

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

<b>Complaint no.</b>	<b>:</b>	<b>8032 of 2022</b>
<b>First date of hearing:</b>		<b>18.05.2023</b>
<b>Order reserved on:</b>		<b>12.10.2023</b>
<b>Order pronounced on:</b>		<b>16.11.2023</b>

1. Smt. Meenakshi Taneja
2. Sh. Sourav Kumar Mal

**Both R/o:** 3/62, First Floor, Old Rajinder  
Nagar, Central Delhi, Delhi-110060

**Complainants**

Versus

1. M/s Ramprastha Promoters and  
Developers Pvt. Ltd.
  2. M/s BlueBell Proptech Private Limited
- Regd. Office at:** C-10, C Block, Market, Vasant  
Vihar, New Delhi- 110057  
**Corporate Office at:** Plot No. 114, Sector-44,  
Gurugram-122002

**Respondents**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Daggar Malhotra (Advocate)

Complainants

Ms. Akansha, Proxy Counsel

Respondents

**ORDER**

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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

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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 apartment buyer's agreement 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	"Skyz"
2.	Location of the project	Sectors 37-D, Gurugram
3.	Nature of the project	Residential Unit
4.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid up to 18.02.2025
5.	RERA Registered/ not registered	320 of 2017 dated 17.10.2017 valid up to 31.03.2019
6.	Unit and Floor no.	1603, Tower-E and 16 <sup>th</sup> floor (As per page no. 20 of the complaint)
7.	Unit area admeasuring	1750 sq. ft. (Super Area) (As per page no. 20 of the complaint))
8.	Allotment Letter	05.09.2011 (As per page no. 13 of the complaint)
9.	Date of execution of apartment buyer's agreement	12.09.2011 (As per page no. 16 of the complaint)
10.	Possession Clause (As per apartment buyer's agreement)	<b>15. Possession</b> <b>(a) Time of handing over the possession</b> <i>Subject to terms of this clause and subject t the allottee having complied with all the</i>

		<p><i>terms and condition of this agreement and the application 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 developers, <b>the developers propose to hand over the possession of the apartment by 31.08.2014.</b> The allottee agrees and understands that the developers shall be entitled to a grace period of 120 days, for applying and obtaining the occupation certificate in respect of the Group housing complex.</i></p> <p>(As per page no. 30 of the complaint)</p>
11.	Total Sale Consideration	Rs.71,87,959/- (As per page no. 20 of the complaint)
12.	Amount paid by the complainants	Rs.62,76,273/- (As per customer ledger on page no. 54, 55 & 84 of the complaint)
13.	Payment Plan	Construction linked payment plan
14.	Occupation certificate /Completion certificate	Not Obtained
17.	Due date of possession (As per apartment buyer's agreement)	31.08.2014 (As per page no. 30 the complaint)
18.	Offer of possession	Not Offered

**B. Facts of the complaint:**

3. That the complainants have made following submissions:

- a. That a project by the name of "Skyz" situated in Sectoe 37-D, Village Gaduali Kalan, Gurugram, Haryana was to be developed jointly by the respondents namely Ramprastha and Developers Private Limited and





Bluebell Proptech Private Limited. The complainants applied for allotment of a flat in the respondents project and vide allotment letter dated 05.09.2011 were allotted a unit no. E-1603 admeasuring 1750 sq. ft. for a total sale consideration of Rs.71,87,959/-.

- b. That in furtherance of the same, an apartment buyer's agreement dated 12.09.2011 was entered into between the complainants and the respondents. As per ABA, the payments were to be demanded by the respondents only as per the stage of construction and the respondents undertook to handover possession of the unit by 31.08.2014.
- c. That the complainants further entered into a tripartite agreement dated 21.09.2011 with the respondent no. 1 and the Indiabulls Housing Finance Ltd. in order to finance the purchase of the said unit and a loan of Rs.40,00,000/- was approved.
- d. That till date the respondents have received a total amount of Rs.62,76,273/- from the complainants but there has been no construction at the project site post the year of 2016. Furthermore, the respondents have only made false assurances stating that they are in the process of receiving funding by way of an arrangement with SWAMIH investment fund for the completion of construction of the project. That the project is at complete standstill and on account of the sheer stagnancy in the pace of construction at the respondent's end, the complainants were left with no option but to repay the entire loan amount in order to safeguard themselves from being unduly penalised with interest on loan amount.
- e. That the respondents have time and again vide email communications misled the complainants into believing that the construction of the project would soon be revived but all in vain. The respondents even got

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a Comfort Letter dated 03.12.2020 signed from the complainants stating that the complainants shall not file any cases against the respondents for a period of 18 months from the date of disbursement of 1<sup>st</sup> tranche from SWAMIH. In furtherance of the above, it is necessary to point out that, clause 7 of the said comfort letter very clearly mentioned that in case 1<sup>st</sup> tranche of SWAMIH for project "Skyz" does not get executed within 90 days of signing of the comfort letter then it would stand null and void.

f. That since 1<sup>st</sup> tranche of SWAMIH for project "Skyz" did not get executed within 90 days of signing of the comfort letter, the same stood null and void.

g. That even after a delay of more than 8 years the project is far from complete. Therefore, the complainants seeks refund of the amount paid along with interest.


**C. Relief sought by the complainants:**

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

i. Direct the respondent company to refund the entire amount of Rs. 62,76,273/- paid by the complainant along with interest @18% p.a. on the paid amount from the date of payment till actualisation.

5. The present complaint has been filed by the complainant against two respondents i.e., M/s Ramprastha Promoters and Developers Pvt. Ltd. as R1 and M/s BlueBell Proptech Pvt. Ltd. as R2. The reply has been filed only by R1. Despite multiple opportunities given, R2 has failed to file any reply till date though he has put up appearance. In view of the aforementioned fact, the defence of R2 is struck off.

**D. Reply by the respondent no. 1:**



6. The respondent contested the complaint on the following grounds:
- a. That at the very outset, it is most respectfully submitted that the complaint filed by the complainants is not maintainable and the Ld. Authority has no jurisdiction whatsoever to entertain the present complaint due to lack of cause of action.
  - b. **That the respondent no. 2 is not a proper and necessary party to the present complaint. The complaint is bad for misjoinder of parties:**
    - i. That at the outset, it is submitted that the respondent no. 2 i.e., M/s Bluebell Proptech Pvt. Ltd. is only a financier in the project and in order to secure and recover its funding has executed a Joint Development Agreement dated 29.11.2011 with respondent no. 1.
    - ii. That the respondent no. 2 is neither the owner of the land nor liable for the construction and development works in any way whatsoever. It is to be stated that the respondent no. 2 is no way responsible for the financial transactions between the complainants and the respondent no. 1. Therefore, it is submitted, that no amount of liability in any manner can be imposed on the respondent no. 2, since it is not a necessary party to the present complaint.
    - iii. That further, by becoming a party to the ABA, the respondent no. 2 has not accepted any liability of construction and development of the project.
    - iv. That it is submitted that so far as the inter-se obligations of the respondents towards the project is concerned, the respondent no. 2 has committed to the respondent no. 1 to make an investment and has duly performed its part of the agreement and so far as construction and development of the said project is concerned the respondent no. 2 does not own any role or responsibility by any

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bounds of interpretation of the clauses of the agreement. Hence, the respondent no. 1 and 2 cannot be placed at an equal podium whenever the obligation for construction and development of the project is concerned. That therefore, in view of the aforesaid circumstances, since the respondent no. 2 is not a necessary party in the present complaint, any liability for default cannot be fastened against the respondent no. 2 and allegations levied, if any, against the respondent no. 2 needs to be terminated at its root level.

**c. Complainants are not consumers within the meaning of Consumer Protection Act:**

- i. That since the Act of 2016 does not provide any definition for the term "Consumer", the same may be imported from the terminology prescribed under the Consumer Protection Act, 2019. That the plain reading of the definition of the term "Consumer" envisaged under the CPA makes it clear that the present complainants do not fall within the four walls of the term "Consumer". That further the complainants are mere investors who had invested in the project for commercial purposes.
- ii. That without prejudice to the above, it is further submitted that the complainants are not "Consumers" within the meaning of the Consumer Protection Act, 2019 since the sole intention of the complainants were to make an investment in a futuristic project of the respondent only to reap profits at a later stage. That further complainants have nowhere provided any supportive averments or proofs as to how they fall within the boundaries of the definition of "Consumer". The complainants have deliberately concealed the motive and intent behind purchasing of the said unit. In this behalf,

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- the Hon'ble Authority may strictly direct the complainants to adduce any documentary evidence in support of their averments.
- iii. That further the complainants are already in ownership of one property which the complainants have materially concealed herein. Hence, by any standard of imagination, the present complainants cannot to be said to have purchased the present property for personal use; rather it can be clearly interpreted that the said unit was only purchased for the purposes of commercial advantage or gain, hence, the complainants are plainly investors who have filed the present complaint on the basis of a totally concocted and fabricated story filled with fallacies and concealments. Therefore, the complainants cannot be said to have approached the Hon'ble Authority with clean hands and only with malafide intention to harass the respondents in the most harm causing way possible.
- iv. That the complainants have approached the respondent's office in August/September 2011 and have communicated that the complainants are interested in a project which is "not ready to move" and expressed their interest in a futuristic project. It is submitted that the complainants were not interested in any of the ready to move in/near completion projects of the respondent. It is submitted that on the specific request of the complainants, the investment was accepted towards a futuristic project. Now the complainants are trying to shift the entire burden on the respondent as the real estate market is facing rough weather.
- v. That the complainants are mere investors in the futuristic project of the respondent. An investor by any extended interpretation cannot mean to fall within the definition of a "Consumer" under the

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Consumer Protection Act, 2019. Therefore, the complaint is liable to be dismissed merely on this ground.

**d. That there is no default on the part of the respondents since the date of possession stands extended till 31.12.2023 in accordance with the terms of the agreement:**

- i. That the delay in delivering the possession of the apartment to the complainants herein have attributed solely because of the reasons beyond control of the respondents
- ii. That the time for handing over of the possession which is subject to Force Majeure circumstances which clearly indicate the nature of agreement entered into between the parties, whereby, the stipulated date of delivery is not a strict and final date but merely a tentative date which is further subject to several factors involved.
- iii. That the said terms and conditions of the agreement were executed only after mutual discussion and decision and agreement of both the parties and in such a case, one party cannot withdraw itself from the boundation of the agreement. That once the said agreement was duly signed and accepted by both the parties which contains detailed terms and conditions the parties are obligated to abide by it and either of parties cannot divert itself from the obligation of performance of their parts manifested in the agreement on its owns whims and fancies and as per their own convenience. It is to be noted that performance and non - performance of the agreement affects both the parties equally and sometimes one party is at a greater disadvantage when one party abstains from performance of its part.
- iv. That further it is pertinent to mention herein that with respect to the present transaction/agreement that time is not of the essence

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when the delivering of possession of the said apartment is concerned.

- v. It is reiterated herein that the respondents are under no default, as the delay is only an aftermath of unforeseeable Force Majeure eventualities which were beyond the control of the respondents.

**e. The complaint defies the stipulated period of limitation:**

- i. That the complainants herein are not entitled to claim refund as claimed by the complainants in the complaint is clearly time barred. The complainants have themselves not come forward to execute the buyer's agreement and hence cannot now push the entire blame onto the respondent for the same. That it is due to lackadaisical attitude of the complainants along with several other reasons beyond the control of the respondent as cited by the respondent which caused the present delay. If any objections to the same was to be raised the same should have been done in a time bound manner while exercising time restrictions very cautiously to not cause prejudice to any other party. The complainants herein cannot now suddenly show up and thoughtlessly file a complaint against the respondent on its own whims and fancies by putting the interest of the builder and the several other genuine allottees at stake. If at all, the complainants had any doubts about the project, it is only reasonable to express so at much earlier stage. Further, filing such complaint after lapse of several years at such an interest only raises suspicions that the present complaint is only made with an intention to arm twist the respondent.

- f. That the respondent has received a major financial assistance from the government under the SWAMIH Funds Scheme:**

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- a. That the respondent has applied for a funding facility to the SWAMIH fund and it has been held eligible for such funding on completion of due diligence as per the requirements of the said fund and after it was found that the various criteria as mentioned herein below for availing the facility have been complied by the respondent:
- I. Satisfactory due diligence of the respondent
  - II. Stalled for lack of adequate funds cause due to factors not attributable to the respondent
  - III. The projects fall in affordable and middle income category
  - IV. The assets created under the projects are adequate to meet the liabilities, therefore the projects are net worth positive
  - V. The projects have been registered by RERA
  - VI. The projects are very close to completion.
- b. That the respondent has been sanctioned funding facility to the tune of Rs.296 crores approx.. for the completion of all the projects of the respondent. That disbursement in respect of project PRIMERA has already been received in January 2021 and now the said project has received its OC. That SWAMIH and the respondent are in the final legs for the release of funds for the project SKYZ.
- c. That it is submitted that since the entire objective of the fund created by the Government of India is to ensure liquidity for meeting the construction cost so that homebuyers are able to obtain delivery of their homes with all amenities instead of such projects falling into an insolvency trap, therefore, it is essential that cash outflows are controlled and managed efficiently so as not to prejudicially affect the interest of the homebuyers at large.

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- d. That it is further submitted that unless cash outflows which are not for the purpose of completion of projects are checked it is absolutely impossible to complete the stalled projects even after availing funding from the liquidity lifeline extended by the Government of India through the SWAMIH Fund.
- e. That it is submitted that homebuyers who have approached the NCDRC/RERA for delay penalties/refunds form a considerably small portion of the total number of homebuyers in the project SKYZ. However, payments/potential payments to those homebuyers in the form of delay penalties and complete refunds with huge interest aggregate to large amounts and form a major point of cashflow in case of the respondent. It is submitted that with such cash outflows it shall not be possible for the respondent to maintain the requisite liquidity in the projects required for maintaining the momentum of construction at the site.
- f. That it is submitted that a typical requirement of the construction operations is that there is continuous flux of material and labour as per project plan and even minor disruptions in the supply of material and labour can cause serious impact on the ongoing works and may lead to stalling the construction again as has happened in the past. Therefore, it is essential that any cash outflow is properly planned and provided and is not random which will have a negative impact on the project.
- g. That in view of the above, it is submitted that the present application is made since the outcome of the present complaint/batch of complaints shall affect the fate of large number of homebuyers of "Skyz" project, who are interested in taking possession of their flats as contemplated under the apartment

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buyer's agreement albeit belatedly in a mutually beneficial arrangement and their objective of obtaining the possession shall be jeopardized by the claims for refund/compensation if treated individually instead of as a class.

h. That, therefore, the present complainants ought to consider the benefits of the scheme of SWAMIH funds and consider giving his consent so that the actions of the complainants do not conflict with the action of other homebuyers who are interested in the project.

8. Therefore, in the above-mentioned premises the present complaint is not maintainable in its present form and ought to be dismissed with exemplary costs upon the complainants.

9. 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:**

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

**D.1 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 decided by the adjudicating officer if pursued by the complainant at a later stage.

8. 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*

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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."

9. 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 respondents:**

**F.1 Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act and that the date of possession stands extended till 31.12.2023 w.r.t to extension of RC to the promoter granted by the Authority**

10. The contention of the respondents 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 apartment buyer's agreement executed between the parties and no agreement for sale as referred to under 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)*** 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 highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

11. 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."

12. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the apartment buyer's agreement has 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 the complainants being investors.**

13. The respondent has taken a stand that the complainants are the investors and not consumer. Therefore, they have not entitled to the protection of the Act and are not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyers and paid total price of Rs. 62,76,273/- to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

### F.III Objection regarding complaint barred by Limitation Act, 1963

15. Another contention of the respondent is that if the date of possession was to be construed in August 2014, the period of limitation has come to an end in the year August 2017. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 006000000021137 titled as **M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others** which provides as under:

*"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."*

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Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

**F.IV Objection regarding the major financial assistance from the Government under the SWAMIH Funds Scheme.**

16. Another contention of the respondent, it has received the major financial assistance from the Government under the scheme of SWAMIH Funds and the project is nearby completion. As these benefits are given by the government in those projects when they are near completion. In the present matter the due date of possession is 31.08.2014 as per the apartment buyer's agreement clause 15(a) dated 12.09.2011. There is delay of 8 years 3 months 27 days on the date of filing of the complaint i.e., 27.12.2022. The occupation 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 allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and relying on the judgement passed 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....."

Thus, this contention of the respondent/promoter that the fund has been given by the government under scheme of SWAMIH fund and the project is nearby completion stands rejected.

**G. Findings on the relief sought by the complainants:**

**G.I Direct the respondent to refund the entire amount i.e., Rs.62,76,273/- to the complainant along with 18% interest from the date of respective payments till its complete realization**

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17. The complainant was allotted a unit in the project of respondent "Skyz", in Sector 11& 14, Gurugram vide allotment letter dated 05.09.2011 for a total sum of Rs.71,87,959/-. An apartment buyer's agreement dated 12.09.2011 was executed between the parties and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.62,76,273/-.
18. The due date of possession as per the possession clause of the apartment buyer's agreement is 31.08.2014. There is delay of 8 years 3 months 27 days on the date of filing of the complaint i.e., 27.12.2022. The occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoter.
19. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and, as observed by **Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019**, decided on 11.01.2021: -
- " .... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottee cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*
20. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022 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.*

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of application form or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottees wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
22. The prescribed rate of interest as per Rule 15 of Rules, 2017 payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.
23. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 62,76,273/- 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*.

**H. Directions of the Authority:**


24. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations

cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent /promoter is directed to refund the amount i.e., **Rs. 62,76,273/-** received by him from the complainants 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 respondents are further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

25. Complaint stands disposed of.

26. File be consigned to the registry.

  
**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.11.2023