

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

Complaint no. :	364 of 2023
First date of hearing:	03.08.2023
Order reserved on:	02.11.2023
Order pronounced on :	14.12.2023

Smt. Asha Rani

R/o: House No.-203/23, Heera Nagar,
Gurugram

Complainant

Versus

1. M/s Ramprastha Promoters and
Developers Pvt. Ltd.

2. M/s BlueBell Proptech Private Limited

Regd. Office at: C-10, C Block, Market, Vasant
Vihar, New Delhi- 110057

Corporate Office at: Plot No. 114, Sector-44,
Gurugram-122002

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Rambir Singh Chauhan (Advocate)

Complainant

Ms. R Gayathri Manasa (Advocate)

Respondents

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

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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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	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	30.12.2020
13.	Unit no.	1804, 18 th floor, tower/block- G (As per page no. 23 of the complaint)	
14.	Unit area admeasuring	2025 sq. ft. (As per page no. 23 of the complaint)	
15.	Date of allotment	10.05.2012 (As per page no. 13 of the complaint)	
16.	Date of execution of apartment agreement buyer	10.05.2012 (As per page no. 16 of the complaint)	
17.	Possession clause	15. POSSESSION (a) Time of handing over the Possession <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)	

		(As per page no. 33 of the complaint)
18.	Due date of possession	31.08.2014 [As per mentioned in the buyer's agreement]
19.	Grace period	Not utilized
20.	Total sale consideration	Rs.77,49,853/- (As per payment plan at page no. 48 of the complaint)
21.	Amount paid by the complainant	Rs.67,91,322/- (As per receipt information at page no. 52-112 of the complaint)
22.	Occupation certificate /Completion certificate	Not received
23.	Offer of possession	Not offered
24.	Delay in handing over the possession till date of filing of complaint i.e., 06.02.2023	7 years, 5months and 06 days

B. Facts of the complaint:

3. That the respondent, namely M/s Ramprastha Promoters and Developers Private Limited and developer no. 2 Blue Bell Proptech Private Ltd. the promoter/developer of the project issued an advertisement inviting applications for advance registration of unit in the "Skyz" project located at Village Gadauli Kalan, Tehsil & District Gurgaon, Haryana. The respondent demanded a total sale price of Rs.77,49,853/- from the complainant for the unit bearing No. G-1804, 18th floor tower/block no. G area 2025 sq.ft. in residential project namely the "Skyz" located at village Gadauli Kalan, Sector 37D, Gurugram, Haryana. The complainant paid the booking amount of

Rs.6,43,915/- to respondent no.1 through cheque bearing no. 686734 dated 28.01.2011.

4. That as per the various demands of the respondents raised from time to time, the complainant paid a sum of total Rs.67,91,322/- and the respondents issued/acknowledged the same. The fact about the payments has also been duly accepted by the respondents through their demand letters and receipts.
5. That the respondents failed to start any construction activity of the project. Whenever the complainant inquired from the respondents, the representatives of respondents assured the complainant that the construction of the project will be completed on time and the construction activities shall commence soon. Even after repeated requests, the complainant did not receive any information regarding progress of the project. No phone calls were being received by the staff or the management of the firm.
6. That the complainant on many occasions enquired from the representatives of the respondents to provide the copy of licences and other permissions issued by competent authorities for construction of the said project. However, the same was not provided on one pretext or other.
7. That the respondents and their officers as well as directors had malafide intention right from the beginning and had the aim of cheating the complainant. The complainant visited on several occasions to find out the activities at the site and to meet the concerned officials in respect thereof and incurred huge expenses thereof.
8. That the respondents have failed to start the construction till date even after signing of the apartment buyer's agreement in which it is clearly written in clause 15 (a) that the possession would be given by 31.08.2014 and the respondents have also mentioned in the buyer's agreement that there is 120 days grace period if the respondents fail to give possession by 31.08.2014. Several years have elapsed from the date of the signing of the buyer's agreement and the extended period has also been finished but the



construction has not been started by the respondents. Even the grace period of 120 days as mentioned in apartment buyer's agreement has also elapsed but till date the respondents have not handed over the possession of the flat.

9. That the complainant has suffered severe mental and financial hardship on a daily basis because of the illegal and fraudulent acts of the respondents. The complainant has invested each and every penny of her lifelong savings in this project.
10. That the respondents at various instances violated the terms and conditions of the apartment buyer's agreement by
 - A. Not handing over the peaceful possession of the above said allotted flat by 31.08.2014.
 - B. Not executing the sale deed of the above said unit.
11. That at the time of execution of the apartment buyer's agreement, the respondents had represented to the complainant that they are in possession of the necessary approvals from the authorities to commence with the construction work of the project. However, till date construction is incomplete at the site.
12. That it is abundantly clear that the respondents have no intentions of completing the above said project and have not abided by the terms and conditions mentioned in the clauses of the apartment buyer's agreement. The respondents have abandoned the said project.
13. That the respondents are not only guilty of deficiency of services and for unfair trade policy along with the breach of contractual obligations, mental torture, harassment of the complainant by misguiding them, keeping them in dark and putting their future at risk by rendering them income less.
14. That the complainant herein is constrained and left with no option but to file the present complaint seeking withdrawal from the project and refund of the

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amount paid by the complainant in respect of flat along with the interest as per Act of 2016.

C. Relief sought by the complainant:

15. The complainant has sought following relief(s):
- i. Direct the respondent company to refund the entire amount of Rs.67,91,332/- paid by the complainant along with interest at the prescribed rate on the paid amount from the date of payment till actualisation.
 - ii. Direct the respondent to pay the litigation cost of Rs.1,00,000/-.
16. The present complaint has been filed by the complainant against two respondents i.e., M/s Ramprastha Promoters and Developers Pvt. Ltd. as R1 and M/s BlueBell Proptech Pvt. Ltd. as R2. The reply has been filed only by R1. Despite multiple opportunities given, R2 has neither filed any reply till date nor he has put up appearance. In view of the aforementioned fact, the defence of R2 is struck off.

D. Reply by the respondent no. 1:

17. The respondent contested the complaint on the following grounds:
- a. That at the very outset, the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favor of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
 - b. **That the default in delivery of possession of property is due to default on the part of the complainant**
 - i. That it is also most respectfully submitted that the complainant has not approached the Hon'ble Authority with clean hands and has



concealed the material fact that the complainant are defaulters, having deliberately failed to make the timely payment of instalments within the time prescribed, which resulted in delayed payment charges/interest, as reflected in the Statement of Account.

- ii. That it is due to the lackadaisical attitude of the complainant along with several other reasons beyond the control of the respondent as cited by the respondent which caused the present unpleasant situation. That it is due to the default of the complainant, the allotment could not have been carried out.
- iii. That further, even all through these years, the complainant has never raised any dispute regarding delay in possession or any other aspect. Furthermore, filing a complaint after all these years only hints at the malafide intentions of the complainant. Apparently, the complainant has been waiting eagerly all this while to raise dispute only to reap the benefits of the increase in value of property.
- iv. That if any objections to the same were to be raised the same should have been done in a time bound manner while exercising time restrictions very cautiously to not cause prejudice to any other party. The complainant herein cannot now suddenly show up and thoughtlessly file a complaint against the respondent on its own whims and fancies by putting the interest of the builder and the several other genuine allottees at stake. If at all, the complainant had any doubts about the project, it is only reasonable to express so at much earlier stage. Further, filing such complaint after lapse of such a long time at such an interest only raises suspicions that the present complaint is only made with an intention to arm twist the respondent. The entire intention of the complainant is made crystal clear with the present complaint and concretes the status of the complainant as an investor who merely invested in the present

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project with an intention to draw back the amount as an escalated and exaggerated amount later.

- v. That the present complainant invested in the project only with the motive to reap the benefits of the escalated property rates at a later stage.
- vi. That the complainant was actually waiting for the passage of several years to pounce upon the respondent and drag the respondent in unnecessary legal proceedings. It is submitted that huge costs must be levied on the complainant for this misadventure and abuse of the process of court for arm twisting and extracting money from respondent.
- vii. That the complainant has concealed its own inactions and defaults since the very beginning. The complainant has deliberately concealed the material fact that the complainant is at default due to non-payment of several instalments within the time prescribed, which has also resulted into delayed payment charges/ interests.
- viii. That the respondent had to bear with the losses and extra costs owing due delay of payment of instalments on the part of the complainant for which they are solely liable. However, the respondent owing to its general nature of good business ethics has always endeavored to serve the buyers with utmost efforts and good intentions. The respondent constantly strived to provide utmost satisfaction to the buyers/allottees. However, now, despite of its efforts and endeavors to serve the buyers/allottees in the best manner possible, is now forced to face the wrath of unnecessary and unwarranted litigation due to the mischief of the complainant.
- ix. That from the initial date of booking to the filing of the present complaint, the complainant has never raised any issues or objections. Had any valid issue been raised by complainant at an

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earlier date, the respondent would have, to its best, endeavored to solve such issues much earlier. However, now to the utter disappointment of the respondent, the complainant has filed the present complaint based on fabricated story woven out of threads of malice and fallacy.

- x. That the complainant has been acting as genuine buyer and desperately attempting to attract the pity of the Hon'ble Authority to arm twist the respondents into agreeing with the unreasonable demands of the complainant. The reality behind filing such complaint is that the complainant has resorted to such coercive measures due to the downtrend of the real estate market and by way of the present complaint, is only intending to extract the amounts invested along with profits in the form of exaggerated interest rates.
- xi. That this conduct of the complainant itself claims that the complainant is mere speculative investor who has invested in the property to earn quick profits and due to the falling & harsh real estate market conditions, the complainant is making a desperate attempt herein to quickly grab the possession alongwith high interests on the basis of concocted facts.
- c. **That there is no default on the part of the respondents since the date of possession stands extended till 31.12.2023 in accordance with the terms of the agreement:**
- i. That the delay in delivering the possession of the apartment to the complainant herein has attributed solely because of the reasons beyond control of the respondents
- ii. That the time for handing over of the possession which is subject to Force Majeure circumstances which clearly indicate the nature of agreement entered into between the parties, whereby, the

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stipulated date of delivery is not a strict and final date but merely a tentative date which is further subject to several factors involved.

- iii. That the said terms and conditions of the agreement were executed only after mutual discussion and decision and agreement of both the parties and in such a case, one party cannot withdraw itself from the boundation of the agreement. That once the said agreement was duly signed and accepted by both the parties which contains detailed terms and conditions the parties are obligated to abide by it and either of parties cannot divert itself from the obligation of performance of their parts manifested in the agreement on its own whims and fancies and as per their own convenience. It is to be noted that performance and non - performance of the agreement affects both the parties equally and sometimes one party is at a greater disadvantage when one party abstains from performance of its part.
- iv. That with respect to the present transaction/agreement that time is not of the essence when the delivering of possession of the said apartment is concerned.
- v. That the respondents are under no default, as the delay is only an aftermath of unforeseeable Force Majeure eventualities which were beyond the control of the respondents.

d. The complaint defies the stipulated period of limitation:

- i. That the complainant herein is not entitled to claim refund as claimed by the complainant in the complaint is clearly time barred. The complainant has himself not come forward to execute the buyer's agreement and hence cannot now push the entire blame onto the respondent for the same. That it is due to lackadaisical attitude of the complainant along with several other reasons beyond the control of the respondent as cited by the respondent

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which caused the present delay. If any objections to the same was to be raised the same should have been done in a time bound manner while exercising time restrictions very cautiously to not cause prejudice to any other party. The complainant herein cannot now suddenly show up and thoughtlessly file a complaint against the respondent on its own whims and fancies by putting the interest of the builder and the several other genuine allottees at stake. If at all, the complainant had any doubts about the project, it is only reasonable to express so at much earlier stage. Further, filing such complaint after lapse of several years at such an interest only raises suspicion that the present complaint is only made with an intention to arm twist the respondent.

18. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

19. 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, 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

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

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.

20. 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.*** SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others V/s 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."

21. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)**, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by her.

F. Findings on objections raised by the respondent:

F.I Objection regarding complainant being investor

22. The respondent has taken a stand that the complainants is the investor and not consumer. Therefore, she is not entitled to the protection of the Act and is not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the 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 the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is buyer and paid total price of Rs. 67,91,322/- to the promoter towards purchase of an apartment in its project.

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;"

23. 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 complainant is allottee as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

F.II Objection regarding jurisdiction of the Authority w.r.t buyer's agreement executed prior to coming into force of the Act and that the date of possession stands extended till 31.12.2023 w.r.t to extension of RC to the promoter granted by the Authority

24. Another contention of the respondent is that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and as referred to the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the

Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

25. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

26. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the apartment buyer's agreement has been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be

payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.III Objection regarding complaint barred by Limitation Act, 1963

27. Another contention of the respondent is that if the date of possession was to be construed in August 2014, the period of limitation has come to an end in the year August 2017. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 006000000021137 titled as *M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others* which provides as under:

"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."

Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

G. Findings on relief sought by the complainant:

- G.I Direct the respondent to refund the entire amount i.e., Rs.67,91,322/- to the complainant at the prescribed rate of interest from the date of respective payments till its complete realization**

28. The complainant was allotted a unit in the project of respondent "Skyz", in Sector 37C, Gurugram vide allotment letter dated 10.05.2012 for a total sum of Rs.77,49,853/-. An apartment buyer's agreement dated 10.05.2012 was executed between the parties and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.67,91,322/-.
29. The due date of possession as per the possession clause of the apartment buyer's agreement is 31.08.2014. There is delay of 7 years 5 months 06 days on the date of filing of the complaint i.e., 06.02.2023. The occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoter.
30. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which she has paid a considerable amount towards the sale consideration and as observed by **Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019**, decided on 11.01.2021: -

" The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottee 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....."

31. 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. (Supra)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022 observed as under:

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the

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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.

32. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of application form or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee 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.
33. **Admissibility of refund along with prescribed rate of interest:** In the present complaint, the complainant intend to withdraw from the project and is seeking refund of the paid-up amount as provided under section 18(1) of the Act. Sec. 18(1) reads as under:

“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 of 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)

34. The complainant is seeking refund of the amount paid by her 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.

35. 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.
36. 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., 14.12.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
37. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

38. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainant is well within her right for seeking refund under section 18(1)(a) of the Act, 2016.

39. The authorised representative of the promoter confirms during the proceedings of the day dated 02.11.2023 that the project is under still construction and unit of the complainant is neither completed nor OC has been obtained and it will take at least another one year to complete the construction and at this stage no firm date can be given to complete the construction.
40. The authority hereby directs the promoter to return the amount received by him i.e., Rs.67,91,322/- 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 Haryana Rules 2017 *ibid*.

G.II Direct the respondent to pay an amount of Rs. 1,00,000/- to the complainant as cost of present litigation.

41. The complainant is seeking relief w.r.t compensation in the aforesaid relief, 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. Supra* 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.

H. Directions of the Authority:

42. 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):


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- i) The respondents /promoters are directed to refund the amount i.e., **Rs. 67,91,322/-** received by them from the complainant 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 amount.
- 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 respondents are 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.

43. Complaint stands disposed of.

44. File be consigned to the registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.12.2023