Subject: - Suo Moto rectification of the title u/s 39 of the Act 2016 in complaint no. 5786/2022.

Chadramani Gupta

Versus

Stadia Infrastructure Pvt. Ltd.

The aforesaid complaint was disposed of vide order dated 29.08.2023 and the detailed order was uploaded on 22.09.2023. While consigning the complaint file in the registry, it was observed that the title of the complaint was not as per the complaint and proforma B.

Thus, to avoid any further complicacy in the matter the title of the complaint may be corrected as Chandramani Gupta Vs Stadia Infrastructure Pvt. Ltd. instead of Chandramani Gupta Vs Chandramani Gupta if the authority deems fit.

Submitted for appropriate orders please.

Shaheen 7-12-2023

Legal Executive

7/12/23

Hon'ble Member (SKA)

7/12

Hon'ble Member (VKG)

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

(Name of the respondent rectified/corrected vide order dated 07.12.2023)

Complaint no. : 5786 of 2022
Date of filing complaint : 25.08.2022
Date of decision : 29.08.2023

	Chandramani Gupta **R/O:** - 149,Tonk Road, Kailashpuri, Durgapura, Jaipur.	**Complainant**
	Versus	
	M/s Stadia Infrastructure Pvt. Ltd. **Regd. Office at:** - 39-2, Double Storey, Ashok Nagar, New Delhi-110018	**Respondent**

CORAM:	
Shri Vijay Kumar Goyal	**Member**
Shri Sanjeev Kumar Arora	**Member**
APPEARANCE:	
Sh. Rahul Bhardwaj	Advocate for the complainant
Sh. M.K. Dang & S. Rahul Thareja	Advocates for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 there under or to the allottee 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 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	'Country Homes' , in village Medavas, Sector-64, Gurugram
2	Registered /Non-Registered	**Not registered**
3	Payment plan	Construction linked payment plan
4	Unit no.	F1-FF (BBA on page no. 49 of complaint)
5	Unit admeasuring	4315 sq. ft. (BBA on page no. 49 of complaint)
6	Date of execution of builder buyer agreement	31.07.2014 (On page no. 48 of complaint)
7	Possession clause	4.1 **In case the developer makes delay in handing over the possession of the**

		instructed property completed in all respect within a period of 1 year + 90 days grace period, then in such case the Seller / Developer will be liable to pay the interest @ 18% per annum to the Buyer without any further explanation and communication irrespective of the effect of the other clauses mentioned in this agreement, (subject to force majeure).
8	Due date of delivery of possession	13.10.2015 (grace period is allowed being unqualified)
9	Total sale consideration	Rs. 1,20,00,000/- (As per BBA on page no. 50 of complaint)
10	Total amount paid by the complainant	Rs. 1,01,11,000/- (As alleged by the complainant)
11	Occupation Certificate	Neither applied nor obtained
12	Possession letter	15.02.2021 (Page no. 137 of reply)

B. Facts of the complaint

3. That the complainant booked a residential apartment bearing no. F-1 on the first floor of the project, having total area of 4315 sq ft approximately (hereinafter referred to as the "Housing Unit) and

executes a unit buyer agreement between the parties on 31.07.2014.

4. That relying upon the respondent's representations, the complainant paid an amount of Rs. 1,01,11,000/- against the total sale consideration of Rs. 1,20,00,000/- including all the charges. Furthermore, the payment made by the complainant is duly acknowledged by the respondent in the unit-buyer agreement and the paid amount by the complainant constitutes to almost 85% of the total sale consideration of the said unit.

5. That as per clause 4.1 of the agreement, the respondent is liable to make payment of interest at the rate of 18% per annum to the complainant, in the event of any delay in handing over of possession of the housing unit by the respondents to the complainant, after expiry of a period of 1 year and an additional grace period of 90 (ninety) days, from the stipulated date of completion, i.e., October, 2015.

6. That the complainant has diligently followed the payment plan and made all the payments to the respondent, as and when the demands for the payments were raised by the respondent.

7. That the possession of the apartment has not been offered till date, an inordinate delay of over 6 years and 10 months has caused immense financial burden on the complainant. The complainant has been severely traumatized by the gross deficiency in service of the respondent, clubbed with mental agony of the fact that the project is in fact far from completion in the near future as was promised.

8. That the complainant had been repeatedly making inquiries with the respondents in form of phone calls, text messages, emails, letters and all other forms of follow-up and reminders including multiple failed attempts to meet the respondent in person at different locations but respondent did not pay any heed to the complainant.

9. That even after a lapse of 6 years and 10 months, the respondent has failed to offer the possession of the unit to the complainant. It is pertinent to mention here that the project in question is not a registered project with the RERA, which puts the said project in a situation wherein it cannot get the occupation certificate from the competent authority. It is submitted that even if the possession is offered to the complainant, such possession would not constitute a valid offer of possession and such possession would be blatantly illegal in the eyes of the law.

10. That the complainant went to physically visit the project site, to his utter shock and dismay, he found that the front facade of the project has been completely eroded due to inferior quality of plastering and finishing and further the entire premises is not gated due to which the stilt area of the premises has become a place for stray animals to sit and take shelter.

11. That as per section 18 of RERA Act, if a promoter fails to complete or is unable to give possession of an apartment/unit (residential apartment in the present case) 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 from the project. 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 word "shall" indicate that this provision is mandatory and it is the absolute right of the allottee /homebuyer which accrues on account of promoter's failure either to complete the apartment or to give its possession in accordance with the terms of the agreement for sale or on the date specified therein for completion of it. Therefore, the case of the complainant is covered by Section 18 of the RERA Act and is entitled to seek refund of the monies paid by him to the respondent along-with applicable interest and as per Section 19 (4) of the RERA Act, 2016, the promoter is entitled to a refund of the amount paid along with interest.

12. That after an inordinate delay in the completion of the project from the due date of possession, the complainant wishes to opt out of the project seeking complete refund of the amount that has been paid by the complainant i.e., Rs. 1,01,11,000/- along with applicable interest prescribed under the RERA Act r/w the HRERA Rules.

C. Relief sought by the complainant.

13. The complainant has sought following relief:

(i) Refund the entire amount paid by the complainant along with prescribed rate of interest.

(ii) Litigation Cost.

D. Reply by the respondents.

14. It is submitted that the complainant has approached this Authority for redressal of the alleged grievances with unclean

hands, i.e., by not disclosing material facts pertaining to the case at hand and, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the Hon'ble Apex Court in plethora of cases has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

- That against the total consideration of Rs.1,20,00,000/-, the complainant till date has paid only a sum of Rs.1,01,11,000/- only. Hence, a sum of Rs.18,89,000/- remains outstanding till date and, consequently, the period of 1 year + 90 days available to the respondent to hand over the possession of the constructed property complete in all respect is yet to begin. No default whatsoever has been committed by the respondent in adhering to its contractual obligations.
- That the complainant was seeking structural changes in the original layout plan in August 2017 which necessitated further and additional expenses. The respondent conveyed to the complainant that structural changed could be carried out on a limited scale.
- The respondent had completed other units in the project-in-question of allottees who had made timely payment and given

them the possession of the units as well as got their sale deed registered.

- The complainant did not make payment of the total sale consideration of Rs.1,20,00,000/- even till the beginning of the year 2020 and thereafter from February 2020 started leveling false and baseless allegations against the respondent. It is pertinent to mention here that there was a breakout of Covid-19 global pandemic in India and the situation worsened from March, 2020 onwards bringing construction activity to halt all over India. In order to cover her default, the complainant started making false allegations against the respondent.
- The complainant lodged a false and baseless complaint with Haryana Real Estate Regulatory Authority, Gurugram, alleging that the project was not registered with RERA. Thereafter, Haryana Real Estate Regulatory Authority, Gurugram, issued a notice dated 31.08.2020 to the respondent as well as directed for its Bank Account to be frozen. The respondent replied to the said notice contending that the project does not fall within the purview of RERA and, hence, wasn't required to be registered with RERA. The respondent also moved an Application before this Authority to de-freeze its bank account. The Haryana Real Estate Regulatory Authority, Gurugram, vide its Order dated 26.02.2021, held that the project-in-question was required to be registered with RERA, but,

taking a lenient view, imposed a penalty of rs.1 lac with direction to the respondent to file an application for registration of the project as well as directed that the bank account shall be de-frozen once the respondent deposited the penalty with the Authority.

15. That the respondent issued a signed possession letter dated 15.02.2021 and draft of sale deed on 15.02.2021, whereupon the got property ID "TMCG64F11F" generated. The respondent has completed the construction of the unit and has handed over the possession vide possession letter dated 15.02.2021.

16. The complainant, in order to unjustly enrich herself had earlier filed a false and frivolous consumer complaint bearing no.26/2022 on 28.06.2022 titled 'Chandramani Gupta vs Stadia Infrastructure Pvt. Ltd etc.' before Hon'ble Rajasthan State Consumer Dispute Redressal Commission claiming same relief of refund of Rs.1,01,33,000/- with Interest which is not permissible.

17. That when the respondent asked for the balance sale consideration before registry of sale deed, the Complainant again started acting nasty and stated that no balance payment is left. It is worthwhile to mention here that that the complainant had got prepared a demand draft of balance sale consideration of Rs.18,89,000/- bearing No. 528790, dated 17.02.2021, with issuing branch being SBI, C- Scheme, Jaipur and Drawee branch being SBI, Sector 49, Gurugram a copy of which was attached by the complainant in her complaint with the Hon'ble Rajasthan state consumer Dispute redressal commission. The aforesaid act of the complainant is an acknowledgement of the facts that the sum Rs.18,89,000/- was due

towards the balance sale consideration even in the year 2021 and is due till date. It is clear that the complainant did not have any intention to pay the balance of the sale consideration of Rs.18,89,000/- along with consequent Interest over two delayed payments. Instead of making payment of the balance of Sale Consideration of Rs.18,89,000/- with consequent Interest over two delayed payments, the Complainant took possession and control over the Lock and Keys of the unit in question and kept on demanding the respondent to complete the remaining work in common areas as late as April, 2022, but without making any payment of the balance sale consideration. Thus, on the one hand, the complainant did not make payment of the total sale consideration of Rs. 1,20,00,000/- up till 31.03.2015 nor are making payment of the balance of sale consideration of Rs. 18,89,000/- with consequent Interest with regard to two delayed payments in terms of unit buyer agreement.

18. That although the respondent had delivered the possession of four apartments comprising of 3 units of two bedroom and 1 unit of one bedroom altogether known as F1 completing their part of obligation. However, the respondent came to know on 30.12.2022 from a WhatsApp message sent by the complainant that some miscreant and anti-social type of persons had forcibly entered into one flat of 2 bedrooms of F1 and had caused damage to the said apartment as well as one other apartment next door not allotted to the complainant. Some goons and dishonest types of persons have resorted to such unauthorized, illegal, unwarranted acts so as to blackmail and harass the respondent. On the said malafide

activities, the respondent lodged a complaint on 04.01.2023 with the Local Police of Sector 65, Gurugram. It is further important to mention here that as the complainant was already in possession of her unit it was her responsibility to take care of the same.

19. All other averments made in the complaint were denied in toto.

20. 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

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

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

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

Section 11(4)(a)

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

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F.I Objection regarding force majeure conditions:

21. The respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

22. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 13.10.2015. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

F. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant has sought following relief:

(i) Refund the entire amount paid by the complainant along with prescribed rate of interest.

(ii) Litigation Cost.

23. A project by the name of County Homes situated in village Medavas Sector- 64 Gurugram was being developed by the respondent builder. The complainant coming to know about the same and applied for a unit bearing no. F1-FF having a total area of 4315 sq.ft. for a basic sale consideration of RS. 1,20,00,000/- inclusive of all other charges. A unit buyer agreement in this regard was executed between the parties on 31.07.2014, the due date for completion of the project and handing over of possession of the allotted units was fixed as October 2015. A total sum of Rs. 1,01,00,000/- was paid upto 30.06.2017 against the sale price by

the allottee from time to time. However, the respondent failed to complete the project and offer possession of the allotted units, leading to withdrawal and seeking refund of the paid-up amount.

24. The complainant further pleaded that as per section 18 of RERA Act, if a promoter fails to complete or is unable to give possession of an apartment/unit (residential apartment in the present case) 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 from the project. 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 word "**shall**" indicate that this provision is mandatory, and it is the absolute right of the allottee/homebuyer which accrues on account of promoter's failure either to complete the apartment or to give its possession in accordance with the terms of the agreement for sale or on the date specified therein for completion of it. Therefore, the case of the complainant is covered by section 18 of the RERA Act and is entitled to seek refund of the monies paid by him to the respondent along-with applicable interest. The relevant portion of Section 18 is reproduced hereunder:

> *"18. Return of amount and compensation:-*
>
> *(1) if the promoter fails to complete or is unable to give possession of a Unit, 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 prejudice to any other remedy available, to return the amount received by him in respect of that Unit, 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:

Besides above, as per Section 19 (4) of the RERA Act, 2016, the complainant is entitled to claim the refund of the amount paid along with prescribed rate of interest.

25. But the case of respondent builder as set up in the written reply dated 10.02.2023 is that though the complainant is its allottee of the above-mentioned units but failed to abide by the terms and conditions of buyer's agreement dated 31.07.2014. She was required to make payments against the allotment by 31.03.2015 but paid only Rs. 81,11,000/-. A number of reminders for making payment as per the schedule of payment were issued but with no positive results. Even a sum of Rs. 18,89,000/- is still due against the allottee. The complainant was offered possession of the allotted unit vide letter dated 15.09.2021 and she along with her husband took possession of the same. She also filed a complaint with State Consumer Forum Rajasthan seeking a refund of the paid-up amount but same was withdrawn on 14.11.2022.

26. It is pertinent to mention here that the respondent constructed a residential complex namely country homes over 605 sq.yd. situated in the revenue estate of village medavas and developed that complex into different units. So, the respondent stated that it was not required to obtain any completion certificate or occupation certificate. Even the units sold to some other persons in the project have been registered by way of sale deeds. Thus, in

such a situation neither the project was required to be registered with the authority.

27. Vide order dated 25.05.2023, A Local Commissioner was appointed on the request of the respondent by the authority to check whether the construction is completed or not and whether the said unit falls within the limit of Gram Panchayat /Planning area or not? The detailed report of site visit submitted by Sh. Sumit Nain (executive engineer) and has reproduced as under:

Physical Status of the project:

The site of project has been physically inspected on 12.07.2023 and it is submitted that the project is developed on area measuring 1 Kanal comprising one tower of Stilt plus four floors. The construction of project had already been completed way back but as on date the doors & windows in one unit at first floor have been removed and the unit is left unattended. The tile flooring work at terrace is not completed. Further as per the current site status 6 units have been handed over to the allottees and they are residing in their respective units and other units in the project are locked. The availability of services at project site is briefed further.

A. **Water supply**- As per the resident residing on the first floor there is boring at stilt level to meet the needs of water and no other water supply connection has been provided to the project.

B. **Sewerage**- As per the resident residing on the first floor there is collection chamber on stilt floor and the same is connected to the external sewer line laid in front of the project.

C. **Electricity**-As per the resident residing on the first floor the individual allottee in the project have taken their own connection

approval from the department. There is no common connection of electricity for the project.

Regarding the status of units at first floor it is submitted that there are six units at first floor out of which unit 1 & 2 have been clubbed & works windows have been removed and unit 6 is handed over & the allottee is residing there.

Further as per the record of the authority, show cause notice was issued to the promoter for non-registration of the project and directions were issued to get the project registered **but till date the project is neither applied for registration nor registered with the authority**. The location of project is at sector-64 of Gurgaon-Manesar urban complex , Gurugram as per the google location.

The local commission has made following conclusion: The site of project namely "County Homes" located at sector-64, Gurugram being developed by M/s Stadia Infrastructure Pvt Ltd. has been inspected on 12.07.2023 and it is concluded that:

I. The project is being developed on area measuring 1 Kanal comprising one tower as stilt + four floors and as per the record of the authority the project is neither applied for registration nor registered with the authority.

II. The construction of the project had been completed way back and as on date tile flooring work at terrace is pending and the doors & windows of one unit at first floor have been removed.

III. As per current site status, 6 units have been handed over to the allottees and they are residing there in their respective units and other units have been locked.

IV. The sewerage lines of the project have been connected to collection chamber at stilt level and further connected to external sewer lines laid in front of project.

V. The water supply connection has not been connected to the project. However boring has been done at stilt to meet the needs of water for the project.

VI. Electricity connection has not been connected to the project. However, the allottees residing in the project have obtained their individual connections from the department.

VII. The location of the project is at sector-64, Gurugram as per google location.

28. It is pertinent to mention here that the location of the project is at sector 64, Gurugram as per google location and site form part of Gurgaon Manesar Urban Complex under provision of the Act no. 41 of 1963 and thus, is part of the planning area as per section 2 (zh) which provides as under:

"planning area" means a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as such by the appropriate Government or any competent authority and includes any area designated by the appropriate Government or the competent authority to be a planning area for future planned development, under the law relating to Town and Country Planning for the time being in force and as revised from time to time.

29. Further, clause 3 of the Act, 2016 provides "prior registration of real estate project with Real Estate Regulatory Authority" which provide as under:

No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in

any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act

Therefore, on non-compliance of the provisions of the act, the authority vide order dated 25.05.2023, imposed a penalty of Rs.1,00,000/- for non-registration of the project, but till date no registration has been done by the respondent/promoter. Thus, as per the above-mentioned provision of the Act of 2016, the project is required to be registered after receipt of necessary approvals and sanctions from the competent authority.

30. Also, as per clause 4(11)(4) of The Haryana Building Code, 2017, no person shall occupy or allow any other person to occupy any new building or a part thereof for any purpose whatsoever until such building or a part thereof has been certified by the competent authority as having been completed and an occupation certificate has been issued in his favour in Form BRS-V; within the prescribed period. The relevant clause of above building code is reproduced as under:

No person shall occupy or allow any other person to occupy any other person to occupy any new building or a part thereof for any purpose whatsoever until such building or a part thereof has been certified by the Competent Authority as having been completed and an occupation certificate has been issued in his favour in Form BRS-V within the above-mentioned period.

Therefore, even if offer of possession of a unit has been made, he cannot be compelled to take its possession in absence of statutory approvals and in violation of above provisions of Haryana Building Code, 2017.

31. The authority is of view that since the completion certificate or occupation certificate of the unit/building has not yet obtained by the respondent from the competent authority and in the absence of same, the complainant cannot be compelled to take possession of the unit as no occupation certificate is available even as on date. Further, section 19(10) of the Act obligates to take possession within 2 months from the date of occupation certificate, not in the absence of the occupation certificate. So, the respondent-builder is directed to refund the entire amount paid by the complainant alongwith prescribed rate of interest.

32. **Admissibility of refund at prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the rate of 18% p.a. However, 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.

33. 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.

34. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 4.1 of the agreement, the possession of the subject apartment was to be delivered within I year plus 90 days. For the reasons quoted above, the due date of possession comes out to be 13.10.2015. As far as grace period is concerned, the same is allowed being unqualified.

35. 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 at rate of the prescribed interest @ 10.75% p.a. from the date of each payment till actual date of its realization.

Litigation Cost:

36. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on

11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation

H. Directions of the authority

37. 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 /promoters are directed to refund the amount paid by the complainant i.e., Rs. 1,01,11,000/- along with interest @10.75% p.a. from the date of each payment till actual date of its realization

II. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

III. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is

initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant

38. Complaint stands disposed of.

39. File be consigned to registry.

(Sanjeev Kumar Arora)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 29.08.2023

HARYANA REAL ESTATE REGULATORY AUTHORITY
सत्यमेव जयते
HARERA
GURUGRAM