

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

Complaint no.: 2466 of 2022
First date of hearing: 22.09.2022
Order pronounced on: 18.01.2024

1. Mr. Inder Nath
2. Mrs. Raj Kumari
3. Mr. Chirag Mahendru

All R/o: - 551/6, Shastri Nagar, Meerut, Utter Pradesh -
250004

Complainants

Versus

M/s Agrante Developers Private Limited. (Formerly Known
as M/s RMS Estates Private Limited)

Office address:- DTJ-704, 7th Floor, DLF Tower-B, Jasola,
New Delhi - 110025

Also At: - 122, Sun city Towers Sector- 21, Gurugram

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Manish Chauhan (Advocate)

Shri. Tarun Biswas (Advocate)

Complainants

Respondent

HARERA
GURUGRAM
ORDER

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

functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Project and unit related details

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

Note: - On proceeding of the day dated 23.11.2023, the succinct fact of some other case was inadvertently mentioned, the relevant facts of the present complaint are as below:

S. N.	Particulars	Details
1.	Name of the project	"Beethoven's 8", Sector- 107, Gurgaon
2.	Nature of project	Group housing complex
3.	RERA registered/not registered	Not Registered
4.	DTPC License no.	23 of 2012 dated 23.03.2012
	Validity status	Not available on record
	Name of licensee	Narendra Kumar Gupta & others
	Licensed area	18.0625 acres
5.	Unit no.	Minor-H/A/1001, 10 th floor [Page no. 22 of complaint]
6.	Unit area admeasuring	1300 sq. ft. [Page no. 22 of complaint]
7.	Date of builder buyer agreement	25.11.2013

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		[Page no. 24 of complaint]
9.	Total sale consideration	Rs.65,00,000/- [Page no. 26 of complaint]
10.	Amount paid by the complainant	Rs.26,89,505/- (As per receipt information at page 48 to 53 of the complaint, further, during proceeding dated 18.05.2023, the counsel for the respondent admit the same at Para no.4 page no. 8 of the reply)
11.	Possession clause	Clause 19(a) <i>Subject to other terms of this Agreement/Agreement, including but not limited to timely payment of the Total Price, stamp duty and other charges by the Vendee(s), the Company shall endeavor to complete the construction of the Said Apartment within 42 (Forty-two) months from the date of start of construction, which is not the same as date of this Agreement. The Company will offer possession of the Said Apartment to the Vendee(s) as and when the Company receives the occupation certificate from the competent authority(ies). Any delay by the Vendee(s) in taking possession of the Said Apartment from the date of offer of possession, would attract holding charges @ Rs.05 (Five) per sq. ft. per month for any delay of full one month or any part thereof.</i> <i>(Emphasis supplied)</i> [Page no. 40 of complaint]
12.	Due date of possession	25.05.2017 [Due date calculated from date of agreement i.e., 25.11.2013 as date of commencement of construction tower is not provided by both

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		the parties]
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

- a. That in the year 2013 the respondent namely M/s RMS Developers private limited (Now known as Agranta Developers Pvt. Ltd.,) in the print and electronic media gave advertisement concerning their project "BEETHOVEN- 8 " at Sector 107, Gurugram-122001 which claimed it to be a dream home at Gurugram, with spectacular designs spread over 18 acres of land. The complainants filed their application to the respondents for allotment of unit/flat in the project and complete all the formalities and payment as per the scheme.
- b. That based on the representation of the respondents, complainants including complainant no.1 who is 80 years old filed their application for allotment of unit/flat in the project and complete all formalities for the same and made payment as required under the scheme. They were allotted a flat/unit no. MINOR-H/A/1001 in the project vide allotment letter dated 10.02.2014 issued by the respondent.
- c. That on 25.11.2013, a builder buyer agreement entered between the parties concerning the flat/unit no. MINOR-H/A/1001 in Bethoven-8 Gurgaon. Clause 5k of the buyer's agreement provided that the project would be completed in 42 months. Complainants made payment of a total amount of Rs.26,89,505/- as per the scheme, payment Plan and builder buyer agreement. The respondent has failed to fulfill its obligation to deliver possession of the flat within promised time. The respondents conveyed change of name of the company from M/s

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RMS Estates Pvt. Ltd. to M/s Agrante Developers Pvt. Ltd. and other changes vide letter dated 03.06.2015.

- d. As per the clause 5k of the buyer's agreement, the project was to be completed within a period of 42 months i.e. latest by June 2017 but the respondent company fails to complete the project as per terms of the BBA and fulfill its obligation despite the complainant making all payments due as per the scheme, hence this complaint for refund of the deposited amount with applicable interest and any other suitable compensation/relief as may be deemed fit in the facts and circumstances of the case.
- e. That later on respondent even refused to attend phone calls of complainants. When respondent stopped responding then somehow complainant find out their current address and only after intervention of police officials in April 2022, complainant could receive copy of receipts and other documents.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s)
 - a. Direct the respondent to make refund of the amount deposited by the complainants against booking of the allotted unit along with applicable interest from the date of deposit of the money till date of refund.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

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

- a. That the complainants unit is booked in tower-H, which is ready and the construction of a building structure comprising fourteen floors is completed. The necessary electrical wiring and works pertaining to plumbing and sanitation are also ready. The promoter would be in a position in all probability to offer possession of the flats in tower-H in 10-12 months from the date of filing of the present reply. The promoter has incurred and utilized his own funds and loans towards construction of the project and if the complaints pertaining to refunds are entertained at this stage it would jeopardize the fate of the project which would consequently hamper the valuable rights of the other allottees of the project. The promoter is in the process of applying for occupation certificate for tower- H. The promoter is willing to adjust for the interest components as computed for delay in offering possession towards the balance sale consideration of the complainant as the promoter will offer possession in tower-H to the complainant.
- b. That the statement of objects, reasons and preamble of the Act makes it manifestly clear that it is not only the interest of the consumers of the real estate sector which the Act seeks to protect and safeguard but also the promotion of the real estate with a view to ensure sale of plot, apartment etc. The Authority is empowered not only to monitor the projects but also to ensure their timely completion where projects are held up or stopped and to take steps so the same are completed in time and in the interest of the allottees who are awaiting possessions of the units in the project. It is not out of place to mention here that due to pending registration of the project with the Authority the promoter since the implementation of the Act was

unable to raise funds from its existing customers nor could it raise finance by selling unsold inventory. The shortage of funds to enable rapid construction had been a determining factor for the delay as it slowed down the pace of construction considerably. It is reiterated that the promoter is undertaking costs of constructions from its own pockets and is not demanding anything from the allottees, an act which is unprecedented by any other real estate company, and it is now for this Authority to balance the interest of the consumers and the promoters harmoniously to achieve the maximum good and benefits.

- c. That M/s RMS Estate Pvt. Ltd. now known as "Agrante Developers Private Limited" was granted development license from Director Town and Country Planning, Haryana ("DTCP") for development of land spread over a total area of 18.0625 acre of land on which the present project is being developed. The said license was granted on 27.03.2012 and was valid for 4 years.
- d. That subsequent to grant of the above license the promoter had executed a development/collaboration agreement dated 23.05.2013 with M/s Sarvaram Infrastructure Pvt. Ltd. ("collaborator"). An area measuring 10.218 acres out of the aforesaid total land was handed to the collaborator with absolute and exclusive rights for the purposes of developing the same. It is pertinent to mention here that M/s Sarvaram Infrastructure Pvt. Ltd. himself or through his nominee had proposed to build a separate project namely "ELACASSA" on that parcel of land with which the promoter has no association whatsoever. Thus, resultantly there were two projects being developed under the same license by two distinct colonizers with

rights and liabilities strictly framed under the said collaboration agreement. It would not be out of place to mention here that such agreements were in common practice then.

- e. The development/collaboration agreement dated 23.05.2013 stipulated strict liability on M/s Sarvaram Infrastructure Pvt. Ltd. or his appointed nominee to be in compliance of all statutory compliances, bye-laws applicable as per HUDA, DTCP etc. as applicable for his parcel of land. M/s Sarvaram Infrastructure Pvt. Ltd. was further under the obligation to remit all the dues accrued to governmental authorities arising under the agreement for the portion of land with the collaborator under the agreement.
- f. That M/s Sarvaram Infrastructure Pvt. Ltd., however, started defaulting in his compliance of statutory duties and contractual obligations. The promoter had on several occasions issued written requests and even served legal notices to M/s Sarvaram Infrastructure Pvt. Ltd. to rectify the said defaults *inter-alia* payment of EDC and IDC charges. The promoter had taken every step to ensure compliance of statutory obligations as non-compliance by M/s Sarvaram Infrastructure Pvt. Ltd. would directly prejudice the promoter's project completion having the common license. It is submitted that the license for the land lapsed due to non-renewal, and it cannot be renewed until outstanding EDC & IDC charges along with penalty is not cleared for the total land jointly by the promoter and M/s Sarvaram Infrastructure Pvt. Ltd. in proportion to their respective projects. Needless to mention here that the promoter is ready and willing to pay its share of EDC and IDC charges for the purposes of renewal of license.

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- g. That the bona-fides of the promoter can be further gathered by the fact that the promoter is running post to pillar and has filed a representation before financial commissioner (Haryana) seeking a bifurcation of the license in two parts for two projects respectively and pursuing the same sincerely. It is pertinent to mention that only after renewal of license the promoter will be competent to obtain RERA registration. The promoter has undertaken every possible measure in his armory to salvage the project and complete the same. The process for bifurcation of license is still under consideration.
- h. It is submitted that the promoter has filed for HRERA registration vide order letter dated 09.08.2018 of its project on the said land which was to be with the applicant as per the agreement. The fate of the application is dubious and is still pending as the aforesaid license has lapsed and does not exist anymore as on date and further, EDC and IDC charges are unpaid which were to be paid by the M/s Sarvarm Infrastructure Pvt. Ltd. It is pertinent to mention here that the directors of M/s Sarvarm Infrastructure Pvt. Ltd. are lodged in jail presently. The promoter is crippled in the sense that he is unable to correspond with them, which could perhaps lead to some fruitful results. Moreover, insolvency proceedings are pending against them before the Hon'ble National Company Law Tribunal.
- i. That due to non-registration with HRERA the promoter is unable to sell its proposed units in its project. More particularly the applicant is crippled financially as no demand can be raised by the promoter from its existing members. It is to be kindly considered by this Court that the promoter has accordingly not raised a single demand from its members and has not collected more than 40% of total sale

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consideration of a unit from any of its members. On the contrary the promoter has undertaken the tedious task of completing the construction of the project from its own finances and loans so as to offer possession and is also remitting the interests on subvention scheme on behalf of customers so as to protect them from further loss. The overall conduct of the promoter plays a vital part in deciding the complaint such as the present one. The promoter is faced with peculiar circumstances which would require mutual co-operation from its members.

- j. That, it would be of high importance to mention one similar complaint filed with this Authority wherein similar issues were being adjudicated. The Authority under HARERA had the opportunity to deal with similar complex issued faced by developers in respect of the licensed land wherein the original licensee had further subdivided the land for development purposes on the basis of collaboration agreements. This Authority in complaint no. 826/2018, 1402/2018, 1343/2018, 1344/2018 had passed common orders. The issues in these complaints were similar to the applicant's issues. In this case also the original licensee M/s Triveni Ferrous Infrastructure Pvt. Ltd. a joint venture comprising of two groups Seth and Mittal Group who had subsequently divided/assigned development/marketing rights into five separate lands holding to be developed separately pursuant to which similar issues arose which are being faced by the applicant. This Authority in that complaint had passed its conclusions and recommendations, particularly the recommendation to Town and Country Planning Department, Haryana stressing the grave importance that DTCP must divide

license into five parts. Once the license is bifurcated separate RERA registration would be permissible besides this Authority had also pertinently recommended that DTCP should defer recovery of their overdue EDC so as to leave some cash flow in the hands of the developers for investing in the project. Therefore, the promoter prays with folded hands to refer the present matter to the Authority in light of the aforementioned case law as cited so that similar recommendations can be issued on behalf of the promoter to Town and Country Planning Department, Haryana. It is submitted that such recommendations would be in parlance with the statutory duty of the Authority in section 32 of the Act which states the functions of the Authority for promotion of the Real Estate Sector.

- k. That lastly it is submitted that the crisis of COVID-19 pandemic has also given a blow to smooth working of the promoter. It is pertinent to mention here that during the lockdown imposed by the Central Government, the workforce at the project site left for their homes and there was a complete halt in the work which added to further delay. It was after sincere efforts of the promoter that the workforce could be again mobilized and presently the works are being carried out at the site.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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8. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.



11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the

jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant

F.1 Direct the respondent to make refund of the amount deposited by the complainants against booking of the allotted unit along with applicable interest from the date of deposit of the money till date of refund.

14. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed." (Emphasis supplied)

15. Clause 19(a) of the agreement provides for handing over of possession and is reproduced below:

"18(a).

Subject to other terms of this agreement/agreement, including but not limited to timely payment of the total price, stamp duty and other charges by the vendee(s), the company shall endeavour to complete the construction of the said apartment within 42 (forty-two) months from the date of start of construction which is not the same as date



***of this agreement.** The company will offer possession of the said apartment to the vendee(s) as and when the company receives the occupation certificate from the competent authority(ies). Any delay by the vendee(s) in taking possession of the said apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof."*

16. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

17. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of

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the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

18. 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.
19. 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., 18.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
20. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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

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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;"

21. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 19 of the agreement dated 25.11.2013, the possession of the subject apartment was to be delivered within a period of 42 months from the date of start of construction which is not the same as date of this agreement. The due date is calculated 42 months from date of buyer's agreement (in the absence of date of start of construction) i.e., 25.11.2013. Accordingly, the due date of possession comes out to be 25.05.2017. It is pertinent to mention over here that even after a passage of more than 10.1 years (i.e., from the date of BBA till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent /promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid almost 41% of total consideration till 2016. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned

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facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

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

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

23. Further, 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."

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24. 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 allottees 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 he 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.
25. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of deposit till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

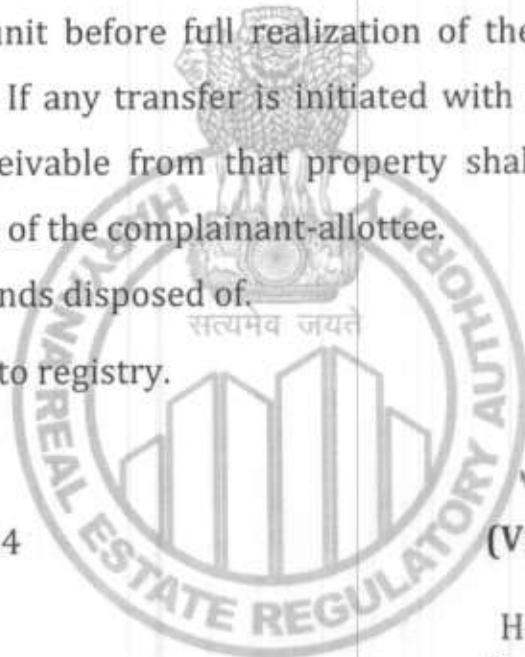
G. Directions of the authority

26. 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):
- The respondent/promoter is directed to refund the entire paid-up amount i.e., Rs.26,89,505/- received by it from the complainants along with interest at the rate of 10.85% p.a. as prescribed under

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- rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual realization of the 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 builder is directed not to create third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.
27. The complaint stands disposed of.
28. File be consigned to registry.

Dated: 18.01.2024



V. I. - 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

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