

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

**Order pronounced on: 27.09.2023**

Name of the Builder		KNS Infracon Pvt. Ltd	
Project Name		Capital Gateway	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/2580/2021	Arihant Projects V/s KNS Infracon Pvt. Ltd.	Rishabh Jain Kunal Gaba
2.	CR/2581/2021	Arihant Projects V/s KNS Infracon Pvt. Ltd.	Rishabh Jain Kunal Gaba
3.	CR/2621/2021	Arihant Projects V/s KNS Infracon Pvt. Ltd.	Rishabh Jain Kunal Gaba
4.	CR/2622/2021	Paras Properties V/s KNS Infracon Pvt. Ltd.	Rishabh Jain Kunal Gaba
5.	CR/2623/2021	Paras Properties V/s KNS Infracon Pvt. Ltd.	Rishabh Jain Kunal Gaba
6.	CR/2747/2021	Arihant Projects V/s KNS Infracon Pvt. Ltd.	Rishabh Jain Kunal Gaba

**CORAM:**

Ashok Sangwan

Member

**ORDER**

1. This order shall dispose of all the 6 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, Capital Gateway being developed by the same respondent/promoter i.e., KNS Infracon Pvt. Ltd. The terms and conditions of the builder 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 possession and delayed possession charges.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

**Project: Capital Gateway, Sector-110A & 111, Gurugram**

**Possession clause: Clause 2.1**

Subject to clause 9 or any other circumstances not anticipated and beyond control of the first party/conforming party and any restraints/restrictions from any court/authorities and subject to the purchaser having complied with all the terms of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities documentation etc. as prescribed by the first party/conforming party proposes to handover the possession of the flat to the purchaser within approximate **period of 36 months from the date of sanction of building plans of the said colony**. The purchaser agrees and understands that the first party/conforming party shall be entitled to a grace period of 180 days after the expiry of 36 months for applying and obtaining OC in respect of the colony from the concerned authority.

**Note:**

**1. Date of sanction of building plans-** Date of sanction of building plans is 07.06.2012 as per information obtained from the planning branch.

**2. Grace period-** Since possession clause 2.1 of the BBA incorporates qualified reason which provides a pre-condition that the entitlement of said grace period of 6 months is dependent of the situation of respondent applying for or obtaining occupation certificate from the competent Authority but as per the given facts it has failed to apply for occupation certificate to the competent authority within the stipulated time. Accordingly, the authority disallows this grace period of 6 months to the promoter wherein the respondent has itself failed to comply with the condition incorporated by it. Therefore, such grace period of six months as

per clause 2.1 of buyer's agreement is disallowed and not included while calculating the due date of handing over of possession.

**3. Due date of handing over of possession-** As per clause 2.1 of buyer's agreement, the due date of handing over of possession is 36 months from date of **sanction of building plans** and as specified above. Therefore, due date of handing over of possession was **07.06.2015**.

**4. Occupation certificate-** Not obtained

**5. DTCP License no. 34 of 2011 dated 16.04.2011** - KNS Infracon Pvt. Ltd. is the licensee for the project as mentioned in land schedule of the project.

**6. RERA registration** - 120 of 2018 dated 10.08.2018 valid upto 31.12.2020

Sr. No.	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasurir (Carpet area)	Date of execution of apartment buyer's agreement	Due date of possession & Offer possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/2580/2021 Arihant Projects Vs. KNS Infracon Pvt. Ltd.  DOF- 19.07.2021.	Reply received on 08.10.2021	1202, 12th floor, tower B, (Page 52 of complaint)	24.12.2014 (Page 45 of complaint)	07.06.2015  Offer of possession- Not offered	TSC: Rs.66,16,750/- (Page 52 of the complaint)  AP: Rs.27,41,084/- (As alleged by the complainant on page 19 of CRA complaint)	1. Refund 2. Legal expenses
2.	CR/2581/2021 Arihant Projects Vs. KNS Infracon Pvt. Ltd.  DOF- 19.07.2021	Reply received on 08.10.2021	1101, 11 <sup>th</sup> floor, tower C (Page 36 of complaint)	Not executed	07.06.2015  Offer of possession- Not offered	TSC: Rs.66,16,750/- (Page 31 of the complaint)  AP: Rs.28,45,355/ (As alleged by the complainant on page 19 of CRA complaint)	1. Refund 2. Legal expenses

3.	CR/2621/2021 Arihant Projects Vs. KNS Infracon Pvt. Ltd.  DOF- 19.07.2021	Reply received on 08.10.20 21	003, Ground floor, tower B  (Page 48 of complaint)	24.12.2014  (Page 41 of complaint)	07.06.2015  Offer of possession- Not offered)	TSC: Rs.66,16,750/- (Page 48 of the complaint)  AP: Rs.27,41,084/- (As alleged by the complainant on page 19 of CRA complaint)	1. Refund  2. Legal expenses
4.	CR/2622/2021 Paras Properties Vs. KNS Infracon Pvt. Ltd.  DOF- 19.07.2021	Reply received on 08.10.20 21	204, 2 <sup>nd</sup> floor, Tower E  (Page 40 of complaint)	13.02.2014  (Page 35 of Complaint)	07.06.2015  Offer of possession- Not offered	TSC: Rs.58,52,000/- (Page 40 of the complaint)  AP: Rs.24,95,910/- (As alleged by the complainant on page 18 of CRA complaint)	1. Refund  2. Legal expenses
5.	CR/2623/2021 Paras Properties Vs. KNS Infracon Pvt. Ltd.  DOF- 19.07.2021	Reply received on 08.10.20 21	1202, 12 <sup>th</sup> floor, Tower D  (Page 44 of complaint)	13.02.2014  (Page 39 of Complaint)	07.06.2015  Offer of possession- Not offered	TSC: Rs.56,35,875/- (Page 44 of the complaint)  AP: Rs.24,95,910/- (As alleged by the complainant on page 19 of CRA complaint)	1. Refund  2. Legal expenses
6.	CR/2747/2021 Arihant Projects Vs. KNS Infracon Pvt. Ltd.  DOF- 19.07.2021	Reply Not Received	703, 7 <sup>th</sup> floor, Tower B	Not executed	07.06.2015  Offer of possession- Not offered	TSC: Rs.66,16,750/- (Page 29 of the complaint)  AP: Rs.27,41,084/- (As alleged by the complainant on page 18 of CRA complaint)	1. Refund  2. Legal expenses

**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:**  
**Abbreviations Full form**

DOF- Date of filing complaint

TSC- Total Sale consideration

AP- Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for seeking award of refund of entire paid-up 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 promoters/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, 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/2580/2021 titled as Arihant Projects Vs. M/s KNS Infracon Pvt. Ltd.*** are being taken into consideration for determining the rights of the allottee(s) qua refund of entire paid-up 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/2580/2021 titled as Arihant Projects Vs. M/s KNS Infracon Pvt. Ltd.***

S. N.	Particulars	Details
1.	Name of the project	Capita Gateway, Sector - 110A & 111, Gurugram
2.	Project area	10.462 acres
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid up to 15.04.2024

5.	Name of licensee	M/s KNS Infracon Pvt. Ltd. and 4 others
6.	RERA Registered/ not registered	Registered vide no. 120 of 2018 dated 10.01.2018
7.	Unit no.	1202, 12 <sup>th</sup> Floor, Tower B (Page 52 of complaint)
8.	Unit area admeasuring	1990 sq. ft. (super area) (Page 52 of complaint)
9.	Date of execution of agreement	24.12.2013 (Page 45 of complaint)
11.	Due date of possession	07.06.2015 36 months from sanctioning of building plan i.e., 07.06.2012)
12.	Total sale consideration	Rs.66,16,750/- (Page 52 of complaint)
13.	Amount paid by the complainant	Rs.27,41,084/- (Page 19 of CRA complaint)
14.	Occupation certificate	Not obtained

## B. Facts of the complaint

- I. The on representations made by the representatives of the respondent, the complainant booked a flat bearing no.1202, 12th floor, Tower-B having total super area of 1990 sq.ft. in the project named "Capital Gateway" at Sectors 110A and 111, Gurugram for a basic sale consideration of Rs.66,16,750/- and the complainant has paid a total sum of Rs.27,41,084/- against the said flat from January, 2011 to 2013. Thereafter, a flat buyer's agreement was also executed between the parties on 24.12.2013.
- II. That, all of sudden, without any ground, the respondent issued a notice of cancellation of the booking of the allotted unit on 25.09.2013 on flimsy and bogus ground to the complainant. Thereafter, the complainant got issued a reply to the notice issued by the respondent and objected on the said cancellation vide its reply dated 09.11.2013.

- III. That the respondent withdrew its notice against the complainant and issued a No Dues Certificate (NOC) and simultaneously, the complainant also withdrew its legal notice on 19.12.2013 and thereby, all issues were resolved mutually amicably.
- IV. That the respondent kept the complainant in dark about the actual and true status of the construction of the said unit and kept telling it that the flat would be ready as per the commitments and the promises made to the complainant and kept raising demands, but the construction activities were not visible at the project site.
- V. That as per clause 2.1 of the agreement the date of possession of the flat comes out to be 24.06.2017 and despite of a delay of more than four years and eleven months, the respondent has failed to offer for possession of the flat till date.
- VI. That the representatives of the complainant approached the respondent many times and requested for refund of the deposited amount with interest, but the respondent did not give any justified replies to the personal visits and telephone calls of the complainant. Therefore, the complainant intends to withdraw from the project and is seeking complete refund of the deposited amount along with interest at the prescribed rate for inordinate delay caused due to the complete failure of the respondent.

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

8. The complainant has sought following relief(s):
  - i. Direct the respondent to refund the entire paid-up amount along-with prescribed rate of interest.
  - ii. Direct the respondent to pay 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 had booked a unit in the project in question and made payment towards the said bookings which are duly acknowledged by the complainant vide receipts issued against the payments. The respondent, however, reserve its right to go through its internal records of sales and finances thoroughly before admitted all the payments as contended by the complainant.
- ii. The construction at the project site is nearing completion and almost ready for possession despite the construction of project having being afflicted with intermittent delays due to forces not in control of the respondent and the flats with all the promised amenities will be handed over very soon.
- iii. That the respondent faced the unprecedented events which lead to the delay in the completion of the construction of this project and the respondent cannot be held responsible or liable for non-performance of its obligations as the same was prevented due to force majeure being beyond its control and could not be avoided or prevented by exercise of reasonable diligence or despite the adoption of reasonable precautions and/or alternative measures.
- iv. That the respondent had applied for environment clearance on 20.10.2011, but the developer finally got the environment clearance on 17.06.2013. The respondent had applied for the revision in



- building plans of the said project before the appropriate authority. However, for no fault of the respondent, the plans were approved by the Department only after a delay of 2 years. Owing to this, the construction of project could not be started in a timely manner. Further, many other factors affected the completion of the project such as increase in cost of construction, slow-down in real-estate industry, changes in government policies, stay on construction work by NGT orders and outbreak of Covid-19.
- v. That in the present case, the respondent, who has already been in a financial crisis and crunch if the relief claimed by the complainant is allowed it would jeopardize the completion of the project and the interest of innumerable number of homebuyers who have reposed trust and faith in the developer in anticipation of possession of their units.
- vi. That the respondent prays to give an extension by a few months so as to enable it to complete the project. The same require monetary liability and as the developer is getting back at its feet, post lockdown to complete the project.
- vii. Thus, it is germane to state that there is no further deficiency as claimed by the complainant against the respondent and no occasion has occurred deeming indulgence of the Authority. Hence, the present complaint is liable to be dismissed.
11. No reply has been received from respondent with regard to the complaint bearing no. CR/2747/2021 despite sufficient opportunities granted. Therefore, the defence of respondent in the said complaint is hereby struck-

off and the complaint will be decided as per documents available on record and submission made by the complainant.

12. 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**

13. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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**

14. 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**

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) 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.*

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 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."*

18. 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 Objection regarding delay due to force majeure circumstances.**

19. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as other competent authorities and spread of Covid-19 across worldwide etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 07.06.2015. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

**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.**

20. The complainant intends to withdraw from the project and is seeking return of the amount paid by it 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)*

21. The apartment buyer's agreement was executed between the parties. As per clause 2.1 of the agreement, the possession was to be handed over within 36 months from the date of sanction of building plans along with a grace period of 6 months. The clause 2.1 of the buyer's agreement is reproduced below:

***2.1 Possession***

*Subject to clause 9 or any other circumstances not anticipated and beyond control of the first party/conforming party and any restraints/restrictions from any court/authorities and subject to the purchaser having complied with*

*all the terms of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities documentation etc. as prescribed by the first party/conforming party proposes to handover the possession of the flat to the purchaser **within approximate period of 36 months from the date of sanction of building plans of the said colony.** The purchaser agrees and understands that the first party/conforming party shall be entitled to a grace period of 180 days after the expiry of 36 months for applying and obtaining OC in respect of the colony from the concerned authority...*

*(Emphasis supplied)*

22. 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 the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him 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 time period 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 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.
23. **Due date of handing over of possession and admissibility of grace period:** As per clause 2.1 of buyer's agreement, the respondent/promoter has proposed to handover the possession the said unit within a period of 36

months from date of sanction of building plans. The said possession clause incorporates qualified reason for grace period/extended period of 6 months. Since possession clause 2.1 of the BBA incorporates qualified reason which provides a pre-condition that the entitlement of said grace period of 6 months is dependent of the situation of respondent applying for or obtaining occupation certificate from the competent Authority but as per the given facts it has failed to apply for occupation certificate to the competent authority within the stipulated time. Accordingly, the authority literally interpreting the same and disallows this grace period of 6 months to the promoter at this stage. Therefore, grace period of six months as per clause 2.1 of buyer's agreement is disallowed and not included while calculating the due date of handing over of possession. Hence, the due date for handing over of possession comes out to be 07.06.2015.

24. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund of the amount paid by it 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.*

25. 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.

26. 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., 27.09.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
27. On consideration of the documents available on record and submissions made 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 2.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 36 months from date of sanction of building plans. The date of sanction of building plan was 07.06.2012 as per information obtained from the planning branch. As such the due date of handing over of possession comes out to be 07.06.2015 in all the cases as detailed in para no. 03 of order.
28. 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.
29. 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 it 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....."*

30. 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."*

31. 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 it wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the promoter in respect of the unit with interest at such rate as may be prescribed.
32. 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 it 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 direct the respondent to pay litigation charges.**

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 issue 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.

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 registry.

  
**(Ashok Sangwan)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.09.2023

  
**HARERA**  
GURUGRAM