

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

Complaint no. : 911 of 2020
Order reserved on: 07.07.2023
Order pronounced on: 29.09.2023

Rajesh Kumar
R/o: - C-219, Alpha, Greater Noida, Kasana Gautam
Budg Nagar, Uttar Pradesh

Complainant

Versus

M/s Ramprashtha Promoters and Developers Private
Limited.
Regd. Office at: C-10, C block Market, Vasant Vihar, New
Delhi

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Ajay Panchal (Advocate)
Shri Naman Saraswat (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 28.02.2020 has been filed by the complainant/allottees 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 under the provision of the Act

or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"SKYZ", Sector 37C, Village Gadauli Kalan, Gurugram
2.	Project area	60.5112 acres
3.	Registered area	102000 sq. mt.
4.	Nature of the project	Group housing complex
5.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid upto 18.02.2025
6.	Name of licensee	Ramprastha Builders Pvt Ltd and 11 others
7.	Date of approval of building plans	12.04.2012 [As per information obtained by planning branch]
8.	Date of environment clearances	21.01.2010 [As per information obtained by planning branch]
9.	RERA Registered/ not registered	Registered vide no. 320 of 2017 dated 17.10.2017
10.	RERA registration valid up to	31.03.2019
11.	Extension applied on	26.03.2019
12.	Extension certificate no.	Date Validity



		HARERA/GGM/REP /RC/320/2017 /EXT/122/2019 In principal approval on 12.06.2019	30.03.2020
13.	Unit no.	1803, 18 th floor, tower/block- I (Page no. 28 of the reply)	
14.	Unit area admeasuring	2025 sq. ft. (Page no. 28 of the reply)	
15.	Date of booking application form	30.09.2011 (Page no. 29 of the reply)	
16.	Allotment letter	N. A	
17.	Date of execution of apartment buyer agreement	Not executed	
18.	Possession clause	15. POSSESSION <i>(a) Time of handing over the Possession</i> <i>Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over the possession of the Apartment by 31.08.2014 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</i> (Emphasis supplied) <i>(Possession clause taken from the BBA annexed in complaint no. 3715-2019 of the</i>	

		<i>same project being developed by the same promoter)</i>
19.	Due date of possession	31.08.2014 [As per mentioned in the buyer's agreement]
20.	Grace period	Not utilized
21.	Basic sale price as per payment detail page no. 28 of the reply	Rs.83,21,068/-
22.	Amount paid by the complainant	Rs.3,00,000/- (As per receipt information page no. 22 of the reply)
23.	Occupation certificate	Not received
24.	Offer of possession	Not offered
25.	Delay in handing over the possession till date of filing complaint i.e., 28.02.2020	5 years 5 months and 28 days

B. Facts of the complaint

3. The complainant has made the following submissions: -

- a. That the complainant believed upon the respondent being an employee of the respondent booked a flat in upcoming real estate project "SKYZ situated at Sector-37 D, Gurgaon, Haryana. But the respondent has not issued any allotment letter nor executed buyers' agreement in favor of the complainant. The complainant also in good faith and never adamant about the execution of the buyer's agreement as well as allotment letter but paying regular installment at agreed and common public sale consideration of ₹ 37,0000/- sq. ft. but the builder promise with complainant that

- sale consideration of ₹ 36,0000/- sq. ft. compare less of common people.
- b. That on 01.10.2011 the complainant paid ₹ 1,00,000/- vide cheque no. 358003 dated 30.11.2011 and the respondent issued receipt in this regard mentioning therein that cheque to be credited to the account of the property no. I-1803 in the project SKYZ Ramprastha City, Sector-37 D, Gurgaon. That the total sale consideration of the flat is ₹ 36,00,000/-for which the complainants have paid ₹ 3,00,000/- till date.
- c. That due to temperamental differences and disputes, the complainant left the services of the respondent and on that the respondent in order to put undue pressure and harassed the complainant neither issued allotment letter nor executed buyers' agreement. As per the terms and conditions of the buyer's agreement the possession of the flat was delivered to the customers on 31.08.2014 with a further grace period of 120 days. However, construction and development works have not even been completed at the site even period of more than 5 years has passed. But the respondent is not in a situation to hand over the peaceful physical possession of the flat/unit as per their commitment within the aforesaid maximum period along with grace period of 120 days.
- d. As at the site, there is no development as per assurance, the project is far from completion and the complainants/petitioners are suffering because of undue delay on the part of the respondent in handing over of the physical possession of the flat/unit.



e. That the complainant/petitioner has diligently discharged all his obligations as per their commitment, whereas the respondent has failed to perform its obligations stipulated in the contract.

C. Relief sought by the complainant:

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

a. To refund the entire amount of ₹ 3,00,000/- paid by the complainant along with interest @ 18% p.a.

5. 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.

6. The respondent has contested the complaint on the following grounds: -

a. That at the very outset, it is most respectfully submitted that the complaint filed by the complainants is not maintainable and this authority has no jurisdiction whatsoever to entertain the present complaint due to lack of cause of action.

b. It is submitted that the complainants herein are the speculative investors and does not fall under the preview of the consumers and nowhere in the present complaint the complainant has taken a plea that they fall under the definition of consumer as defined under the Consumer Protection Act, 1986. The complainants have deliberately not pleaded to the purpose for booking a flat in the project of the respondent as disclosing the purpose to be an investment would result in dismissal of the complaint. It is further

submitted that the complainant owns more than one property and therefore are speculative investors, who never had any intention to buy the said flat in the project of the respondent for their personal use and have now filed the present complaint on false and frivolous ground. It is respectfully submitted that the complaint is liable to be rejected/dismissed on the very ground that the complainants have not come to the Ld. Adjudicating Officer with clean hands and intentions and have concealed the material fact that they have invested in the apartment for earning profits and the transaction therefore is relatable to commercial purpose and the complaints not being a 'Consumers' within the meaning of section 2(1)(d) of the Consumer Protection Act, 1986.

- c. The respondent has obtained an occupancy certificate for the majority of its projects. The below table shows the project name, its size and the current status of the project. It can be seen that the Respondent has been diligent in completing all its projects and shall be completing the remaining projects in phased manner. The respondent has completed major projects mentioned below and has been able to provide houses to the allottees.
- d. It is therefore humbly submitted before this Hon'ble Authority that lot of customers including the complainant herein who had booked their apartments did not pay their installments on time leading up to a situation where the Respondent builder, who had already squeezed all its resources into the project by way of contribution in

the form of land and approvals thereon, could not carry on construction activity as envisaged.

- e. It is submitted that the complainant is in default since 2011 and has not even the earnest money till date. The complainant submitted an application form dated 30.09.2011 for 3 BHK flat of super area 2025 sq. ft. at the basic sale price of ₹ 3375/- per sq. ft. The total cost of the flat as per the application form is ₹ 83,21,681/-, however, the complainant has not even made the complete initial booking amount i.e., ₹ 7,01,036/- till date. It is pertinent to mention here that ₹ 4,01,036/- is still outstanding on the part of the complainant.
- f. It is pertinent to mention here that that any additional one-year delay of the project increases the cost of the project by 20%. It is also submitted that the agreement between the parties is on a firm pricing basis and therefore it cannot be said that respondent builder benefited by the act of its own delay. It is therefore submitted that collective parameters led to the delay of the project and the role of the customers, and the complainant cannot be ignored.
- g. That the respondents have made huge investments in obtaining approvals and carrying on the construction and development of 'SKYZ' project and despite several adversities is in the process of completing the construction of the project and should be able to apply the occupation certificate for the said apartment in question by 31.03.2020 (as mentioned at the time of application for



extension of Registration of the project with RERA) or within such extended time, as may be extended by the Ld. Authority, as the case may be. The respondents continued with the development and construction of the said apartment and also had to incur interest liability towards its bankers. The complainants prevented the respondents from allotting the said apartment in question to any other suitable customer at the rate prevalent at that time and thus the respondents have suffered huge financial losses on account of breach of contract by the complainants.

- h. It is submitted that it was the complainant being employee of the respondent had approached the respondent for investing in an apartment with the object to earn profits overnight. The complainant had not relied upon and was not influenced by any brochures, advertisements, representations, etc. and it was only after fully satisfying himself about the interest and entitlement of the respondent in the said project and after having gathered and understood detailed information about the said project, and after completely satisfying himself about all aspects of the said project and after a careful consideration of all the facts, terms and conditions that the complainant had applied for booking of the said apartment.
- i. It is also wrong and denied that the Respondent had not issued any allotment letter nor executed buyer's agreement with the complainant. It is submitted that the application form dated 31.09.2011 was submitted by the complainant for 3 BHK apartment

with super area of 2025 sq. ft. at the basic sale price of ₹ 3375/sq. ft. i.e., ₹ 68,34,375/-. It is further submitted that as per the said application form the total price payable for the apartment was ₹ 83,21,068/-.

- j. It is submitted that the complainant did not even pay 10% of the total sale amount and in the absence of the same the respondent is not under any obligation to execute builder buyer agreement with the complainant. It is further submitted that due to the speculative investors like the complainant the project of the respondent is delayed. The total amount outstanding against the initial booking amount till date is ₹ 4,01,036/- and total interest outstanding till date is ₹ 7,14,259/-.
- k. It is submitted that the proposed estimated time of handing over the possession of the said apartment i.e., 31.08.2014 + 120 days, which comes to 31.12.2014, is applicable only subject to force majeure and the complainants having complied with, all the terms and conditions and not being in default of any the terms and conditions of the apartment buyer agreement, including but not limited to the payment of installments. In case of any default/delay in payment, the date of handing over of possession shall be extended accordingly solely at the respondent's discretion, till the payment of all outstanding amounts and at the same time in case of any default, the complainant will not be entitled to any compensation whatsoever. This was also provided in clause-15 and clause-17 of the apartment buyer agreement which may kindly be



referred to in reply to the contents of this para and the same is not produced herein for the sake of brevity.

7. 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

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. 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

10. 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.

11. 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 complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR(C), 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** 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."

13. 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 the complainants being investors.

14. The respondent has taken a stand that the complainants are the investors and not consumers, and therefore, are not entitled to the protection of the Act and to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if it contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions



of the apartment buyer's agreement, it is revealed that the complainants are buyer and paid total price of Rs.65,76,424/- to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

15. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019^o in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant.

- G.I To refund the entire amount of ₹ 3,00,000/- paid by the complainant with interest @ 18% p.a.**



16. The complainant intends to withdraw from the project and is seeking return of the amount paid by them 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."

17. As per clause 15(a) of the apartment buyer agreement (Possession clause taken from the BBA annexed in complaint no. 3715-2019 of the same project being developed by the same promoter) provides for handing over of possession and is reproduced below:

"15. POSSESSION

(a) Time of handing over the possession

Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over the possession of the Apartment by **31.08.2014** the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."



18. The authority has gone through the possession clause of the agreement and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.
19. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused



his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

20. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 31.08.2014 and further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the promoter in the apartment buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 120 days cannot be allowed to the promoter at this stage.
21. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule 28(1), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 15(a) of the buyer agreement (possession clause taken from the BBA annexed in complaint no. 3715-2019 of the same project being developed by the same promoter), the due date of possession was specifically mentioned in the apartment buyer agreement as 31.08.2014. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 31.08.2014.
22. The authority has further, observes that due date of possession of the same project being developed by the same promoter is specifically



mentioned in the possession clause i.e., 31.08.2014. It is pertinent to mention over here that even after a passage of more than 11.2 years (i.e., from the date of allotment till date) neither the construction is completed nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid the booking amount. Further, the authority observes that there is no document placed on record from which it can be ascertained that the respondent has raised any further demand from the complainant and issued reminder letters. Moreover, no cancellation has been done by the respondent in the present matter accordingly no default on part of complainant is seen on face of it. In view of the above-mentioned fact, the allottee intends to withdraw from the project and is well within the right to do the same in view of section 18(1) of the Act, 2016.

23. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent /promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021:***

"....

The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be

made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

24. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others (Supra)***, it was observed as under: -

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

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

26. **Admissibility of refund at prescribed rate of interest:** However, the allottees intend to withdraw from the project and is seeking refund of the amount paid by him 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.

27. 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.
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., 29.09.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
29. 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 them 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.

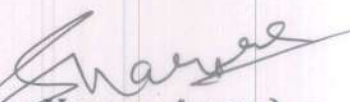
H. Directions of the authority

30. 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):

- a. The respondent/promoter is directed to refund the amount i.e., ₹ 3,00,000/- received by it from the complainants 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.
- b. 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.
- c. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee-complainants.

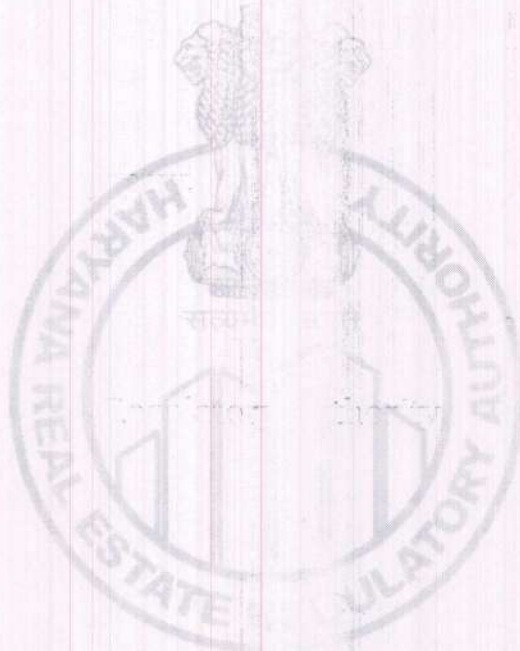
31. Complaint stands disposed of.

32. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.09.2023



HARERA
GURUGRAM