

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

Complaint no. : 2081 of 2019
Complaint filed on : 17.05.2019
First date of hearing : 01.08.2019
Order pronounced on : 17.10.2023

1. Shri Suresh Kumar Arora
2. Smt. Reema Arora
Both RR/o: B-78, Sharda Puri, Ramesh Nagar,
New Delhi-110015.

Complainants

Versus

M/s Emaar India Ltd.
(Formerly known as Emaar MGF Land Ltd.)
Address: Emaar MGF Business Park,
Mehrauli Gurgaon Road, Sikandarpur Chowk,
Sector-28, Gurugram-122002, Haryana.

Respondent

Coram:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

Appearance:

Shri Suresh Kumar Arora
Shri J.K. Dang

Complainant no.1 in person
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

2. Vide order dated 08.09.2021, the present complaint was disposed off by the Adjudicating Officer with the following directions: -

"14. On the same analogy, complainants in this case are entitled to get refund of their amount. Complaint in hands is thus allowed, and respondent is directed to refund entire amount received from complainants i.e., Rs.47,15,269/- along with interest @ 9.30% p.a. from the date of receipt of amount till actual realization. The respondent is also burdened with cost of Rs. 1,00,000/- to be paid to the complainants."

3. Thereafter, the applicant/respondent filed an appeal against the order dated 08.09.2021, before the Haryana Real Estate Appellate Tribunal, Chandigarh. The said appeal was disposed of vide order dated 13.07.2022 with a direction to the authority for fresh decision of the compliant in accordance with law. Thereafter, the present is complaint is before the authority.

A. Project and unit related details

4. The particulars of the project, the details of 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.	Heads	Information
1.	Project name and location	"Emerald Floors Select at Emerald Hills"
2.	Location of the project	Sector 65, Gurugram, Haryana.
3.	Nature of the project	Group housing colony

4.	Occupation certificate granted on	03.12.2018 [annexure R19, page 69 of reply]
5.	Date of booking	06.03.2011 [Page 35 of complaint]
6.	Provisional allotment letter dated	01.02.2012 [annexure R2, page 37 of reply]
7.	Unit no.	EFS-B-T-GF-202, ground floor, Block Topaz [annexure R2, page 37 of reply]
8.	Unit measuring	3000 sq. ft. [annexure R2, page 37 of reply]
9.	Date of execution of buyer's agreement	Not executed
10.	Possession clause (Taken from the similar project being developed by the same promoter)	13. Possession (a) Time of handing over the Possession <i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the independent floor within 27 months from the date of execution of this Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the occupation certificate in respect of the Floor and/or the Project.</i> <i>[Emphasis supplied]</i>
11.	Due date of delivery of possession	01.05.2014 [Note: Due date of possession is calculated from the date of execution of allotment letter i.e., 01.02.2012 in

		the absence of BBA and grace period is not included]
12.	Total basic price as per allotment letter dated 01.02.2012	Rs. 1,76,40,000/-
13.	Total amount paid by the complainants as per statement of account dated 18.09.2018 at page 57 of reply	Rs.47,15,269/-
14.	Letter of surrender by the complainant on	11.10.2017 [Additional documents placed by the complainant on 27.07.2023]
15.	Letter of cancellation	24.10.2018 [Annexure R17, page 61 of reply]
16.	Date of offer of possession to the complainants	Not offered

B. Facts of the complaint

5. The complainants have made the following submissions in the complaint:
- i. That the complainants are husband and wife in relation and are joint allottees of the unit no. T-202, ground floor including basement on plot size 350 sq. yards having super area - 3630 sq. ft. (1800+1200+630). The basic sale price - 1,80,00,000/- out of which the complainants have paid a total sum of Rs. 47,15,269/-.
 - ii. That at the time of launching the project and thereafter, the concerned officials of respondent under instructions from the respondent made various representations about the features of the said project, its location, amenities offered with the commercial space and projected that the said project has most notable and strategically located site.

The respondent also shared all these features on its official web site to attract the prospective buyers.

- iii. That the complainants by seeing the advertisement of the respondent in newspaper approached the officials of the respondent, who provided them a brochure of their project showing computerized images of various modern amenities. Further the officials of the respondent made promise to provide 100% power backup, roads, security, multipurpose courts, community centers, green area, park, gym, spa, club, shopping mall, swimming pool etc. Besides these appealing representations, the complainants were further represented by, and rest assured by the respondents and its officials that the possession of residential flats will be handed over to them within the agreed timeline of 2 years from the date of booking. As the complainants were intending to purchase a residential space for themselves and for their extending family and were looking for a suitable one, they got induced by the representations made by the respondent and their officials, therefore the complainants decided to book a residential plot in the said project.
- iv. That the complainants booked unit in question on 06.03.2011 at the office of respondent namely M/s Emaar MGF Land Ltd. at Gurgaon office and after that the complainants were forced to kept visiting their office again & again for provisional allotment letter & receipt. But the company did not respond anything except that the matter is

under process. On 06.03.2011, the respondent provided a payment schedule by which the complainants were supposed to give further installments from 21.04.2011 so as to take the possession timely. The company did not send even a simple allotment letter for next 11 months.

- v. That the complainants repeatedly communicated with the respondent company through e-mail dated 21.04.2011, 16.05.2011 and 03.07.2011 apart from repeated enquiry from Mr. Dilawar Ali of the company and by personally visiting the office repeatedly and Mr. Ahmed Rizwan of ROI consultancy (Business Associate of Emaar MGF), no positive reply from the respondent side. Then the complainants sent a letter through speed post to the respondent office on 13.07.2011 but shockingly nobody even responded to the letter. Since then the complainants kept enquiring from their office repeatedly but there was no satisfactory reply for non-issuing of allotment letter and further demand letter.
- vi. That on 01.02.2012, the respondents after a gap of 11 months and after sending letters and reminders letters for provisional allotment allotted a unit no. T-202 ground floor including basement at Emerald Floor Select, Emerald Hills, Sector-65, Gurugram to the complainants and asked for further installments arbitrarily without consulting the further payment schedule with the complainants and also changed the date of the allotment from 06.03.2011 to 10.01.2012.

- vii. That the complainants informed the respondent that as per the payment schedule, the payment was supposed to be made on 21.04.2011 but the respondent stopped communication with the complainants. Since, the complainants were to arrange payment and had taken a loan and since the respondent did not communicate with the complainants, the complainants had surrendered the loan as they were bearing interest on the same for approx. 9 months. This was also apprised to the respondent that they had arbitrarily changed the booking date also from 06.03.2011 to 10.01.2012. The complainants in the said reply letter demanded interest compensation on the booking amount of Rs. 15,00,000/- for 11 months which remained with the respondent for 11 months.
- viii. That on verbal assurance of respondent company to pay compensation in future, the complainants deposited some money on their demands. The respondent sent 2 copies of buyer agreement, which the complainants got modified in view of the ongoing unlawful & casual approach of the company, signed it in 1st week of June 2012 under protest & sent by speed post to company so that after their sign & seal, the complainants can get his copy back, but till date, the respondent has not sent his copy which is also very objectionable on the part of company.
- ix. That for 5 years w.e.f. 2012 to 2016, the respondent company again went into silent mode. The respondent company stopped

correspondence & gave no response to queries regarding project details & its handing over. The respondent company remained on silent mode for next 5 years & kept assuring the complainants whenever they went to their office on repeated occasion & the respondent used to say that there is some problems within the company among their partners & therefore project is not getting started. But the company people kept verbally assuring that company will compensate for all these delays once the project starts. The complainants had no option but to be at the mercy of the company as lot of their hard-earned money was already blocked with the respondent company.

- x. That on 26.12.2016 after repeated reminder by the complainants, the respondent company for the first time responded & accepted the delay in handing over the unit. In their reply they also stated company shall settle the delayed compensation charges (if any) as per the terms & conditions of the buyer's agreement & shall be calculated & adjusted at the time of final handover only. It is pertinent to mention here that company had not sent back the signed copy of buyer's agreement till today.
- xi. That in-spite of repeated visit & reminder by the complainants, there was no response from respondent company. Again, the respondent company went in silent mode & suddenly started demanding money

in June 2017. Therefore on 04.07.2017, the complainants again wrote to clarify all pending issues to proceed further.

- xii. That for another 6 months there was no response from the respondent company. The complainants again wrote on 05.11.2017 mentioning all issues but company responded on 24.11.2017 & clarified only the architectural part e) point only. Then again reminder was sent by the complainants to the respondent on 21.12.2017 & then for the 1st time company responded on 27.12.2017 & told about the likely date of possession but remained silent & did not settle other pending issues of compensation on our deposited money in view of delayed project. Company took 6 months to respond that too after repeated reminders but unsatisfactory response. In between the complainants kept visiting the respondent's office several times.
- xiii. That the complainants again wrote a mail on 08.04.2018 stating that already huge money of the complainants is blocked with company for last 7 years and therefore further payments will be made if respondent company settles the pending issues raised for last 7 years repeatedly. The respondent company instead of settling pending issues, sent a cancellation notice dated 10.05.2018 for cancellation of the unit and in reply to the cancellation notice, the complainants sent a reply requesting the respondent to settle the issues pending for last 8 years. Then on 20.09.2018 & vide cancellation letter dated

24.10.2018, the respondent arbitrarily and illegally cancelled the unit of the complainants and forfeited the booking amount of Rs. 15,00,000/- deposited with them. The complainants kept protesting by saying that we will make the payments only after the pending issues of last 8 years get settled first. It is pertinent to mention that the complainants had signed 2 copies of the buyer's agreement, but the respondent never returned the same. It is also pertinent to mention that the respondent remained irresponsive and dormant for 7 years, the unit was supposed to be delivered in March 2013, but the same is still not delivered by the respondent, rather, the respondent has cancelled the unit of the complainants and has illegally misappropriated the money of the complainants.

C. Relief sought by the complainants

6. The complainants have filed the present compliant for seeking following reliefs:
- i. Direct the respondent to refund Rs.47,15,269/- along with interest on deposits from the date of deposit till the date of refund.
 - ii. Direct the respondent to pay cost of litigation and for mental harassment and physical harassment caused to the complainants by the respondent.
 - iii. Pass such order or further order(s) as this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.

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

D. Reply by the respondent

8. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

- i. That the complainants have filed the present complaint seeking refund and interest for alleged delay in delivering possession of the unit allotted to the complainants. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the Adjudicating Officer under Section 71 of the Act read with rule 29 of the rules and not by this Hon'ble Authority. Accordingly, this Hon'ble Authority does not have the jurisdiction to try and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.
- ii. That the complainants had approached the respondent sometime in 2011 for purchase of an independent unit in its upcoming residential project "Emerald Hills Floors" situated in Sector 65, Gurgaon, Haryana. The complainants vide personal details form dated 06.03.2011 applied to the respondent for provisional allotment of a unit in the project. The complainants consciously and wilfully opted for a construction linked plan for remittance of the sale consideration

for the unit in question and further represented to the respondent that the complainants would remit every installment on time as per the payment schedule. The complainants, in pursuance of the aforesaid personal details form, were allotted an independent unit bearing no. EFS-B-T-GF-202, having super built up area measuring 3000 sq. ft. located on the First Floor, in Block Topaz in the project vide provisional allotment letter dated 01.02.2012.

- iii. That the complainants further signed a declaration present in the personal details form that they have gone through the terms and conditions of the buyer's agreement and that they are bound by the terms and conditions of the buyer's agreement. The buyer's agreement provides that the right to realize interest would be without prejudice to the right of the answering respondent to cancel the allotment at its absolute discretion. Clause 1.2 (i) of the buyer's agreement clearly states that 15% of the total consideration of the property will be treated as earnest money by the parties. It was further mentioned in the same clause that the complainants would be bound to execute the buyer's agreement within 30 days from the date of dispatch failing which the provisional allotment in favour of the complainants would be cancelled. Two copies of the buyer's agreement were dispatched to the complainants on 17.02.2012 along with a letter dated 17.02.2012. However, the complainants have neither signed nor returned the buyers agreement till date.

- iv. That the complainants consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that they would remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants. However, the complainants defaulted in remittance of installments on time. The complainants failed to remit the instalments within the time prescribed for the same as per schedule of payments. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainants to make payment of outstanding amounts payable by the complainants under the payment plan/instalment plan opted by them.
- v. That instead of making the demanded payment, the complainants had sent a letter dated 04.02.2012 wherein the complainants had wrongly claimed that the date of booking had been changed from 06.03.2011 to 01.02.2012. The complainants instead of making the demanded payment had started insisting for payment of compensation over alleged delay in commencement of the project. The intention of the complainants from the very inception was not to make payment on time in respect of the property in question.
- vi. That however, the complainants were conscious and aware of the fact that the allegations levelled by them were devoid of any merit and substance. Accordingly, the complainants had started making some

payments in respect of the property booked by the complainants. However, even thereafter the complainants started committing default in payment of agreed consideration in respect of the property in question. Statement of accounts maintained by the respondent in its due course of business dated 18.09.2018 depicts delay in remittance of various payments and evidencing the discontinuance of remittance of the instalments by the complainants. As per the aforesaid statement a sum of Rs.1,74,00,422/- was outstanding and payable by the complainants to the respondent in respect of the property in question.

- vii. That the complainants had also defaulted in execution of the buyer's agreement and had committed a violation of terms and conditions of application for allotment voluntarily and consciously executed and submitted by the complainants. The buyer's agreement had been dispatched in duplicate by the respondent to the complainants on 17.02.2012. Although, it was the responsibility of the complainants to themselves execute the buyer's agreement but they failed to do so without any cogent or plausible reason. Under these circumstances, reminder dated 26.03.2012 for execution of the buyer's agreement was sent by the respondent to the complainants. However, despite receiving the aforesaid letter, the complainants chose not to execute the buyer's agreement.

- viii. That letter dated 20.09.2018 had been sent by respondent to the complainants to bring the attention of the complainants, the defaults committed by them in making payment of consideration in respect of the property in question. It was also brought to the attention of the complainants that they had failed to come forward for execution of buyer's agreement despite being called upon to do so. By virtue of the said letter, the complainants had been called upon to make payment of Rs. 1,74,09,125/- within a period of 30 days from the date of receipt of the letter and to come forward for execution of the buyer's agreement. It was further specifically mentioned in the aforesaid letter that in case the complainants failed to do so, the respondent would have no option but to cancel the allotment of the complainants.
- ix. That despite receiving the letter dated 20.09.2018, the complainants chose not to make the demanded payment or to execute the buyer's agreement. Since, the complainants were not forthcoming to make the demanded payment despite repeated requests made by the respondent, the respondent was left with no option but to send cancellation notice dated 24.10.2018 dispatched on 26.10.2018 to the complainants wherein it was specifically mentioned that the complainants had been called upon repeatedly to make payment of the outstanding amounts. However, the complainants wilfully neglected to remit the outstanding payments even after repeated reminders. By virtue of the said notice, it was brought to the attention

of the complainants that the booking made by them stood cancelled and the earnest money amount of Rs. 15 lakhs paid by them stood forfeited.

- x. That the complainants were never ready and willing to make payment of agreed consideration in respect of the property in question. It had been specifically mentioned in cancellation letter dated 24.10.2018 that the complainants were not left with any right, title or interest of any nature in the property in question. It had also been specified in the aforesaid letter that the balance amount payable to the complainants would be refunded when the property in question was resold. No default/lapse of any nature can be attributed to the respondent in the entire sequence of events.
- xi. That the respondent had even prepared and sent the cheques to the complainants towards refund of the amount pursuant to cancellation along with letter dated 16.04.2019. The complainants were called upon to surrender the original documents of allotment to the respondent within a period of 5 days from the date of receipt of email dated 16.04.2019. However, the complainants refused to accept the cheques.
- xii. That compensation for any delay in delivery of possession would only be given to such allottees who were not in default of their obligations envisaged under the terms of booking and who had not defaulted in payment of instalments as per the payment plan. In case of delay

caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. As delineated hereinabove, the complainants, having defaulted in payment of instalment, were thus not entitled to any compensation or any amount towards interest as an indemnification for delay, if any, under the buyer's agreement.

xiii. That the respondent has received occupation certificate bearing memo no. 13087 dated 03.12.2018 in respect of the building in which the unit in question is situated. Thus, the respondent duly fulfilled its obligation of raising of construction even though payments were not forthcoming from the complainants. The respondent had continuously and persistently requested the complainants to remit the outstanding amount. However, the complainants chose to ignore the legitimate and valid requests of the respondent to remit balance payment. It is submitted that the complainants do not have adequate funds to remit the balance payment and consequently in order to needlessly linger on the matter, the complainants have preferred the instant complaint.

E. Jurisdiction of the authority

9. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint 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

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

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

Section 11

.....

(1) 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.

12. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
13. Further, the authority relies upon the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on 11.11.2021 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."

14. Furthermore, the said view has been reiterated by the Division Bench of Hon'ble Punjab and Haryana High Court in ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others*** dated 13.01.2022

in CWP bearing no. 6688 of 2021. The relevant paras of the above said judgment reads as under:

"23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being, within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.

24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.

25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No 38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount, interest on the refund amount, or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."

(Emphasis supplied)

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, and the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others. (supra)**", the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the reliefs sought by the complainants

F.1 Refund of the amount paid by the complainants along with interest

16. **Relief sought by the complainants:** Direct the respondent to refund Rs.47,15,269/- along with interest on deposits from the date of deposit till the date of refund.
17. The complainant present in person stated that the instant unit was allotted way back in March 2011 after having paid an amount of Rs.15 Lakhs. The counsel for the respondent stated that the allotment letter was issued on 01.02.2012 but no buyer's agreement/BBA has been executed till date. The complainant stated that the BBA after signatures was sent to the respondent company on 23.07.2012 but was never returned back. There had been no further progress in the project till 2017 and the respondent started raising the demand after 2017. But further payments were not made as the respondent has not clarified the due date of possession as the partial payment of Rs. 47,15,269/- stands made and remaining amount was to be paid only by way of raising loan after signing of BBA which somehow was never received. But instead of prior execution of BBA, the respondent continued to raise the demands for outstanding instalments and on failure of its non-payment, the unit was cancelled on 24.10.2018. The OC of the project has been obtained on 03.12.2018 and hence, the refund can be allowed only after deduction of 10% earnest money. However, the complainants stated that non-payment of demanded instalment was due to non-signing of BBA as further demands would have

been raised by the respondent only in terms of BBA and hence is entitled for full amount as already been decided by the Adjudicating Officer vide order dated 08.09.2021 which has been remanded back to the Authority for re-hearing due to jurisdictional issue and otherwise, the order of AO of full refund has not been set aside. Further, the complainant no.1 states that a letter was written to the respondent on 11.10.2017 as the construction is not yet started and sought refund with interest. He again wrote a letter on 25.08.2018 (*sic* 23.05.2018) requesting the respondent to resolve the pending issue including non charging of interest on delayed payment and to intimate the exact date of handing over of possession. However, the respondent cancelled the unit prior to obtaining occupation certificate and no offer was made.

18. The counsel for the respondent states that cancellation has been made due to non-payment of the outstanding amount, hence if the refund is allowed the same may be made after deduction of 10% of the earnest money. Further states that in view of above and keeping in view the orders passed by the authority in CR No. 756 of 2018 decided on 14.2.2019 and in CR No. 99 of 2019 decided on 8.12.2022, refund can be allowed after deducting 10% of the earnest money and statutory dues.
19. The authority observes that the complainants booked the said unit vide 'Personal Details Form' on 06.03.2011 and they had paid a sum of Rs.15,00,000/- vide cheque dated 06.03.2011. After a lapse of around 11 months, a provisional allotment letter dated 01.02.2012 was issued by the

respondent allotting unit no. EFS-B-T-GF-202, ground floor, block Topaz. The respondent submitted that vide letter dated 17.02.2012, two copies of the buyer's agreement were dispatched to the complainants. However, they had failed to execute the same till date. On the contrary, the complainants submitted that they had sent the modified copy of buyer's agreement to the respondent through speed post as well as through email dated 11.06.2012. However, vide email dated 23.07.2012, the respondent replied to the same stating that such amendments/corrections were not allowed as per the company policy and two new sets of BBA were again sent to the complainants for execution. It is pertinent to note that till August 2012, the complainants had paid a sum of Rs.47,15,269/- to the respondent and thereafter, no amount has been paid by them till date. After August 2012, the respondent had raised demand on account of 'start of construction' only on 30.06.2017 i.e., after delay of almost 5 years.

20. Subsequently, the complainants have placed on record a letter dated 11.10.2017 whereby the complainants-allottees stated that *'we don't want to continue in the project and you are requested to refund our full deposit of Rs. 47,15,269/- along with 18% rate of interest from the date of deposit immediately.'* Afterwards, the respondent had vide email dated 23.10.2017, offered waiver of 100% delay payment charges on the said unit till 30.10.2017 which is approximately Rs.20.09 lacs subject to the receipt of the overdue amount of Rs.33,15,245/- and had requested the consensus of the complainants to the said offer. It is matter record that the

complainants had reverted to the said email sent by the respondent vide email dated 05.11.2017 (Page 75 of complaint) wherein the complainants had not given any consensus to the offer made by the respondent rather the complainants had again raised various issues which they had been facing from the very beginning. The same issues were repeatedly raised by the complainants vide various emails, but these issues were never resolved by the respondent.

21. Thereafter, due to non-payment of the outstanding dues, the respondent had issued cancellation letter dated 24.10.2018 to the complainants forfeiting booking amount of Rs.15,00,000/- paid by them. Thereafter, occupation certificate was obtained by the respondent from the competent authority on 03.12.2018. The respondent had prepared and sent the cheques to the complainants towards refund of the amount pursuant to cancellation along with letter dated 16.04.2019. However, the same has not been accepted by the complainants and has been annexed as Annexure R17A of the reply.
22. The authority is of the view that there was various dispute between the parties w.r.t the clauses of the buyer's agreement, in this way no contract was concluded between the parties. Though efforts for execution of BBA w.r.t. the unit were made as evident from the communications of different dates exchanged between the parties, but they were unable to arise at a conclusion leaving it open transaction between the parties. Thus, in such a situation when there was no formal agreement w.r.t. the allotted unit

between the parties then the respondent builder was not competent to raise any further demands after receipt of initial payments made by the allottee.

23. The complainants had surrendered the subject unit vide letter dated 11.10.2017 which is after the due date of handing over possession and before the receipt of occupation certificate from the competent authority. It seems that the cancellation made by the respondent vide letter dated 24.10.2018 was intentional and deliberate to threaten the complainants. So, the action of respondent cancelling the allotment of the unit vide letter dated 24.10.2018 and retaining a sum of Rs.15,00,000/- as earnest money cannot be said to be legal and is against the settled principles of law.
24. In view of the reasons stated above, the respondent was not within its right to retain amounts received from the complainants. Thus, the complainants are entitled to get refund of the entire amount paid by them along with interest at the prescribed rate. The authority hereby directs the promoter to return the amount received by it i.e., Rs. 47,15,269/- 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 surrender i.e., 11.10.2017 till the date of refund of the deposited amount within the timelines provided in rule 16 of the Rules *ibid*.

F.II Compensation

25. **Relief sought by the complainants:** Direct the respondent to pay cost of litigation and for mental harassment and physical harassment caused to the complainants by the respondent.
26. The complainants in the aforesaid relief is seeking compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled for claiming 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. Therefore, the complainants are at liberty to approach the adjudicating officer for seeking compensation, if any.

G. Directions of the authority

27. 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 entire amount of Rs. 47,15,269/- paid by the complainants along with prescribed rate of interest @ 10.75% p.a. as prescribed under rule 15 of the rules from

the date of surrender i.e., 11.10.2017 till the 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.

28. Complaint stands disposed of.

29. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

(Ashok Sangwan)

Member

(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.10.2023