

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

Complaint no. :	6319 of 2022
Date of filing complaint:	14.09.2022
First date of hearing:	20.12.2022
Date of decision :	05.10.2023

Sh. Saurav Joshi

R/o: Flat No.-402, Tower 1, Pyramid
Urban Homes-2, Sector-86, Gurgaon-
122004

Complainant

Versus

M/s Revital Reality Private Limited

Regd. office: 1114, 11th Floor,
Hemkunt Chamber, 89, Nehru Place,
New Delhi-110019

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Himanshu Gautam (Advocate)

Complainant

Sh. Bhirgu Dhami (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Supertech Basera"
2.	Location of the project	Sectors 79, Gurugram
3.	Nature of the project	Residential Flat
4.	DTCP license no. and validity status	i. 163 of 2014 dated 12.09.2014 valid up to 11.09.2019 ii. 164 of 2014 dated 12.09.2014 valid up to 11.09.2019
5.	RERA Registered/ not registered	108 of 2017 dated 24.05.2017 valid upto 31.01.2020
6.	Unit and Floor no.	R034T401207/ #Flat 1207, Tower-4 and 12 th floor (As per page no. 14 of the complaint)
7.	Unit area admeasuring	473 sq. ft. (Carpet Area) 73 sq. ft. Balcony Area (As per page no. 14 of the complaint)
8.	Allotment Letter	19.09.2015 (As per page no. 11 of the complaint)
9.	Date of execution of flat buyer's agreement	04.12.2015 (As per page no. 13 of the complaint)
10.	Possession Clause (As per flat buyer's agreement)	3.1 POSSESSION <i>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</i>



		<p>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 date of approval of the building plans or grant of environment clearance, whichever is later.</p> <p>(As per page no. 17 of the complaint)</p>
11.	Total Sale Consideration	Rs. 19,28,500/- (As per page no. 15 of the complaint)
12.	Amount paid by the complainant	Rs. 19,94,265/- (As per statement of payment received on page no. 30 of the complaint)
13.	Payment Plan	Time linked plan
14.	Date of approval of building plan	19.12.2014 (As per information provided by planning branch)
15.	Environment Clearance	22.01.2016 (As per page 24 of the reply)
16.	Occupation certificate /Completion certificate	Not Obtained
17.	Due date of possession	22.01.2020 [Note: - the due date of possession can be calculated by the 4 years from the date of environment clearance, being later(22.01.2016)]
18.	Offer of possession	Not available

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B. Facts of the complaint:

3. That the complainant on 20.12.2014 booked a residential flat admeasuring 473 sq. ft. in the project named "Supertech Basera" situated in sector-79, Gurugram. Draw for the allotment of the units in the said project was conducted on 04.09.2015 and according to the result of the draw the complainant was allotted a flat bearing no. R034T401207/ #Flat 1207 in tower-4.
4. That the flat buyer's agreement was executed between the parties on 04.12.2015 wherein as per clause 3.1, the developer should offer possession of unit within 4 years from the date of commencement of the project i.e., the date of approval of building plan or grant of environmental clearance, whichever is later. Environmental clearance was granted on 21.01.2016 and hence possession was to be offered on 22.01.2020.
5. That out of the total cost of the said unit a sum of Rs.19,94,265/- i.e., almost 100% of the total consideration amount has already been paid by the complainant till 20.09.2018, but the construction of the flat is still incomplete. Even the tower containing the flat has not been constructed yet and there is no hope of offering the possession even after a delay of almost 3 years.
6. That an undue delay by the respondent in offering the possession to the complainant caused great monetary loss to the complainant in terms of the interest payable on the paid-up amount.
7. That despite repeated calls, meetings and emails sent to the respondents, no definite commitment was shown for timely offering the possession of the said flat and no appropriate action was taken to address the concerns and grievances of the complainant. Thus, the complainants lost their faith in the respondent and no longer want to continue with this project as he has not

only breached the BBA but also cheated on him. Thus, the complainant herein is seeking refund of his hard-earned money along with the interest.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
- i. Direct the respondent company to refund the entire amount of Rs.19,94,265/- paid by the complainant along with interest at the prescribed rate on the paid amount from the date of payment till actualisation.
 - ii. Direct the respondent to pay the litigation cost of Rs.1,00,000/-.

D. Reply by the respondent:

9. The respondent contested the complaint on the following grounds:
- a. That at the very outset, the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favor of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
 - b. It is submitted that in view of the *force majeure* clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by the respondent for completion of the project is not a delay on account of the respondent for completion of the project.
 - c. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before 4 years after obtaining the requisite approval of the building plans or environmental clearance, whichever is later. It is a known fact that the delivery of a

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project is a dynamic process and heavily dependent on various circumstances and contingencies. In the present case also, the respondent had endeavored to deliver the property within the stipulated time but for reasons stated in the present reply could not complete the same.

- d. 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. The respondent has already applied for due extension.
- e. That it is pertinent to reiterate that the possession of the said premises was proposed to be delivered by the respondent to the apartment allottee by 22.01.2020 subject to Force Majeure conditions. 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. It is also pertinent to mention here that due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was / has been stopped for a considerable period day due to high rise in pollution in Delhi NCR.
- f. That it is pertinent to mention here that when the parties have contracted and limited their liabilities, they are bound by the same, and relief beyond the same could not be granted.
- g. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'Hues' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction

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activity for a considerable period. It is pertinent to note that similar stay orders have been passed during winter period in the preceding years as well, i.e. 2017-2018 and 2018-2019. It is most respectfully submitted that a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labour is let off and the said travel to their native villages or look for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction is realized after long period of time.

- h. It is relevant to note that, Graded Response Action Plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.
- i. Unfortunately, circumstances have worsened for the respondent and the real estate sector in general. The pandemic of Covid 19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July, 2020. In fact, the entire labour force employed by the respondent were forced to return to their home towns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such the respondent has not been able to employ the requisite labour necessary for completion of its projects.

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The Hon'ble Supreme Court in the seminal case of Gajendra Sharma v. UOI & Ors, as well Credai MCHI & Anr. V. UOI & Ors, has taken cognizance of the devastating conditions of the real estate sector, and has directed the Union of India to come up with a comprehensive sector specific policy for the real estate sector. In view of the same, it is most humbly submitted that the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the apartment.

- j. It is submitted that as once the parties have duly contracted and locked their legal obligations by way of the buyer's agreement, no relief over and above the clauses of the agreement can be granted to the complainant. The buyer's agreement duly provides that for any period of delay beyond the contracted date of offer of possession, subject to Force Majeure clause.
 - k. It is most humbly submitted 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 of the project which in turn would lead to transfer of funds which are necessary for timely completion of the project. It is most humbly submitted that any refund order at this stage would severally prejudice the interest of the other allottees of the project as the diversion of funds would severally impact the project development. Thus, no order of refund may be passed by the Hon'ble Authority in lieu of the present prevailing economic crisis and to safeguard the interest of the other allottees at large.
10. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

11. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. I Territorial jurisdiction

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

D. II Subject matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

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decided by the adjudicating officer if pursued by the complainant 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.*** SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022 wherein it has been laid down as under:

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

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

F. Findings on objections raised by the respondent:



F.I Objection regarding jurisdiction of the Authority w.r.t buyer's agreement executed prior to coming into force of the Act

14. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no as referred to the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

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

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

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highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

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

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

16. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the flat buyer's agreement have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding delay due to Force Majeure circumstances:

17. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Environment Pollution (Prevention & Control) Authority, weather conditions in NCR region and lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour. The authority put

reliance on judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

18. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of 4 years from the date of approval of building plans or the date of grant of environment clearance, whichever is later." In the present case, the due date is calculated from the date of environment clearance, so, the due date of subject unit comes out to be 22.01.2020. Thus, the outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the afore-mentioned reason the said time period is not excluded while calculating the delay in handing over possession. Though there has been various orders issued to curb the environment pollution, but these were for a short period of time. Thus, the respondent cannot be benefitted for his own wrong. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

G. Findings on relief sought by the complainant:

- G.I Direct to the respondent to refund an amount of Rs.19,66,971/- along with interest.**



19. In the present complaint, the complainant intend to withdraw from the project and is seeking refund of the paid-up amount as provided under the proviso to 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 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)

20. The complainant was allotted a unit in the project of respondent "Supertech Basera", in Sector 79, Gurugram vide allotment letter dated 19.09.2015 for a total sum of Rs.19,28,500/-. The flat buyer's agreement was executed between the parties on 04.12.2015 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.19,94,265/-.
21. The due date of possession as per the possession clause of the flat buyer's agreement as mentioned in the table above is 22.01.2020. There is delay of 2 years 7 months 23 days on the date of filing of the complaint i.e., 14.09.2022. The occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoter.
22. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have

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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....."

23. 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.

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 allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of application form or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wish to withdraw from the project, without prejudice to any other remedy available, to return the amount

received by him in respect of the unit with interest at such rate as may be prescribed.

25. 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.
26. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund of the amount paid by her with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

27. 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., 19.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
28. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainant is well within his right for seeking refund under section 18(1)(a) of the Act, 2016.



29. The counsel for the respondent has brought to the notice of the authority vide hearing dated 05.10.2023 that the amount mentioned at sr. no. 13 and 17 of statement of accounts which amounts to Rs.27,286/- is incentive money and thus the amount paid by the complainant comes to Rs.19,66,971/-.
30. The authority hereby directs the promoter to return the amount received by him i.e., Rs.19,66,971/- with interest at the rate of 10.75% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

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

31. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

H. Directions of the Authority:

32. 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. 19,66,971/-** received by him from the complainant along with interest at the rate of 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
 - ii) A period of 90 days is given to the 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 complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
33. Complaint stands disposed of.
34. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.10.2023