

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

**Complaint no. : 1009 of 2019**  
**Complaint filed on : 08.03.2019**  
**First date of hearing : 27.11.2019**  
**Order pronounced on : 19.09.2023**

1. Pushp Dutt Sharma  
2. Raj Bala  
Both RR/o: G-30, 1<sup>st</sup> floor,  
near Shitla Mata Mandir, Shyam Nagar,  
Tilak Nagar, New Delhi-110018.

**Complainants**

**Versus**

M/s Orris Infrastructure Pvt. Ltd.  
Regd. Address: RZ-D5, Mahavir Enclave,  
New Delhi-110045.

Corp. Adress: J-10/5, DLF Phase-II, M.G. Road,  
Gurugram-122002, Haryana.

**Respondent**

**Coram:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**  
**Member**

**Appearance:**

Shri Mukesh Kumar Sharma  
Shri J.K. Dang

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in

short, 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 obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

**A. Project and unit related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Greenopolis, Sector 89, Village Hayatpur, Gurugram, Haryana.
2.	Project area	47.22 acres
3.	Nature of the project	Group housing project
4.	DTCP license no.	115 of 2011 dated 23.12.2011
	License valid till	22.12.2019
	Licensed area	47.22 acres
	License holder	M/s Orris Infrastructure Pvt. Ltd.
5.	HRERA registered/ not registered	<b>Registered vide no. 5 of 2019 dated 23.01.2019 for 37.2018 acres</b>
	HRERA registration valid up to	31.12.2020

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6.	Allotment letter issued by Orris Infrastructure Pvt. Ltd. in favour of complainants on	24.08.2012 (Annexure E, page 21 of complaint)
7.	Unit no.	1603, 16 <sup>th</sup> floor, tower 28 (Annexure E, page 21 of complaint)
8.	Unit admeasuring	2036 sq. ft.
9.	Builder buyer agreement	Not executed
10.	Possession clause as per clause 11(a) of the agreement	Subject to force majeure and subject further to all the Allottee(s) for the Project, making timely payment, Company shall endeavor to complete the construction of the Apartment within 36 (Thirty Six) months with 6 (six) months grace period from the date of Allotment of the Apartment in the Project to the Allottee(s). (Page 9 of complaint)
11.	Due date of possession	24.02.2016 [ <b>Note:</b> Grace period is included being unqualified and unconditional]
12.	Total consideration as per statement of account dated 14.02.2013 at page 18 of complaint	₹ 1,05,89,280/-
13.	Amount paid by the complainants as per statement of account dated 14.02.2013 at page 24 of complaint	₹ 28,15,300/-
14.	Occupation certificate	Not obtained

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15.	Offer of possession	Not offered
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**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:
- i. That the respondent in the year 2012 launched the subject project under the name and style of "Greenopolis" situated at Sector 89, Gurugram, Haryana.
  - ii. That the complainants had booked a flat in the said project of the respondent on 14.11.2012 and subsequently apartment bearing no. 1603, tower 28 was allotted to the complainants by the respondent. Out of the total sale consideration of Rs.1,05,89,280/-, the complainants have paid a sum of Rs.28,15,300/- to the respondent. As per the terms and conditions of the agreement, the respondent clearly stipulated that the possession of the allotted unit shall be given within 42 months from the date of allotment i.e., by February 2016.
  - iii. That the complainants inspected the site of the apartment and found that the respondent could not complete the entire construction work at the site as per the schedule. When the complainants enquired about the delay from the officials of the respondent, the officials of the respondent falsely promised that they will complete the entire construction work and would handover the fully furnished unit to the complainants within the stipulated time. That the said promise of the officials of the respondent turned futile being false as the respondent

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miserably failed to complete the construction work within stipulated time.

- iv. That the complainants ultimately wrote a letter dated 14.07.2015 thereby requesting the respondent to cancel the booking of the said flat. Again the complainants send so many reminder but to no avail. The complainants also served a legal notice dated 25.10.2018 through counsel upon the respondent but the respondent has failed to reply or comply with the terms of the said legal notice.
- v. That till date the construction of the project is not complete and even if it is started now, it will take 7 years approx. time to complete the construction work and the complainants are senior citizens. In such circumstances, the complainants have filed the present complaint seeking the following reliefs.

**C. Relief sought by the complainants**

4. The complainants have filed the present compliant for seeking following reliefs:
  - i. Direct the respondent to refund an amount of Rs.28,15,300/- along with interest at the prescribed rate on the amount so deposited from the date of deposit till the date of refund.
  - ii. Pass such order or further order(s) as this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been

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committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

- i. That the respondent along with other landowners obtained license bearing no. 115 of 2011 dated 23.12.2011 to develop and construct the group housing project.
- ii. That the respondent is only the landowner & license holder for the project land, whereas it is the Three C Shelters Pvt Ltd which is the developer of the said residential group housing project namely "Greenopolis" and Three C Shelters was solely responsible for carrying out the construction at its own cost in the above project in terms of Development Agreement dated 02.11.2011 executed in between respondent and Three C Shelters. Therefore, the delay in construction or deficiency in service, if any, is solely attributable to the Three C Shelters who has not been made party to the present complaint.
- iii. That since there was delay in the construction of the project, the authorized representative of Three C Shelters, Mr. Ravi Bhargav, had admitted its responsibility of developing and constructing the said project by way of an Affidavit dated 23.01.2019 before the Hon'ble

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Haryana Real Estate Regulatory Authority, Gurugram [Hon'ble HRERA].

- iv. That the member of Greenopolis Welfare Association ["GWA"] were pursuing Greenopolis Welfare Association vs Orris Infrastructure Pvt. Ltd. & Anr., complaint no. 225 of 2018 ["GWA's Complaint"] before Hon'ble HRERA, and after hearing all the parties, Hon'ble HRERA passed a detailed order dated 23.01.2019, which was uploaded on the official website of the Hon'ble HRERA on 25.01.2019 attaching all unsold inventories and receivables of both respondent and Three C Shelters and further is closely monitoring the development of the project by appointing a Commissioner Investigation and Monitoring Officer and an Engineer. Even all the payments to the contractor and vendors etc. from the Escrow account are being monitored by Hon'ble Authority closely. The Hon'ble HRERA has further directed the respondent and Three C Shelters to submit all unsold inventories and the future deliverables from the said Project in an escrow account so that the same may be used to develop the Project only and for on other purpose whatsoever.
- v. That vide order dated 20.08.2019 passed by the **Hon'ble Delhi High Court in O.M.P. (I) (COMM) 229/2019** in the matter of **Three C Infra Pvt. Ltd. vs. Parsvnath Rail Land Project Ltd.**, wherein the Greenopolis Welfare Association (GWA) is also a party, Parsvnath Rail Land Project Limited has been directed to refund Three C Infra

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Private Limited an amount of Rs. 65.50 crores out of which about Rs. 47.50 Cr. was routed from the Three C Shelter Pvt. Ltd. It is submitted that the aforesaid sum of Rs.47.50 Cr. has been transferred out of the project's funds by Three C Shelters to its group concern Three C Infra Private Limited and from Three C Infra Private Limited to Parsvnath Rail Land Project Limited.

- vi. That in pursuance of the Order dated 20.08.2019 passed by the Hon'ble High Court of Delhi, wherein the Hon'ble Court had directed that a said sum of Rs.47.50 Cr plus interest thereon be transferred to the Escrow Account of the project, an amount of Rs. 52.60 Cr. (approx..) has been transferred to the escrow account of the Three C Infra Private Limited and from Three C Infra Private Limited to the project Escrow account. Therefore, with these incoming funds it is further hoped that the project completion shall be smooth.
- vii. That since Three C Shelters failed to adhere to the schedule provided before the Hon'ble HRERA for completion of Phase-I of the project and also failed to comply with the directions of the Hon'ble HRERA given in order dated 23.01.2019, the GWA filed an Execution Application bearing No. E/115/225/2018 of 2019 before the Hon'ble HRERA which was later on transferred from the Hon'ble HRERA to the Hon'ble Adjudicating Officer and the case number was changed to **E/659/2020/225/2018** and order dated 13.02.2020 can be perused wherein the adjournment was sought by the Three C Shelters due to



unavailability of the Managing Director of the Three C Shelters company.

- viii. That Phase 1 consisting of Tower nos. T-15 to 21 of the project are nearly completed as about more than 95% work is complete and as per the direction of the Hon'ble HRERA and the same was to be handed over on or before 30<sup>th</sup> April, 2020 but due to the pandemic COVID-19, the same got delayed. The entire country was under lock down. The work has again restarted with limited number of raw material and labour. The work of phase 1 is expected to be completed soon followed by starting and completion of work in remaining two phases as per time lines given by the Hon'ble HRERA.
- ix. That the entire development of the project including the utilization of funds was being monitored by the Hon'ble HRERA and timelines of completion in respect of various towers have already been recorded and suitably extended by the Hon'ble HRERA vide its order dated 16.01.2020 in an execution petition filed by the GWA of the project in the following manner:

*"12. The work of phase 1 was to be commenced from 6th December, 2019 and was to be completed by 31st March, 2020 and the commencement of construction is already delayed. Now, in view of these facts that have come to the notice of the Authority in the preceding para, the Authority directs the promoters to start work of Phase 1 by 1st of February, 2020. If work is not commenced on or before 1 February, 2020, the promoters shall be liable for a penalty of Rs. 1 Crore per day individually, which may go up to 5 percent of the cost of the real estate project as determined by the Authority. The Authority further directs that the promoters shall complete the construction work of phase 1 on or before 30th April, 2020. In case*

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*work is not completed by 30th April 2020 the promoters shall also be liable for penalty of Rs. 1 crore for each day of delay individually which may go up to 5 percent of the cost of the real estate project as determined by the Authority. The request of the Three C. Shelters Pvt. Ltd. Dated 28.11.2019 and further affidavit dated 31.12.2019 was concurred by the Authority subject to the time schedule as mentioned above and further request for change of contractor including balance work of phase 1. Both the counsels of respondents have agreed to this during course of hearing. As per the due diligence report the cost of balance work in Phase 1 has been estimated to be Rs. 17.23 crore and the Authority hereby put a ceiling to withdraw amount out of the separate account of this project to this extent and for any expenditure over and above this amount excluding the amount required for development of common facilities necessary for operationalization of Phase 1 for which an amount as authorized by CIMO may be withdrawn. An affidavit in this regard would be filed by the contractor on or before 24.01.2020 so that the timeline for completion of the Phase 1 of the project is adhered to."*

- x. That it is further submitted that vide letter dated 28.11.2019, Three C Shelters through the authorised signatory informed that Three C Shelters was to begin the construction of the phase-I of the project in question by 06.11.2019 but due to the Environment Pollution (Prevention and Control) Authority (EPCA) had imposed a partial ban on construction activities during October 26-30 between 6 pm and 6 am as a measure to control deteriorating air quality, which had reached emergency levels on November 3. Since October 30, the EPCA, advised by a task force led by the Central Pollution Control Board (CPCB), has been extending the ban. From November 1 to 5, a complete ban was ordered by EPCA until the Hon'ble Supreme Court, on November 4, directed that all construction activities in Delhi-NCR be stopped until further orders, which got partially lifted by the

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Hon'ble Supreme Court on 09.12.2019 wherein the construction hours were restricted from 6 AM to 6 PM.

- xi. That the Hon'ble HRERA directed vide order dated 16.01.2020 that the start the construction of the Phase-I of the project by 01.02.2020 but the completion of the project as per the abovementioned timeline is subject to the delay caused by the pandemic situation due to COVID 19 and nationwide lockdown, which has given a major setback to the construction at the project site. However, the construction at the project site has started with limited raw material and limited number of labour due to the said lockdown the entire migrant labour has moved back to their respective homes from entire NCR and also from other states as well, which was even highlighted by media, once the pandemic situation get normalized and labour crisis situation improve construction will start at full swing. Further, the Finance Ministry on 13<sup>th</sup> May, 2020 while announcing a relief package for Covid-19, extended the completion dates for all real estate projects expiring on or after 25<sup>th</sup> March, 2020, under RERA of various states by six months.
- xii. That the delay in the delivery of possession of the flat in question and construction of the project has occurred due to reasons beyond the control of the respondent. Thus, respondent was not responsible for the construction of the project and the same was the responsibility and obligation of Three C Shelters solely.

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- xiii. That the delay in the delivery of possession of the flat in question and construction of the project has occurred due to reasons beyond the control of the respondent. Thus, respondent was not responsible for the construction of the project and the same was the responsibility and obligation of Three C Shelters solely.
- xiv. That the Hon'ble HRERA had taken a view with respect to completion of the said project and therefore, in the matter titled as **Sudhesh Poddar vs Orris Infrastructure Pvt Ltd & Anr.** bearing complaint no. 993 of 2020 where the Hon'ble Authority has observed the following on 21.10.2020:

*"Mitigation plan for completion of the project in under consideration of the authority. Accordingly, the matter will be decided keeping in view the completion of the project, the authority considers for deferment of DPC till project is completed."*

- xv. That during the pendency of the execution petition CR/659/2020, on **20.07.2020 CIRP Petition was allowed and vide order dated 16.10.2020**, an IRP has been appointed by the Special Bench of the National Company Law Tribunal, New Delhi Branch in the matter **M/s Straight Edge Contracts Pvt Ltd Vs M/s Three C Shelters Pvt Ltd, bearing Company Petition No. (IB)-2721(ND)/2019** and a moratorium in terms of section 14 of the IBC was also issued against the Corporate Debtor/ Three C Shelters. Thus, the project Greenopolis, being a single and only project of the Three C Shelters, is the subject matter of CIR Process pursuant to order dated 16.10.2020 passed by the Hon'ble NCLT in 3C Insolvency Proceeding and the 29

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towers and applicable commercial area on 37 acres of land is the subject matter of CIRP proceedings. It is important to mention here that the provisions of section 7 of the Code which applies to 'a real estate project' and here the GREENOPOLIS PROJECT is the only project of Three C Shelters and which is in CIR Process. The IRP Mr. Amarpal, appointed by Hon'ble NCLT vide order dated 18.10.2020 in Three C Shelters Insolvency Proceedings, made a publication in newspaper, asking the Creditors of M/s Three C Shelters Pvt. Ltd. to file their claims with proof.

xvi. That further, in compliance of the order dated 07.10.2020, when the respondent initiated the activities for the construction of the project, the respondent received an email dated 30.10.2020 from the IRP of the respondent appointed by the Hon'ble NCLT. In the email it was categorically mentioned that the "Greenopolis" project is being developed by the Three C Shelters. It is further directed by the IRP to immediately stop the construction work on the project "Greenopolis". Thus, the delay caused in the construction of the project is on account of the multiple proceedings initiated on different foras.

xvii. That as per section 238 of the Insolvency and Bankruptcy Code, 2016, the Code has an overriding effect of other laws, if they are in conflict with the Code. Section 238 of the Code provides as under:

*Section 238: The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any*

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*other law for the time being in force or any instrument having effect by virtue of any such law.*

Thus, if the provisions of the Section 7, 14 and 238 of the Code are read in tandem, then it would be clear that there is complete stay on proceedings in relation to the project GREENOPOLIS.

xviii. That not only this, after the insolvency of Three C Shelters, on 25.11.2020, Sh. R. K. Arora, Vice-President of GWA wrote an email to Kotak Mahindra Bank, Noida branch to freeze the bank account so that no transactions take place into the ESCROW account bearing no. 558011059169. It is pertinent to note that the said account is the same account which is mentioned by the Hon'ble HRERA in the order dated 23.01.2019 and the point for consideration is that the said account is in the name of the Authorised representative of Three C Shelters and thus, the same has been freezed by the IRP due to which the respondent cannot either take out the money or transact through the said account in lieu of payment of EDC/IDC amount or for payment in terms of construction work, labour cost, renewal of licence (subject to payment of EDC/IDC), etc.

xix. That not only this, the GWA challenged the order dated 16.10.2020 passed by Hon'ble NCLT in Company Petition No. (IB)-2721(ND)/2019, wherein the **Hon'ble NCLAT in Greenopolis Welfare Association vs Three C Shelters Pvt Ltd & Straight Edge Contracts Pvt Ltd, Company Appeal (AT) (Ins) No. 891 of 2020 decided on 06.01.2021** observed the following:





"1. Appellant claims to be association representing 350 home buyers in the project Greenopolis of the Respondent No.1 - Three C Shelters Pvt. Ltd. (Corporate Debtor). The Appeal has been filed against the admission of Application under Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC – in short) in C.P. IB-2721/ND/2019 dated 20th July, 2020 (Impugned Order No.1) (Annexure A-1 – Page 34) and against Order dated 17th September, 2020 (Page 34A – Impugned Order No.2) by which Order I.A. No.3491 of 2020 filed by the Appellant in the Petition was dismissed.

3.....The Appellant thus wants to claim that Respondent No.2 (Straight Edge Contracts Pvt Ltd) was not an Operational Creditor. It is also claimed that Respondent No.1 – Corporate Debtor (Three C Shelters Pvt Ltd) launched the Greenopolis Projects in 2011 in collaboration with "Orris Infrastructure Pvt. Ltd." and the project was of 38 towers and thousands of flats were to be developed by the Corporate Debtor in conjunction with Orris Infrastructure Pvt. Ltd. It is claimed that for fruitful CIRP (Corporate Insolvency Resolution Process), the Corporate Debtor cannot be subjected to the CIRP process alone since the project was being developed jointly with Orris Infrastructure. It is claimed that it is not feasible to only subject one participant into one CIRP. According to Appellant, there should be group insolvency of Respondent No.1 with Oriss Infrastructure.

**CIRP against Respondent No. 1 maintainable**

The other averment of the Appellant is that CIRP against Respondent No.1 alone would not be feasible without joining Orris Infrastructure Pvt. Ltd., now needs to be looked into. Although the Appellant claims (see para – 7.4) that there should be group insolvency of Respondent No.1 along with Orris Infrastructure, when there is no pending CIRP against Orris Infrastructure, such claim has got no substance. Orris Infrastructure has itself filed Application seeking intervention pointing out proceedings which have taken place before Haryana Real Estate Regulatory Authority and High Court with the prayer that the amounts lying in Escrow Account in view of Orders of the High Court should be used only for the construction of Greenopolis Project. **The IRP of the Corporate Debtor who has filed Reply (Diary No.23486) has stated (Reply para – 7.8) that it is denied that the development of the Greenopolis Project was in joint venture. IRP claims that there is no document in support. It is the Reply of IRP that Three C Shelters Pvt. Ltd. is the sole developer of the Greenopolis Project. Thus, we find that the contentions raised by the Appellant are not supported by documentary material and as regards the Intervention, Application filed by Orris Infrastructure, and the prayer made, it would be a matter for the IRP/RP to look into in the course of CIRP proceedings.**

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That it is submitted that the Hon'ble Authority being conscious of the above said position has deferred the proceedings in other RERA complaints filed qua the Greenopolis project.

- xx. That even the Hon'ble Supreme Court, in terms of the law has relegated the parties to the Ld. NCLT in SLP (C) Nos. 7712 of 2021. It is submitted that the Orris Infrastructure had filed a writ petition before the Hon'ble Delhi High Court inter alia seeking certain directions qua the Escrow Account No. 558011059169 opened with Kotak Mahindra Bank in relation to the 'Greenopolis' project. The Hon'ble Supreme Court vide order dated 01.07.2021 relegated the parties to the Ld. NCLT including on the issue as to whether the proceedings under Real Estate (Regulation and Development) Act, 2016 (RERA Act) and orders passed therein will have any bearing on the proceedings initiated before the NCLT under the IBC. Therefore, the 29 towers of Greenopolis Project in terms of HRERA order dated 07.10.2020 and order dated 15.04.2021 are being considered by the Hon'ble NCLT, in terms of the aforesaid order of the Hon'ble Supreme Court. Further, it may be noted that GWA, as an intervener was present before the Hon'ble Supreme Court during the hearing dated 01.07.2021 and is well aware of the aforesaid situation.
- xxi. That since the moratorium was issued against the Three C Shelters by Hon'ble NCLT on 16.10.2020, the order dated 07.10.2020 issued by Hon'ble HRERA in suo moto proceedings which was also challenged

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by the **GWA in Appeal No. 394 of 2020 before Hon'ble HREAT**, was ultimately withdrawn by GWA on 20.7.2021.

xxii. That the issue as to whether the proceedings under the Real Estate (Regulation and Development) Act, 2016 (RERA Act) and orders passed therein will have any bearing on the proceedings initiated before the NCLT under the IBC was to be decided by Hon'ble NCLT as directed by the Hon'ble Supreme Court vide order dated 01.07.2021 in SLP (C) Nos. 7712 of 2021.

xxiii. That Ld. NCLT had reserved the order on the applications and the same was delivered on 29.03.2022 wherein the following observations being made:

*77. Hon'ble the Apex Court in the above said citation clearly laid down that any property in possession of the Corporate Debtor under the contractual arrangement are specifically kept out of the term "Assets" under the explanation section 18. Therefore, it is held that the Greenopolis does not belong to corporate debtor, Ld. IRP/RP is not entitled to take the control & custody of the said property. Accordingly, Point Nos. V & VI are answered Negative.*

91. In sequel of the aforesaid detailed discussion, this Tribunal comes to the following conclusions:

*a. Orris is necessary party to the lis, being aggrieved party, hence, it is allowed to intervene as there was active collusion between Petitioner & Respondent corporate debtor and there was material suppression of the facts on behalf of the Ld. RP of the corporate debtor from this Tribunal.....".*

xxiv. That Hon'ble NCLT taking into consideration the benefit of the home buyers as well as the promoters by maintaining a balance between the two and upholding and following the precedents as already been laid down by the Hon'ble Supreme Court of India, that the present matter has to be dealt with very carefully examining and monitoring

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the situation and circumstances in hand, Hon'ble NCLT observed, **"that the IBC Code overrides the provisions of the HARERA, but it is also matter of fact that once Sectorial Regulator Authorities are duly constituted for a very particular purpose and is watching the interest of home buyers, then the said Authority can be more conveniently approached by the aggrieved persons as their Authority also possess powers under the Act to pass orders appropriate order with an intent to supervise & regulate the real estate projects in a better manner.** It also possesses the power to penalise, if any default is being committed by the developer/ promoters as the case may be."

xxv. That therefore, HARERA has been constituted for a very purpose which involves the decision to be taken for the benefit of not only the home buyers but also to maintain a balance between the promoter/ builder and the homebuyer in order to safeguard the economy of the country as well and therefore, the Hon'ble HARERA in the suo moto case no. 2206 of 2020 passed the following directions vide order dated 12.04.2022.

*13. With respect to applications for constitution of project monitoring committee and revision of timelines given for 'Greenopolis Project', It is directed that, for proper and efficient monitoring the monitoring committee as mentioned in para 33(V) of the Order of the Authority dated 07.10,2020, except for the representative of M/s Three C Shelters Pvt. Ltd, is revived and the same shall monitor the execution of construction work in the project and allow withdrawal from the new separate ERA account opened by*

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*Orris Infrastructure Pvt. Ltd. in compliance to the order of the Authority dated 07.10.2020.*

*14. With respect to prayer made by M/s Orris Infrastructure PVL Ltd, for revising the timeline for completion of the construction works, keeping in view the fact that due to the matter being pending before the NCLT construction work could not proceeded with, M/ Orris Infrastructure Pvt. Ltd is directed to submit revised timelines on affidavit within 10 days.*

*15. Considering the request made by M/s Orris Infrastructure Pvt. Ltd, to allow them to move an application under section 7(3) the Authority directs M/s Orris Infrastructure Pvt. Ltd. to move the applicator and complete all procedure formalities within a period of 1 month from the date of is order. For decision on the application under section 7(3) separate proceeding shall be initiated by the planning branch.*

*16. M/s Orris infrastructure Pvt Ltd is directed to provide the copies of applications dated 01 01 2022 and 07 01 2022 be provided to Mr. Venkat-Rao, counsel for the Greenopolis Welfare Association within 3 working days from this order. Also, in future if any application is moved by M/s Orris Infrastructure Pvt. Ltd, advance copy be shared with counsel for Greenopolis Welfare Association and representatives of Greenopolis Welfare Association.*

*17. M/s Orris Infrastructure Pvt, Ltd, is directed to share the status reports 1 and 2 with respect to resumption of construction work as submitted in the authority with the CIMO (Chief Investigation and Monitoring Officer).*

xxvi. That subsequent to the suo moto proceedings dated 12.04.2022, the respondent submitted fresh timelines for the completion of the project in question before the Hon'ble Authority on 22.04.2022 wherein the following timeline was provided by the respondent for the completion of the Greenopolis project.

Phase	Tower Nos.	Completion Date
1	15, 16, 17, 18, 19, 20, 21	November/ December 2022
2	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12	November/ December 2023
3	12A, 14, 22, 23, 24, 25, 26, 27, 28, 29	November/ December 2024

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xxvii. That despite having faced all the possible hinderances at the hands of Three C, as on date, the Phase-1 of the Greenopolis project is completed and the "Fire NOC" has been received while the "Occupation Certificate" is awaited. It is submitted that pursuant to receiving the Fire NOC, possession has been offered for fit-outs to the allottees as the application for grant of occupation certificate was dated 01.12.2022, well within the timelines as deposed to Hon'ble Authority vide affidavit dated 22.04.2022. That not only this, after obtaining Fire NOC and applying for Occupation Certificate, the Phase-1 of the project has been inspected by Sh. Ziauddin Ahmed who is the Assistant Professor in Department of Civil Engineering at Jamia Milia Islamia and has certified as on January 2023 that the Phase-I of the Greenopolis project has a satisfactory construction works, safe for human habitation.

**E. Jurisdiction of the authority**

7. 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**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all

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purpose with office 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**

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

### **Section 11**

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(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.*

10. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.



11. Further, the authority relies upon the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on 11.11.2021 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."*

12. Furthermore, the said view has been reiterated by the Division Bench of Hon'ble Punjab and Haryana High Court in ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021.*** The relevant paras of the above said judgment reads as under:

*"23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be*

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*inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.*

*24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.*

*25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount, or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer.”  
(Emphasis supplied)*

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in *M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*, and the Division Bench of Hon'ble Punjab and Haryana High Court in *“Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others. (supra)*, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the reliefs sought by the complainants**

**F.I Refund of the amount paid by the complainants along with interest**

14. **Relief sought by the complainants:** Direct the respondent to refund an amount of Rs.28,15,300/- along with interest at the prescribed rate on the amount so deposited from the date of deposit till the date of refund.

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15. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject apartment 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)*

16. **Due date of handing over possession and admissibility of grace period:** In the present complaint, the respondent herein i.e., M/s Orris Infrastructure Pvt. Ltd. issued allotment letter dated 24.08.2012 in favour of the complainants allotting unit bearing no. 1603 on 16<sup>th</sup> floor in Tower E of the 'Greenopolis' project. It is matter of record that the builder buyer agreement has not been executed inter se parties. However, clause 11(a) of the unsigned agreement provides time period for handing over the possession and the same is reproduced below:

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*11(a) Subject to force majeure and subject further to all the Allottee(s) for the Project, making timely payment, Company shall endeavor to complete the construction of the Apartment **within 36 (Thirty Six) months with 6 (six) months grace period from the date of Allotment of the Apartment** in the Project to the Allottee(s)."*

*(Emphasis supplied)*

17. The allotment letter was issued by M/s Orris Infrastructure Pvt. Ltd. in favour of the complainants on 24.08.2012. Grace period of 6 months is allowed in the present complaint being unconditional and unqualified. Therefore, the due date of handing over possession of the subject unit comes out to be 24.02.2016 including grace period of 6 months. 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.
18. The Authority is of the view that the over a period of time, certain legal developments were carried out which were before different court/tribunals/ forums of competent jurisdiction which adjudicated the matters presented before them. However, different parties who have different locus standi and stakes appeared before this authority, and this led to a series of orders adjudicating upon different tangents in this matter. As is evident from the aforesaid discussions, vide order dated 23.01.2019, it was held by the authority that both, M/s Orris Infrastructure Pvt. Ltd. and M/s Three C Shelters Pvt. Ltd., falls within the definition of the 'promoter' under the Act and are jointly & severally liable for completion of the project. Initially through interim order passed by the authority, M/s Orris Infrastructure Pvt. Ltd. was directed to complete the project in view of the

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inter se arrangement between them, however, as the arrangement failed, M/s Three C Shelters Pvt. Ltd. came forward and filed an affidavit dated 23.01.2019 committing timelines for completion of the project. Keeping in view the interest of the allottees of the project and for completion of the project, vide order dated 23.01.2019, the authority authorised M/s Three C Shelters Pvt. Ltd. to complete the project as per the committed timelines. Also, M/s Orris Infrastructure Pvt. Ltd. was directed to get the license renewed along with other necessary statutory approvals from the competent authorities. Unfortunately, M/s Three C Shelters Pvt. Ltd. failed to abide by the said timelines and failed to complete the project and the authority again passed order dated 16.01.2020 in execution proceeding whereby the timeline for completion of phase 1 was again revised stating that the work shall be again started by 01.02.2020 and completed by 30.04.2020. Despite repeated direction of the authority to complete the subject project, M/s Three C Shelters Pvt. Ltd. failed to complete the construction of the phase 1 within the committed timeframe.

19. Thereafter, M/s Orris Infrastructure Pvt. Ltd. filed an affidavit dated 20.07.2020 regarding proposed completion plan for completing the construction of the subject project. It is a matter of fact that on the basis of the afore-mentioned affidavit, this authority while considering the timelines mentioned in the affidavit itself vide its order dated 07.10.2020 directed the M/s Orris Infrastructure Pvt. Ltd. to complete the subject project in the committed time frame as mentioned in the affidavit.

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However, immediately after the passing of the order dated 07.10.2020 by this Authority, the CIRP proceedings were initiated against M/s Three C Shelters Pvt. Ltd. by the Ld. NCLT vide order dated 16.10.2020 and by virtue of the order dated 16.10.2020, the IRP took custody and control of the subject project. In view of the pendency of proceedings before Ld. NCLT as mentioned above, M/s Orris Infrastructure Pvt. Ltd. was unable to complete the subject project as per the committed timelines. Thereafter, an order dated 29.03.2022 was passed by the Ld. NCLT wherein it was held that the project "Greenopolis" belongs to M/s Orris Infrastructure Pvt. Ltd. being landowner and statutory license holder. Subsequent to the order passed by Ld. NCLT on 29.03.2022, an application was filed by M/s Orris Infrastructure Pvt. Ltd. before this Authority for revising the timelines for completion of the project which was decided vide order of this Authority dated 12.04.2022.

20. Also, it is of utmost importance to mention here that the contention and submission made by the counsel of the M/s Orris Infrastructure Pvt. Ltd. w.r.t the order of the Ld. NCLT dated 29.03.2022 doesn't stand today and stands rejected in view of the order of Hon'ble NCLAT in Company Appeal (AT) (Ins) no. 444 of 2022 dated 28.08.2023 whereby order dated 29.03.2022 has been set aside and orders dated 20.07.2020 and 16.10.2020 has been recalled.
21. In the present complaint, the entire amount was collected from the complainants by M/s orris Infrastructure Pvt. Ltd. against the subject unit.

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Vide order dated 11.05.2023 passed by the authority, the respondent was again directed to clarify as to whether any request was made by the complainants or not for shifting of the unit alongwith status of construction of unit of the complainants. In compliance of the same, the counsel for the respondent stated that the '*No request was made by the complainant for shifting of Unit*' and has placed on record the status of construction of project as on date. Further, the counsel for the respondent states that the subject unit of the complainants falls in Phase 3 of the project and the work is in progress. The counsel for the respondent also states that the respondent is ready to shift the unit of the complainants from Phase 3 to Phase 1 of the project as the construction of phase 1 of the project is complete. The counsel for the complainants refused the request made by the respondent regarding shifting of the unit of the complainants as the respondent has not obtained occupation certificate in respect of phase 1 of the project till date and wishes to withdraw from the said project.

22. Section 18 of the Act relates to obligation of the promoter regarding return of amount and compensation. Under section 18 (1) of the Act, the promoter shall be liable on demand by the allottee, in case an allottee wishes to withdraw from the project, to return the amount received by him with interest at the prescribed rate including compensation in the manner as provided under the Act. Returning of amount along with prescribed rate of interest to be paid by the promoter is positive obligation under section

18(1) of the Act in case of failure of the promoter to hand over possession within the stipulated time period. Section 18(1) of the Act empowers the allottee to withdraw from the project and seek refund of the principal amount paid by him with interest in the event the promoter fails to handover possession in accordance with the agreement for sale or due to discontinuance of business as a developer on account of suspension or revocation of registration under the Act or for any other reason. Moreover, the expression "on demand" which follows the right to "return of amount" is indicative of the priority, immediacy and expediency which is accorded to the right to refund. Thus, the expressions "refund" and "return of amount" is an act of restitution, and the obligation to retribute lies on the person or the body that has received unjust enrichment or unjust benefit.

23. In addition, the Hon'ble Supreme Court of India in civil appeal no. 3591 of 2020 titled as *M/s Imperia Structures Ltd. v. Anil Patni and Anr.* **MANU/SC/0811/2020: 2020(10) SCC 783 (dated 02.11.2020)** held that section 18 of the Act of 2016 confers an unqualified right upon an allottee to get refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the buyer's agreement and the para 25 of the said judgement is reproduced below for ready reference:

*"25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date*

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*specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". **The right so given to the allottee is unqualified** and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either Under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."*

*(Emphasis supplied)*

24. Furthermore, the Hon'ble Supreme Court in **M/s Newtech Promoters and Developers Private Limited Vs. State of U.P. and Ors. (supra)**, has held that the legislature has consciously provided the 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 and 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. The relevant para of the judgement is reproduced below for the ready reference:

*"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***

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*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.*

...

*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."*

25. Also, the Hon'ble Apex Court in recent judgement dated 28.03.2022 passed in civil appeal no. 1816 of 2022 titled as **M/s Imperia Structure Limited Vs. Brig. Harit Pant** has upheld the law laid down in M/s Imperia Structures Ltd. v. Anil Patni and Anr. (supra) and has observed as under:

*"2. The National Commission in paragraph 10 of its judgment relied upon the decision of this Court in **Imperia Structures Ltd. v. Anil Patni & Another, (2020) 10 SCC 783**. Paragraph 25 of the decision in Imperia Structures Ltd. (supra) was as under:*

*25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw*

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*from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". **The right so given to the allottee is unqualified** and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either Under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.*

*3. Since the National Commission has followed the decision of this Court in Imperia Structures Ltd. (supra), we see no reason to entertain this appeal."*

26. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 within the stipulated time period. The authority observes that the complainants-allottees intend to withdraw from the subject project in view of the facts mentioned above and are well within their right to do the same in view of section 18(1) of the Act, 2016 as the respondent has failed to hand over possession of the subject unit within the stipulated time period. Keeping in view the facts of the present matter, the authority is of the view that the complainants-allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they had paid a considerable amount of money towards the sale consideration. As a matter of fact, the respondent has till date not obtained occupation certificate from the concerned authority and has failed to offer possession

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of the subject unit to the complainants till date. As such, the complainants are entitled to refund of the entire amount paid by them along with interest at prescribed rate as per provisions of section 18(1) of the Act read with rule 15 of the rules.

27. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest. However, the allottees intend to withdraw from the project and are seeking refund of the amount paid by them 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.

28. 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., 18.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

29. As such the complainants are entitled to refund of the entire amount paid by them along with interest at prescribed rate as per provisions of section 18(1) of the Act read with rule 15 of the rules. Therefore, in view of the

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above, the authority directs the respondent-promoter to return the amount received by it from the complainants-allottees along with interest at the rate of 9.30% p.a. from the from the date of deposit till the date of recovery of the amount within 90 days from the date of this order as per rule 16 of the Haryana Rules, 2017.

30. In view of the reasons stated above, the authority hereby directs the respondent-promoter to return the amount received by it i.e., Rs. 28,15,300/- with interest at the rate of 10.75% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.

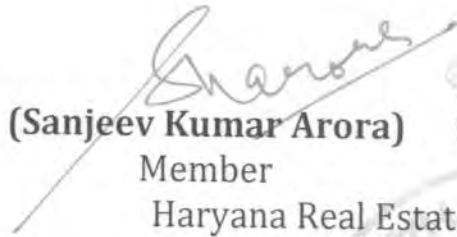
**G. Directions of the authority**

31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the entire amount of Rs. 28,15,300/- paid by the complainants along with prescribed rate of interest @ 10.75% p.a. as prescribed under rule 15 of the rules from the date of each payment till the date of refund of the deposited amount.

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- 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.
32. Complaint stands disposed of.
33. File be consigned to registry.

  
**(Sanjeev Kumar Arora)**  
Member  
Haryana Real Estate Regulatory Authority, Gurugram

  
**(Ashok Sangwan)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

Dated: 19.09.2023



