore, 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 she 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 relevant para is reproduced as under:
- ".....The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*
25. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 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."

26. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
27. 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 and 72 read with section 31(1) of the Act of 2016.
28. **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."

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., 13.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
31. Further, it comes to the notice of this Authority that the complainant has already received an amount of Rs.13,00,000/- towards assured return as per the terms agreed between them. However, in this case the allottee intends to withdraw from the project. Therefore, a refund of the paid-up amount will be granted only after deducting the amount/assured return already credited in the account of the complainant.
32. The authority hereby directs the promoter to return the amount received by it i.e., Rs.25,00,000/- 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 after adjusting the amount/assured return paid by respondent, if any within the timelines provided in rule 16 of the Rules ibid.

G.II Direct the respondent to pay cost of litigation.

33. 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.

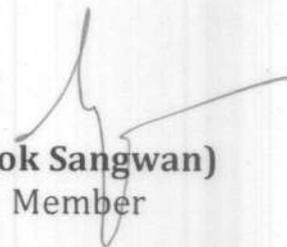
H. Directions of the authority

34. 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):
- The respondent/promoter is directed to refund the entire amount paid by the complainant 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 after adjusting the amount/assured return paid by respondent, if any.

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.

35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
36. The complaints stand disposed of.
37. Files be consigned to the registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.09.2023

HARERA
GURUGRAM