

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**Date of decision:- **06.12.2023**

NAME OF THE BUILDER		M/s Angle Infrastructure Pvt. Ltd.	
PROJECT NAME		"Florence Estate", Sector- 70, Gurgaon	
S. No.	Case No.	Case title	Appearance
1	CR/2243/2022	Sadhna Mehrotra and Harshit Mehrotra through SPA holder Atul Mehrotra Vs. M/s Angle Infrastructure Pvt. Ltd.	Ms. Shriya Takkar (Advocate) Shri Shivam Rajpal (Advocate)
2	CR/2244/2022	Geeta Mehrotra And Prateek Mehrotra Vs. M/s Angle Infrastructure Pvt. Ltd.	Ms. Shriya Takkar (Advocate) Shri Shivam Rajpal (Advocate)
CORAM:			Member
Shri Ashok Sangwan			

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale/allotment letter executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the

project, namely, "Florence Estate", Sector- 70, Gurugram, being developed by the same respondent/promoter i.e., M/s Angle Infrastructure Pvt. Ltd. The terms and conditions of the buyer's agreements fulcrum of the issue involved in both the cases pertains to failure on the part of the promoter and seeking full refund along with interest.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location		"Florence Estate", Sector- 70, Gurgaon				
Common details: -						
Occupation certificate- Not received						
Offer of possession- Not offered						
Sr. no.	Complaint no/ title/date of filing	Date of execution of agreement	Unit no. and area admeasuring	Due date of possession	Total Sale consideration and amount paid	Relief sought
1.	CR/2243/2022 Case titled as Sadhna Mehrotra and Harshit Mehrotra through SPA holder Atul Mehrotra Vs. M/s Angle Infrastructure Pvt. Ltd. DOF: 27.05.2022	N/A	D-0303 on 3rd floor of tower D 2125 sq. ft. [Super area]	06.12.2021 (calculated from the date of allotment letter)	Sale consideration: Rs 88,50,625/- Paid up amount: Rs. 48,63,636/-	Refund along with interest
2.	CR/2244/2022 Case titled as Geeta Mehrotra And Prateek Mehrotra Vs. M/s Angle	N/A	D-0504 on 5th floor of tower-D 2125 sq. ft. [Super area]	12.02.2021 (calculated from the date of allotment letter)	Sale consideration: Rs 88,50,625/- Paid up amount:	Refund along with interest

Infrastructur e Pvt. Ltd.					Rs. 67,82,384/-	
DOF: 27.05.2022						

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of *CR/2243/2022 Case titled as Sadhna Mehrotra and Harshit Mehrotra through SPA holder Atul Mehrotra Vs. M/s Angle Infrastructure Pvt. Ltd.* is being taken as the lead case in order to determine the rights of the allottee(s) qua refund along with interest.

A. Unit and project related details

6. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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	"Florence Estate", Sector- 70, Gurgaon
2.	Nature of project	Group housing project
3.	RERA registered/not registered	Registered vide registration no. 287 of 2017 dated 10.10.2017

	Validity status	31.12.2018
4.	DTPC License no.	170 of 2008 dated 22.09.2008
	Validity status	21.09.2020
	Licensed area	14.468 acres
	Name of licensee	Central Government Employees Welfare Housing Organization
5.	Allotment letter	06.12.2018 [As per page no. 64 of complaint]
6.	Unit no.	D-0303 on 3 rd floor of tower D [As per page no. 64 of complaint]
7.	Unit area admeasuring	2125 sq. ft. [Super area] [As per page no. 64 of complaint]
8.	Date of apartment buyer agreement	Not executed
9.	Payment plan	Construction linked plan [As per customer ledger on page no. 97 of complaint]
10.	Total sale consideration	Rs. 88,50,625/- (BSP) Rs. 1,08,68,950/- (TSC) [As per customer ledger on page no. 97 of complaint]
11.	Amount paid by the complainant	Rs. 48,63,636/- [As per customer ledger dated 08.03.2022 on page no. 97 of complaint]

12.	Possession clause	N/A
13.	Environmental clearance	15.10.2013 [As per page no. 12-21 of rely]
14.	Commencement of construction for Tower-D	09.06.2013 [page 2 additional documents submitted by the respondent on 01.12.2023]
15.	Due date of possession	06.12.2021 [Calculated from the date of allotment letter i.e., 06.12.2018]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

7. The complainants have pleaded the complaint on the following facts:

- i. That the respondent company, sometime in the year 2012-2013 launched one of their housing projects in Sector 70, Gurgaon by the name of "Florence Estate" and termed it as "one of the Gurgaon's Luxury residential complexes". The said project was supposed to have everything that makes it a perfect hub for a modern, socially active urban lifestyle. The said project was launched with much fervour and fanfare and was marketed with boastful claims and propaganda of having world-class amenities and space, which are unheard of in India. That it is pertinent to mention here that the said project was launched exclusively and solely for the Central Government Employees- Serving and Retired. Further, the project

- was represented to be spread across 14.468 Acres of land comprising of 5 towers (Tower A, B, C, D & E).
- ii. That in the year November 2018 the complainants visited the project site. The sales representatives of the respondent handed over the brochure of the project and assured that the possession of the apartment would be delivered by January 2020. Thus, believing the promise of timely delivery, high quality construction and world class amenities made available for all those who buy this project, the complainants were convinced into buying an apartment in the group housing colony. That Complainant No.1 being a Central Government (former ESIC employee) employee was eligible for allotment of an apartment in the said project 'Florence Estate'.
 - iii. Accordingly, Complainant No.1 along with her son Complainant No. 2 applied for provisional Registration of a 3BHK+S apartment in the project of the Respondent Company. That at the time of booking on 02.11.2018 the Complainants were assured that the possession would be handed over by January, 2020. That thereafter the Complainants were made to sign a one sided Application Form. That as per the terms of the Application Form the possession of the apartment would be delivered within a period of 4 (four) years with a grace period of 9 (nine months) from the date of all approval & permissions for commencement of construction of the Project or execution of the Apartment Buyer's Agreement, whichever is later. The Complainants herein raised an objection regarding the said clause however, the Respondent's representative informed the Complainants that the same is just a

- formality and assured the Complainants that the possession would be delivered by January, 2020. That along with the Application Form the Complainant herein paid an amount of Rs. 10,41,250 /- towards booking amount vide cheque dated 05.11.2018 and accordingly receipt was issued by the respondent company.
- iv. That the respondent vide letter dated 06.12.2018 the complainants were allotted the apartment bearing No. 0303, Third Floor, Tower-D, having tentative super area of 2125 sq. ft. The Complainants opted for the construction linked payment plan. The total sale consideration of the Apartment was Rs. 1,13,68,750/-.
- v. That since Tower D of the Group Housing Colony had been constructed till the 8th Floor Slab at the time of booking, the Respondent Company asked the Complainants to pay the instalments upto the 8th Floor Slab immediately. That the since the Respondent was asking for payment of more than 50% of the total cost of the apartment the Complainants requested for execution of the Apartment Buyers Agreement. However, the Respondent Company insisted the Complainants to make payments to avoid cancellation of their booking. Having no other, the Complainants accordingly made payments in the months of November 2018, December, 2018 and January 2019. That it is pertinent to mention Respondent Company collected huge sum of money from the Complainants even before executing the Apartment Buyer's Agreement.
- vi. That the Complainants were asked to come and collect the copies of the standard Apartment Buyer's Agreement in the month of January, 2019 for execution at their end. The said copies were

collected by the Complainants from the office of the Respondent Company. After going through the terms of the Agreement the Complainants visited the office of the Respondent and requested them for the deletion of the one sided clauses especially Clause 3 of Agreement which stated that the possession of the Apartment was to be delivered by the Respondent Company within a period of 4 (four) years from the date of commencement of construction or date of execution of the Agreement or date of obtaining all licences whichever is later after factoring in the grace period. It is submitted that at the time of booking the Respondent Company promised the Complainant that the possession of the flat would be handed over by January, 2020 and therefore the Complainants requested the officials of the Respondent to change the possession clause.

- vii. However, the employees of the respondent refused to change the possession clause and informed the complainants that the buyers agreement is a standard document that each and every allottee has to execute. The officials of the Respondent Company threatened that in case the Buyers Agreement is not executed by the Complainants, the Respondent Company would invoke the cancellation clause and forfeit the amounts paid by the Complainants. The Complainants having no other choice were forced to sign on the dotted lines. That it is pertinent to mention that the said Apartment Buyer's Agreement contained various one sided, arbitrary and unreasonable clause. For instance, for any delay in payment by the Complainants, the Respondent Company was entitled to levy interest on the Complainants at an enormous

rate of 24% per annum on monthly compounded basis, however, for delivery of possession of the Apartment, the Respondent Company was entitled to a grace of over 9 (nine) months. The Apartment Buyers Agreement was signed by the Complainants under duress and the Complainants were made to sign on the dotted lines of the one-sided agreement which was not only an abuse of the dominant position of the Respondent but also amounts to unfair trade practice.

- viii. That moreover, in the present case the Respondent Company has charged the Complainant on Super Built-up area whereas as per the Haryana Real Estate Regulatory Authority, Gurugram (Registration of projects), Regulations 2018 the price of an apartment in a real estate project shall be charged by the Promoter from the allottee only on the basis of carpet area of the apartment. That however, in the present case the Respondent Company has charged the Complainants herein on basis of Super Area and hence have violated the Haryana Real Estate Regulatory Authority, Gurugram (Registration of projects), Regulations 2018. That it is pertinent to mention herein that besides not charging on carpet area, the Respondent Builder has failed to even mention the details of the carpet area in the Application form, allotment letter and the Apartment Buyer's Agreement. That such an act of the Respondent Builder is in total disregard to the Act, Regulations and the Rules.
- ix. That the Respondent Company continued to collect significant amount of money from the Complainants even when it was not in position to deliver the project within the promised time of delivery. That the Complainants with the hope of getting timely delivery of

possession of the apartment diligently made payments out of their hard earned money and savings. That the Respondent kept on paying the same on the assurances of the Respondent that the apartment would be delivered on time. That the Complainants visited the project site in the month of April, 2019 and were shocked to see that there was no progress on the construction site and the construction of the tower was stalled. The Complainants got worried and visited the office of the Respondent Company and raised the issue regarding the construction being stalled with the officials of the Respondent Company. That thereafter one Ms. Vaishali Tomar vide email dated 23.04.2019 assured the Complainants that the possession would be offered by December, 2020. That vide email dated 23.04.2019 the Respondent extended the delivery timeline almost by a year.

- x. That the complainants raised issues with respect to the non-execution of the apartment buyer's agreement and with respect to the delay of the project and the respondent time and again gave false assurances to the complainants herein. That despite specific assurance given by the Respondent for handing over the possession, the respondent company has failed to handover the possession even till today, which clearly reflects that the builder is making only good at making promises. It is submitted that when the Complainants booked the apartment in Nov 2018 the construction was complete till the 8th floor slab. Since the Complainants opted for the construction linked payment plan the Complainants were asked to pay all the instalments till the commencement of the 8th floor slab. However, there has been no

progress in construction of the tower and the same is lying abandoned.

- xi. That at the time of sale of the apartment, respondent company had given a rosy picture and had made false promises to the complainants and cheated them by not executing the agreement and by not handing over possession of the apartment as per the timeline given in their email dated 23.04.2019, the respondent company has miserably failed to comply with its contractual obligations of handing over possession as per the time frame and even after 4 years from the date of booking, the construction work is nowhere near completion .
- xii. That the grievance of the Complainants inter alia is that despite collecting Rs. 48,63,636/- from the Complainants the Respondent Company miserably failed to complete the construction of the project and handover position of the apartment within the promised time. Furthermore, to the utter shock of the Complainants the Respondent Company has till date failed to complete the construction of the project despite categoric written assurances. That the construction of the project is still not complete, and it would not be wrong to state that the delivery of possession of the apartment in near future is impossible. That the dream of owning an apartment with world class facilities of the Complainants has been frustrated by the long and annoying delay and even today the construction is nowhere near completion and the same shall require another 5 years or more. It is submitted that Tower D of the Group Housing Colony is lying abandoned and there is no construction activity going on site.

- xiii. That the Complainants have deposited their hard earned money, in hope that they would have a house to live in. The Respondents have failed to deliver possession to the Complainant within stipulated period. On account of non-delivery of possession of the apartment in question, by the Respondent, to the Complainant, in all respects, within stipulated period, the Complainants are seeking refund of the amount deposited by them.
- xiv. That it is pertinent to mention that the Complainant No.1 is suffering from Breast Cancer and is in a financial precarious situation. That keeping in view the peculiar medical emergency which is extremely serious and life-threatening for the complainant no.1, the interest of justice as well as consideration of humanity demands, the complainants are seeking refund of the amount deposited by them.
- xv. That the Complainants being aggrieved by the failure of the Respondent Company in abiding by its obligations and categorical written commitments and also being in a financially precarious situation repeatedly and continuously followed up with the Respondent Company through several phone calls and personal visits. That the Complainants time and again expressed their grievances and concerns with respect to the non- delivery of the apartment. However, the Respondent Company kept the Complainants in dark by giving false assurances as to the status of the construction and continued to extend the date of possession on one pretext or another.
- xvi. That it is further submitted that the Complainants case is not just an inordinate delay but one of a kind where delivery of the units in

near future seems unlikely and the Respondent Company further has no intentions to hand over of the possession of the apartments in the said project. That as a matter of fact the project is in fact not even a top priority for the Respondent Company after having taken huge considerations of the hard-earned money from the Complainants.

xvii. That the Complainants aggrieved by the delay in handing over possession of the apartment and thus is seeking refund of the amount paid along with interest at 18% p.a. and compensation.

C. Relief sought by the complainants:

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

- i. Direct the respondent to refund the total amount deposited by the complainant along with interest.
- ii. Direct the respondent to pay compensation and litigation cost.

D. Reply by respondent:

9. The respondent by way of written reply made following submissions:

- i. That initially one M/s. Capital Builders was the absolute owner of the land situated at Village Fazilpur, Jharsa and District Gurgaon, Haryana comprising of Rectangle No. 55, Killa No. 9 (8 Kanal 18 Marla), 13 (8 Kanal), 16 (6 Kanal 04 Marla), 18 (Kanal), 4/2 (3 Kanal 11 Marla), 7(8 Kanal), 5/1 (2 Kanal 12 Marla), 10/2 (4 Kanal 16 Marla) , 11 (6 Kanal 11 Marla), 2/2 (5 Kanal 11 Marla), 3/1(2 Kanal 11 Marla), 15/1 (5 Kanal 04 Marla), 10/1 (2 Kanal 04 Marla),17 (4 Kanal 11 Marla), 15/2/2 (1Kanal 14 Marla) and Rectangle No. 56, 6Killa No. 6 (8 Kanal), 7/1 (6 Kanal 11 Marla),

- 15/2 (2 Kanal 12 Marla) total admeasuring approximately 115 Kanal 15 Marla i.e. 14.468 fourteen point four six eight) Acres (hereinafter referred to as "the said Project Land").
- ii. That Directorate of Town and Country Planning, Haryana, (hereinafter referred to as "DTCP") issued a License bearing No. 170 of 2008 dated 22.09.2008 to M/s. Capital Builders for development of the said Project on the said Project Land. That, M/s. Capital Builders executed certain irrevocable Development Rights Agreement in favour of the Respondent and granted, conveyed and transferred all development, construction, marketing, sales and other rights and entitlements to develop, construct, market and sell groups housing project on the said Project Land to the Respondent. M/s. Capital Builders also transferred the license to the Respondent.
- iii. That, accordingly the Respondent proposed to develop a group housing project namely "Florence Estate" (hereinafter referred to as "the said Project") on the said Project Land. DTCP sanctioned the site plan on 14.05.2013. That the State Environment Impact Assessment Authority, Haryana issued the Environment Clearance Certificate to the Respondent. That after conducting his own independent due diligence and being fully satisfied with the particulars of the said Project, the Complainants in the month of November 2018 voluntarily approached and applied to the Respondent and expressed their interest in purchasing an Apartment in the said Project being developed by the Respondent. It is stated that the Respondent never promised to the Complainants that possession of the Apartment would be handed

over by January, 2020. Admittedly, as per the Application Form the possession of the Apartment would be delivered within a period of 4 (four) years with a grace period of nine months from the date of approval and permission for commencement of construction of the Project or execution of the Apartment Buyer's Agreement, whichever is later.

- iv. That the Respondent vide letter dated 06.12.2018 provisionally allotted Apartment No. 0303, Third Floor, Tower D admeasuring 2125 square feet (197.41 square meters) saleable area in the said Project for a total basic sale consideration of Rs. 1,26,18,250/-. That, the Complainants had made a total payment of Rs.48,63,636/- to the Respondent till date. That the Respondent duly provided the Apartment Buyer's Agreement to the Complainants, but for reasons best known to the Complainants, they did not execute the same. It is specifically denied that the Complainants raised objections in respect to completion clause. It is further specifically denied that the representative of the Respondent informed the Complainants that the same is just formality and assured them that the possession would be delivered by January 2020. It is further specifically denied that the Respondent insisted the Complainants to make payments to avoid cancellation of their booking. It is further specifically denied that the Respondent threatened that if Apartment Buyer's Agreement is not executed, the Respondent will invoke the cancellation clause and forfeit the amounts paid by the Complainants. It is stated that the terms and conditions of the Apartment Buyer's Agreement are not arbitrary and unreasonable.

- v. It is stated that sometime in the year 2013, one Mr. Ballu Ram filed a Writ Petition (CWP No. 17737 of 2013) before the Hon'ble High Court of Punjab and Haryana challenging grant of license No. 170 of 2008 issued by DTCP. The Hon'ble High Court vide order dated 16.08.2013 directed the parties maintain status-quo with regard to transfer and construction in respect to the said Project of the Respondent herein.
- vi. It is stated that in view of the aforesaid order passed by the Hon'ble High Court of Punjab and Haryana, the Respondent failed to continue with any kind of construction at the project site. All the construction work at the project site came to stand still. It is stated that the Hon'ble High Court of Punjab and Haryana vide order dated 17.11.2014 dismissed the said Writ Petition.
- vii. It is stated that in view of the said order of the Hon'ble High Court of Punjab and Haryana dated 16.08.2013, the Respondent was forced to keep in hold all the construction work at the project site. The Respondent was unable to do any kind of construction work at the project site for about fifteen (15) months.
- viii. It is further pertinent to bring to the notice of this Authority that certain disputes arose between M/s. Capital Builders and the Respondent. In an Appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against the Respondent before the Hon'ble High Court of Punjab and Haryana, the Hon'ble High Court vide order dated 10.09.2015 restrained the Respondent herein from creating any third party interest in respect unsold flats. The Hon'ble High Court vide order dated 08.05.2019 modified the earlier order

dated 10.09.2015 and excluded 60 un-sold flats from the ambit of the stay order.

- ix. It is stated that the Respondent is in the process of completing and developing the said Project and will deliver the possession of the Apartment to the buyers within a short period of time. It is further stated that this Authority has granted registration of the said Project under the Real Estate (Regulation and Development) Act, 2016. The Respondent has also applied for extension of validity of registration of the project with the requisite fees. The development of the project is in an advance stage.
- x. It is further stated that even the date of provisional allotment letter i.e. 06.12.2018 is taken as the date of the Agreement between the parties, there is no delay in completing and handing over the possession of the Apartment to the Complainant by the Respondent. The Respondent has to hand over the possession of the Apartment to the Complainants within 4 years and 9 months of grace period from 06.12.2018 i.e. on or before 06.09.2023. It is stated that no cause of action has arisen in favour of the Complainants to file the present Complaint against the Respondent, as such the present Complaint is liable to be dismissed.
- xi. It is most respectfully submitted that there is no failure on the part of the Respondent in completing the construction and delivering the possession of the Apartment and further there is no deficiency of service on the part of the Respondent, as such the present Complaint is not maintainable. The Respondent is not liable to pay any amounts to the Complainants.

xii. It is most respectfully submitted that the present Complaint along with the reliefs sought for is not maintainable as this Authority does not have the Jurisdiction to award any reliefs prayed for in the Complaint. As such the present Complaint is not maintainable.

10. 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 those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

E. Jurisdiction of the authority:

11. The plea of the respondent regarding lack of jurisdiction of Authority is 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

12. 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

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13. 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)(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.

14. 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.
15. 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 (Civil), 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."

16. 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.1. Objection regarding force majeure conditions.

17. The respondent-promoter pleaded that there was no delay on its part in completing the project and handing over. The possession of the allotted unit and which was on account of force majeure circumstances such as stay on transfer and construction by Hon'ble High Court of Punjab & Haryana challenging grant of license no. 170 of 2008 issued by DTCP in writ petition (CWP No. 17737 of 2013). The respondent pleaded that such period should not be considered while calculating the delay in completion of the subject unit. The Authority is of considered view that such ban on construction and transfer of unsold unit would

affect the construction activities at project site and the respondent was not at fault in fulfilling its obligations, but the respondent has failed to place on record any such document/order of any competent Authority/forum wherein such period was declared as "zero period". Hence, the plea of the respondent on that count is not tenable.

G. Entitlement of the complainant for refund:

G.I Direct the respondent to refund the total amount deposited by the complainants along with interest.

18. The project detailed above was launched by the respondent as group housing complex and the complainants were allotted the subject unit in tower D on 06.12.2018 against sale consideration of Rs. 88,50,625/. In the instant case, the apartment buyer agreement was not executed between the parties. This was confirmed on the hearing dated 22.11.2023, when the authority questioned the respondent about execution of BBA to which the respondent stated that no BBA has been executed between the parties till date, although the respondent had sent the BBA for signatures to the complainant but it was never executed. So far as the date of commencement of construction of the Tower-D in the which the unit of the complainant is situated it was started on 09.06.2013 as per the additional documents submitted by the respondent on 01.12.2023. Therefore, the Authority is of view that the due date of possession is calculated as per the judgment passed by the Hon'ble Supreme Court in case titled as *Fortune Infrastructure and Ors. Versus Trevor D 'Lima and Ors (12.03.2018)* wherein the Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation.

Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. In view of the above, the date of signing of allotment letter dated 06.12.2018, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 06.12.2021. It has come on record that against the sale consideration the complainants have paid an amount of Rs.48,63,636/- to the respondent. The complainants submitted that the present complaint was filed on 27.05.2022 on ground that the construction of the tower in which the complainant's unit is situated is far from the completion and only bare structure of the tower is constructed till now. The occupation certificate for the tower where complainant's unit is situated not received. Keeping in view the above facts, the complainants are entitled for full refund.

19. 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. 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....."

20. 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.** it was observed that:
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*
21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as 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 the unit with interest at such rate as may be prescribed.
22. The authority hereby directs the promoter to return the amount received by it i.e., Rs. 48,63,636/- 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 compensation and litigation cost.

23. The complainants are claiming compensation under the present relief.

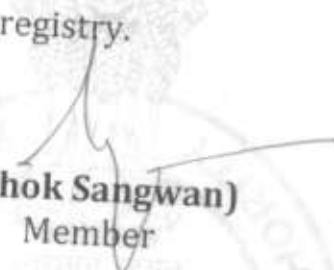
The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainants may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority:

24. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.

- i. The respondent- promoter is directed to refund the entire amount of Rs. 48,63,636/- paid by the complainants 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 date of actual realization. The amount paid on account of assured return may be deducted/adjusted from the refundable amount.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
25. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
26. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
27. Files be consigned to the registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 06.12.2023

HARERA
GURUGRAM