BEFORE THE HARYANA REALESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**7340 of 2022**
Date of first hearing:		**25.04.2023**
Date of decision	**:**	**11.01.2024**

1. Sh. Harish Kumar
2. Smt. Asha

R/o: - H. No.-236, Kewal Park, Azad Pur, Delhi-110033. **Complainants**

Versus

M/s Revital Reality Private Limited.
Regd. Office at: 1114, 11th floor, Hemkunt Chamber, 89, Nehru Place, New Delhi-110019. **Respondent**

CORAM:
Sh. Vijay Kumar Goyal **Member**

APPEARANCE:
Sh. Raman Kumar (Advocate) Complainants
Sh. Bhrigu Dhami (Advocate) Respondent

ORDER

1. This complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made 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:

S.No.	Particulars	Details
1.	Name of the project	"Supertech Basera, Sector- 79-B, Gurugram.
2.	Nature of the project	Residential
3.	RERA Registered/ not registered	Registered vide no. 31 of 2018 dated 14.12.2018 valid up to 31.10.2023
4.	Unit no.	1102, 11th Floor, Tower-7 (Page no. 18 of the complaint)
5.	Area admeasuring	Carpet Area 473 sq. ft. + Balcony Area 73 sq. ft. (Carpet area mentioned in the buyer's agreement)
6.	Offer of allotment	19.09.2015 (Page no. 34 of the complaint)
7.	Date of execution of flat buyer's agreement	04.01.2016 (As per page no. 17 of the complaint)
8.	Possession clause	**3. POSSESSION OF THE UNIT** *3.1 Subject to Force Majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and allottee/buyer having timely complied with all its obligations, formalities or documentation, as prescribed by developer and not being in default under any part hereof and flat buyer's agreement, including but not limited to the timely payment of installments of the other charges as per the payment plan, stamp duty and registration charges, the developer proposes to offer possession of the said flat to the allottee/buyer within a period of 4 years from the due date of approval of building plans or grant of environment clearance, (herein after referred to as the*

		"Commencement Date"), whichever is earlier (As per page no. 21 of the complaint)
9.	Date of approval of building plan	19.12.2014 (As per page no. 17 of the complaint)
10.	Date of Environmental Clearance	22.01.2016 (As per page no. 26 of the reply)
11.	Total sale consideration	Rs.19,28,500/- (As per payment schedule page no. 19 of the complaint)
12.	Amount paid by the complainants	Rs.14,60,841/- (As per proceedings of the day dated 11.01.2024)
13.	Due date of possession	22.01.2020 (Calculated from date of Environment Clearance i.e., 22.01.2016)
14.	Occupation Certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions: -

I. That the complainant no. 1 and 2 are husband and wife and residing at the same address. The complainants after seeing advertisements of the respondent/builder herein, soliciting sale of their residential flats / units in the project "Supertech Basera", situated at Sector- 79,79-B, Gurgaon, came into contact with the respondent/builder, who embarked upon the complainants with their sales team with various promises of timely completion of project and swift delivery of possession on time.

II. That the complainants, trusting and believing completely in the words, assurances and towering claims made by the respondent, fell into their trap and agreed to book a unit in the said project.

III. That the complainant no. 2 paid booking amount of Rs.96,425/- as demanded by the respondent on 15.04.2015 and booked a unit no.

1102. The offer of allotment was issued by the respondent vide letter dated 19.09.2015. The complainants were further asked by the respondent to make payment of Rs.4,02,575/- in the month of September, 2015 and the said amount was also duly paid to the respondent.

IV. That the complainants before making further payments asked the respondent to execute proper buyer's agreement. That a buyer's agreement was also signed between the parties on 04.01.2016.

V. That further payments were made to the respondent time to time. As per clause 3.1 of the buyer's agreement, the respondent was to handover the possession of unit within 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. The respondent got the environment clearance from the concerned department on 22.01.2016. Thus, the respondent was under obligation to complete the project in question and handover possession of residential flat on or before 22.01.2020 to the complainants. But till date no offer of possession has been made to the complainants.

VI. That the complainants tried their level best to resolve the issue of the delayed possession but the respondent did not pay any heed to the said requests made by them. On the contrary the respondent kept on issuing illegal demand notices to the complainant for the remaining payments.

VII. That from 15.04.2015 till date, the complainants had paid an amount of Rs.14,63,252/- against the total consideration of Rs.19,95,998/- inclusive of service tax, as applicable.

VIII. That the complainants after watching the conduct of the respondent and after making due diligence about the said project that no work is

carried out stopped making the payment to the respondent, the complainants wrote emails to the respondent seeking refund of their money as paid to the respondent towards booking of the residential flat in the said project. That till date the respondent did not take any step to resolve the issues in hand and hard-earned money of the complainants are still with the respondent.

IX. That despite various follow-ups and requests of the complainants, the respondent failed to provide occupation certificate and further did not pay any heed towards refund of the amount, compensation on account of delay in completion of project and handing over of possession. Rather, the respondent persisted with its illegal demand letters sent to them seeking further amounts including penalty/interest. Despite that, the respondent turned a blind eye to the requests of the complainants.

X. That the cause of action for filing present complaint first arose when complainants booked a unit in the said project, it was further arose when they made further payments to the respondent. It further arose when respondent raised demands for making the payment to the complainants, it further arose when respondent failed to deliver the timely possession of the unit to them. The cause of action is still continuing and subsisting one as the respondent has failed to provide the complainants compensation towards delay in handing over of possession.

XI. That the Hon'ble Authority has jurisdiction to try and adjudicate the present complaint since the project is located within the jurisdiction of the Authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

i. Direct the respondent to refund the paid-up amount of Rs.14,63,252/- by the complainants along with interest at the prescribed rate.

ii. Direct the respondent to pay Rs.55,000/- as cost of litigation.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

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

i. That on 04.09.2015, the complainant vide draw was allotted an apartment bearing no. 1102, 3rd floor, Tower-11, having a carpet area of 473 sq. ft. and balcony area of 73 sq. ft. for a total consideration of Rs.19,28,500/-. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainants executed the flat buyer's agreement dated 04.01.2016.

ii. That as per clause 2.3 of the flat buyer's agreement, it was agreed that an amount of Rs.25,000/- shall be treated as earnest money which shall be liable to be forfeited in the event of withdrawal of allotment by the allottee/ buyer and/or cancellation of allotment on account of default/ breach of the terms and conditions of allotment/transfer contained herein, including non-payment of instalments. In the eventuality of withdrawal/cancellation, the earnest money will stand forfeited and the balance amount paid, if any, will be refunded to the allottee/buyer, without any interest and such refund shall be made only when the said flat is re-allotteed/sold to any other person(s) and a consideration exceeding the refund

amount is received from the new allottee/ buyer. Further, vide clause 3.5 of the agreement it was agreed that the developer shall endeavor to handover possession of the said flat within a period of four years from the commencement date, subject to timely payment by the allottee/buyer towards the basic sale price and other charges, as demanded in terms of this agreement. The time frame for possession provided hereinabove is tentative and shall be subject to force majeure and timely and prompt payment of all instalments and completion of formalities required.

iii. That it is submitted that the project "Basera" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 108 of 2017 dated 24.08.2017. The Authority had issued the said certificate which is valid for a period commencing from 24.08.2017 to 31.01.2020 and the respondent has already applied for due extension.

iv. That the complaint filed by the complainants is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not close any cause of action in favour of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.

v. That the possession of the said premises was proposed to be delivered by 21.01.2020. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. However, the project got delayed due to force majeure circumstances which were beyond the control of the respondent. Further, due to orders passed by the Environment

Pollution (Prevention & Control) Authority, the construction was/has been stopped for a considerable period due to high rise in pollution in Delhi-NCR. Furthermore, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. Moreover, shortage of labour, water and other raw materials and various stay orders issued by various courts, authorities, implementation of NREGA and JNNURM schemes etc. caused delay in completion of the project. Unfortunately, circumstances have worsened for the respondent in the pandemic of Covid-19.

vi. That the project is an ongoing project and orders of refund at a time when the real-estate sector is at its lowest point, would severally prejudice the development and the interest of the other allottees of the project.

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

E. Jurisdiction of the authority:

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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

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

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (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."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent:

F.I Objection regarding the project being delayed because of force majeure circumstances.

14. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as competent authorities, High Court and Supreme Court orders, shortage in supply of raw material and major spread of Covid-19 across worldwide. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 22.01.2020. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on basis of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to refund of paid-up amount of Rs.14,63,252/- along with compound interest at the prescribed rate.

15. The complainants were allotted a unit in the project of respondent "Supertech Basera", in Sector-79 B, Gurugram vide allotment letter dated 19.09.2015 for a total sum of Rs.19,28,500/-. A flat buyer's agreement dated 04.01.2016 was executed between the parties and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.14,63,252/.

16. The due date of possession as per the possession clause of the flat buyer's agreement is 22.01.2020. There is delay of more than 2 years on the date of filing of the complaint i.e., 21.11.2022. The occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoter.

17. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit for which they have 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....."*

18. 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 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.

19. 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 allottees 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.

20. 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.

21. **Admissibility of refund along with prescribed rate of interest:** In the present complaint, the complainants intends to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso 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 prescribedin 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)

22. The complainants are seeking refund of the amount paid by them with interest at the 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.

23. 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.

24. 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., 11.01.2024 is **8.85%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%.**

25. 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;"*

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

27. The counsel for the complainants vide hearing dated 11.01.2024 brought to the notice of the authority that the amount paid by the complainants as per the outstanding dues statement issued by the respondent is Rs.14,63,252/-. The counsel for the respondent has also placed on record a copy of customer statement during proceedings and confirmed the receipt of amount of Rs.14,63,252/- but requested for exclusion of Rs.2411/- credited in account of the complainants on account of discount and the net amount paid by the complainants comes to Rs.14,60,841/- which was duly agreed by the counsel for the complainants.

28. The authority hereby directs the promoter to return the amount received by him i.e., Rs.14,60,841/- with interest at the rate of 10.85% (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.55,000/- to the complainants as cost of present litigation.

29. The complainants are 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:

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

i. The respondent/promoter is directed to refund the amount i.e., Rs.14,60,841/- received by it from the complainant along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

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.

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 complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

31. Complaint stands disposed of.

32. File be consigned to registry.

V.J

(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.01.2024