

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

Complaint no.	:	1618 of 2021
Date of filing complaint:		31.03.2021
Date of decision	:	17.11.2023

1. Smt. Ram Dulari Devi 2. Sh. Dhanajay Kumar 3. Smt. Rita Kumari Singh 4. Sh. Sachida Nand Singh All are R/O: Plot no. 17, Co-operative Colony, Bokaro Steel City, Jharkhand - 827001	Complainants
Versus	
M/s ATS real Estate Builders Private Limited Regd. office: 711/92, Deepali Nehru Place, New Delhi South Delhi-110019 सत्यमेव जयते	Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Karan Nagpal (Advocate)

Complainants

Sh. Rahul Thareja Proxy Counsel (Advocate)

Respondent

ORDER

- 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 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"ATS Marigold", Sector 89A, Gurugram
2.	Nature of the project	Residential Group Housing
3.	Project area	11.125 acres
4.	DTCP License	87 of 2013 dated 11.10.2013 valid till 10.10.2017
	Name of the licensee	Dale Developers Private Limited & Gabino Developers Pvt. Ltd.
5.	HRERA registered/ not registered	Registered vide no. 55 of 2017 dated 17.08.2017 valid till 31.07.2021
6.	Allotment letter dated	30.07.2015 (As per page no. 18 of complaint)
7.	Date of execution of flat buyer's agreement	30.07.2015 (As per page no. 20 of complaint)
8.	Unit no.	1161 on 16 th floor, tower 01 (As per page no. 22 of complaint)
9.	Super Area	1750 sq. ft. (As per page no. 22 of complaint)
10.	Possession clause	Clause 6.2 <i>(The Developer shall endeavor to</i>

		<p>complete the construction of the Apartment <u>within 42 (forty two) months from the date of this Agreement, with the grace period of 6 (six) months ie. ("Completion Date").</u> <u>subject always</u> to timely payment of all charges including the basic sale price, stamp duty, registration fees and other charges as stipulated herein. The Company will send possession Notice and offer possession of the Apartment to the Applicant(s) as and when the Company receives the occupation certificate from the competent authority(ies)..)</p>
11.	Due date of possession	<p>30.07.2019 (Calculated from the date of the agreement i.e.; 30.07.2015 + grace period of 6 months) Grace period is allowed</p>
12.	Total consideration	<p>Rs. 1,23,52,500/- (As per page no. 51 of complaint) BSP- 1,09,46,250/- (As per page no. 50 of complaint)</p>
13.	Total amount paid by the complainants	<p>Rs. 1,15,90,566/- (As per applicant ledger dated 04.07.2019 on page no. 77 of complaint)</p>
14.	Occupation Certificate	<p>16.06.2023 (As stated at bar in the proceeding of the day dated 08.09.2023)</p>
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the present complaint is being preferred by Mrs. Ram Dulari Devi, Mr. Dhanjay Kumar, Mrs. Rita Kumari Singh, Mr. Sachida Nand Singh under Section 31 of the Real Estate (Regulation and Development) Act, 2016 for seeking directions and relief against the errant actions of the respondent who despite assuring the possession of the apartment booked/purchased by them failed to deliver the same and thereby committed the breach of the apartment buyer's agreement dated 30.07.2015 and the provisions stated under the Real Estate (Regulation and Development) Act, 2016.
4. That for a total sale price consideration of Rs. 12,967,741/- inclusive of EDC/IDC charges, maintenance deposit, power backup, car parking charges. That on 30.07.2015 an allotment letter was issued by the respondent with respect to the purchase of the residential apartment. That further on 30.07.2015 apartment buyer's agreement was executed between the parties for the above said residential apartment. That as per the **clause 6.2** of the apartment buyer's agreement dated 30.07.2015, the respondent had assured them to deliver the possession of the unit within 42 months from the date of execution of the apartment buyer's agreement i.e., by 29.01.2019. That however to the utter dismay of them the respondent could not complete the said project on time and failed to deliver the possession of the apartment by due date as proposed in the apartment buyer's agreement dated i.e. by 29.01.2019 and along with the grace period of 6 months i.e. 29.07.2019. That the respondent owing to his dishonest

intentions even after taking timely payments against the unit purchased failed to deliver the possession of the unit, thereby infringing the rights of the innocent complainants who has spent his hard-earned life savings in the purchase of the said unit.

5. That in furtherance and without prejudice to the grounds mentioned herein above, the refund of the amount shall be paid with interest for the period between the date when the respondent received the amount or any part thereof from the complainant.

C. Relief sought by the complainants:

6. The complainants have sought following relief(s):
- Direct the respondent to refund the entire amount of Rs. 1,15,90,566/- paid by the complainants to the respondent till date along with interest at the prescribed rate under Act of 2016.

D. Reply by respondent:

The respondent by way of written reply made following submissions

7. That the complaint is not maintainable for the reason that the agreement contains clause 21, an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.
8. That the complainants after checking the veracity of the project namely, 'ATS Marigold', Sector 89A, Gurugram had applied for allotment of a residential unit and agreed to be bound by the terms and conditions of the

documents executed by the parties to the complaint. It is submitted that based on the application, the respondent company vide its allotment offer letters dated 30.07.2015 made the allotment of the unit bearing no. 1161 having super built up area of 162.58 sq. meter.

9. That the possession of the unit was supposed to be offered to the complainants in accordance with the agreed terms and conditions of clause 6.2 of the buyer's agreement wherein the construction was to be completed within a period of 42 months from the date of the agreement and the same was subject to the occurrence of force majeure conditions. The possession of the unit is to be handed over to the complainants only after the receipt of the occupation certificate from the concerned authorities.
10. They made part-payment out of the total sale consideration and are bound to make payment towards the remaining due amount along with applicable charges at the appropriate stage.
11. That the implementation of the said project was hampered and most of the work was stalled due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of respondent and which have affected the materially affected the construction and progress of the project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under :

I) Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization:

[Only happened second time in 71 years of independence hence beyond control and could not be foreseen]. The respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/ company could not implement the entire project for approx. 7-8 months w.e.f. from 9-10 November 2016 the day when the Central Government issued notification with regard to demonetization. During this period, the contractor could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and were paid in cash on a daily basis. During demonetization, the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on a site of the magnitude of the project in question were Rs. 3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got delayed due on account of issues faced by contractor due to the said notification of Central Government.

Further there are studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the said issue of impact of demonetization on real estate industry and construction labour. The Reserve Bank of India has published reports on impact of Demonetization. In the report- macroeconomic impact of demonetization, it

has been observed and mentioned by Reserve Bank of India at page no. 10 and 42 of the said report that the construction industry was in negative during Q3 and Q4 of 2016-17 and started showing improvement only in April 2017.

That in view of the above studies and reports, the said event of demonetization was beyond the control of the respondent, hence the time period for offer of possession should be deemed to be extended for 6 months on account of the above.

II) Orders Passed by National Green Tribunal: In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also, the Hon'ble NGT has passed orders with regard to phasing out the 10 year old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The contractor of the respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to following, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November- December 2016 and November- December 2017. The district administration issued the requisite directions in this regard.

In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of the respondent and the said period is also required to be added for calculating the delivery date of possession.

(III) Non-Payment of Instalments by Allottees: Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.

(IV) Inclement Weather Conditions viz. Gurugram: Due to heavy rainfall in Gurugram in the year 2016 and unfavourable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.

(V) Covid-19 Outbreak-: The outbreak of the deadly Covid-19 virus has resulted in significant delay in completion of the construction of the projects in India and the real estate industry in NCR region has suffered tremendously. The outbreak resulted in not only disruption of the supply chain of the necessary materials but also in shortage of the labour at the construction sites as several labourers have migrated to their respective hometowns. The Covid-19 outbreak which has been classified as

'pandemic' is an Act of God and the same is thus beyond the reasonable apprehension of the respondent.

12. The time period covered by the above-mentioned force majeure events is required to be added to the time frame mentioned above. The respondent cannot be held responsible for the circumstances which were beyond its control.
13. That the respondent has already completed the construction of the tower in which the unit allotted to the complainants is located and it shall soon apply for the grant of the occupation certificate. It is pertinent to mention here that only finishing work in the said tower in question is left and is being undertaken by the respondent currently.
14. That the complainants are real estate investors who had invested their money in the project of the respondent with an intention to make profit in a short span of time. However, their calculations have gone wrong on account of slump in the real estate market and they are now deliberately trying to unnecessarily harass, pressurize and blackmail the respondent to submit to their unreasonable demands.
15. 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 submission made by the parties.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(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 promoter, the allottees 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 complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding complainants is in breach of agreement for non-invocation of arbitration.

17. The respondent has raised an objection that the complainants have not invoked arbitration proceedings as per the provisions of buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

"Clause 21: All or any disputes that may arise with respect to the terms and conditions of this Agreement, including the interpretation and validity of the provisions hereof and the respective rights and obligations of the parties shall be first settled through mutual discussion and amicable settlement, failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 and any statutory amendments/modifications thereto by a sole arbitrator who shall be mutually appointed by the parties or if unable to be mutually appointed then to be appointed by the Court. The decision of the Arbitrator shall be final and binding on the parties"

18. The respondent contended that as per the terms & conditions of the application form duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which

falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer.

19. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as ***M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018*** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

20. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within the right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.II Objection regarding entitlement of refund on account of complainants being investors.

21. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby 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 observed 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 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 buyer and they have paid total price of Rs. 1,15,90,566/- to the promoter towards purchase of an apartment in the project of the promoter. 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;"

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) 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 Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019

in *appeal no. 000600000010557 titled as M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investors are not entitled to protection of this Act also stands rejected.

F.III Objection regarding force majeure conditions:

22. The respondent- promoter alleged that period over and above such grace period of 6 months be allowed on account of force majeure conditions. The respondents-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 30.07.2015 and as per terms and conditions of the said agreement due date of handing over of possession along with 6 months grace period comes out to be 30.07.2019. The events such as demonetization and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous where as there is a delay of more than three years even after due date of handing over of possession and there is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances no period more that specified grace period of 6 months can be allowed to the respondent-builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the

said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

F.IV Objection regarding delay in completion of construction of project due to outbreak of Covid-19

23. The 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 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."

24. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 30.07.2019. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that 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 said reason the said time period is not excluded while calculating the delay in handing over possession.

G. Entitlement of the complainants for refund:

G.I Direct the respondent to refund the entire amount of Rs. 1,15,90,566/- paid by the complainants to the respondent till date along with interest at the prescribed rate under Act of 2016.

25. The project detailed above was launched by the respondent as group housing complex and the complainants were allotted the subject unit in tower 01 on 30.07.2015 against total sale consideration of Rs. 1,23,52,500/-. It led to execution of builder buyer agreement between the parties on 30.07.2015, detailing the terms and conditions of allotment, total sale consideration of the allotted unit, its dimensions, due date of possession, etc. A period of 42 months along with grace period of 6 months was allowed to the respondent for completion of the project and that period has admittedly expired on 30.07.2019. It has come on record that against the total sale consideration of Rs. 1,23,52,500/- the complainants have paid a sum of Rs. 1,15,90,566/- to the respondent.

26. Thus, keeping in view the fact that the allottees- complainants wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on his failure to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per agreement for sale as mentioned in the table above is **30.07.2019**.

27. The occupation certificate/completion certificate of the project where the unit is situated has been obtained by the respondent-promoter on 16.06.2023. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for

which he has paid a considerable amount towards the sale consideration and as observed by **Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019**, decided on 11.01.2021

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

28. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoter and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(Civil),357)** 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. it was observed

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

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 agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as the allottees wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

29. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

Thus, keeping in view the aforesaid facts and legal provisions, the authority hereby directs the promoter to return the amount received by it i.e., **Rs. 1,15,90,566/-** 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:

30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the 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. 1,15,90,566/-** received by it 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.

31. Complaint stands disposed of.

32. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member
Haryana Real Estate Regulatory Authority,
Gurugram
Dated: 17.11.2023

HARERA
GURUGRAM