

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

Complaint no.	:	7215 of 2022
First date of hearing:		10.03.2023
Date of Decision:		19.10.2023

Sh. Sanjay Vig

R/o: House No.-489, First Floor, H- Block,
Palam Vihar, Gurugram, Haryana

Complainant

Versus

1. M/s Ramprastha Developers Pvt.
Ltd.

2. M/s Ramprastha Promoters and
Developers Pvt. Ltd.

Respondents

Both having Regd. Office at: C-10, C Block,
Market, Vasant Vihar, New Delhi- 110057

Corporate Office at: Plot No. 114, Sector-
44, Gurugram-122002

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Gaurav Jaglan (Advocate)

Ms. R Gayathri Manasa (Advocate)

Complainant

Respondents

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 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	"Ramprastha City", Sectors 37C and 37D, Gurugram, Haryana
2.	Project area	105.402 acres
3.	Nature of the project	Residential Colony
4.	DTCP license no. and validity status	128 of 2012 dated 28.12.2012 Valid up to 27.12.2025
5.	Name of licensee	B.S.Y Developers Pvt. Ltd. and 35 others
6.	RERA Registered/ not registered	Not registered
7.	Plot no.	A-117, block A (As per page no. 48 of the complaint)
8.	Plot admeasuring	300 sq. yds. (As per page no. 48 of the complaint)
9.	Allotment letter	18.06.2015 (As per page no. 63 of the complaint)
10.	Date of execution of plot buyer's agreement	17.06.2015 (As per page no. 45 of the complaint)
11.	Date of execution of agreement between the complainant and respondents	16.07.2014 (As per page no. 32 of the complaint)
12.	Possession clause	11. Schedule for possession "The company shall endeavour to offer possession of the said plot, within thirty (30) months with another grace period of six (6) months from the date of this Agreement subject to timely payment by the intending

		Allottee(s) of Total Price, stamp duty, registration charges and any other changes due and payable according to the payment plan. (As per page no. 52 of the complaint)
13.	Due date of possession	17.12.2017 (Note: Due date to be calculated 30 months from the execution of PBA i.e., 17.06.2015) (Grace period not allowed)
14.	Total sale consideration	Rs.66,80,000/- (As per payment plan annexed with the buyer's agreement on page no. 61 of the complaint)
15.	Amount paid by the complainant	Rs.1,00,35,500/- (Rs.60,35,500/- as per SOA on page no. 111 of the complainant and Rs.40,00,000/- for which no receipt is on record)
16.	Occupation certificate/ Completion certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the complainant has made following submissions:

- a. That the complainant came across luring advertisements by the respondents claiming themselves to be renowned developers. Based on representations of the officials of the respondents that the project will be developed completely in 2-3 years and relying on the claims and assurances in the brochure of the project the complainant applied for booking of a residential unit in the project namely "Ramprastha City Gurgaon" floated by respondents in Gurgaon, Haryana. At the time of initial application/booking, the complainant paid an amount of Rs.23,00,000/- vide cheque dated 08.01.2011 and also gave Rs. 40,00,000/- in cash through Mr. Rohit Agarwal of Finelines Pvt. Ltd.

Noida who is family friend of Mr. Amit who works with Ramprastha that was supposed to be final but Ramprastha employees have been forcing to pay another Rs.40,00,000/- as respondents kept revising the price.

- b. A tri-partite agreement was executed between the complainant, the respondent and Ramprastha Developers Private Limited on 16.07.2014 with regard to the booking of the residential plot admeasuring 300 sq. yd. and payment plan was issued to the complainant for the residential plot ad measuring 300 sq. yards in the project where total amount of plot is mentioned Rs.42,00,000/- which stated that the booking amount paid by the complainant to Ramprastha Developers Private Limited in respect of the unit shall be adjusted and considered to be payment by the complainant towards amounts payable for the unit.
- c. That on 17.06.2015, the plot buyer's agreement was issued to the complainant and he was allotted a plot no. A-117, 250 sq. mtrs (approx. 300 sq. yards) at the basic sale price of Rs.7667/- per sq. yd. The possession of the flat was to be given within thirty (30) months with another grace period of 6 months from the date of execution of plot buyer's agreement subject to timely payment by intending allottee of total price, stamp duty, registration charges or any other charges due and payable according to the payment plan. However, the date of execution of buyer's agreement cannot be looked into and is not sacrosanct for the purpose of assurances given by the promoters, in as much as, the agreements being standard form of contracts were executed with various allottees and re-allottees on different dates. Based on different dates of execution of buyers' agreement, the date of possession of units cannot be different because legally, occupation

certificate or other certificates is always for the entire project and not for individual apartments/units.

- d. That the complainant visited the office of respondent number of times and sent an email asking about the status of the delivery of the plots from 2016 to 2022. Despite making so much efforts respondents kept the complainant in dark on the handover of the plot on one pretext or other.
- e. That complainant was told by the respondents that they have applied for registration of their project under RERA, 2016 but the same was not registered. On 06.05.2022, wife of the complainant filed RTI application in HRERA seeking information about the status of registration of project of respondents. The complainant received the reply from the Authority wherein, it was stated that no application for the registration of Ramprastha City Plots, Sector-37D has been made in the authority.
- f. That complainant has paid Rs.1,00,35,500/- against Rs.66,80,000/- that is more than the total sale consideration of the apartment by this date as per the statement of account issued by the respondents on 11.07.2022 and respondents have not shown Rs.40,00,000/- in the statement of accounts which complainant have paid in cash to the respondents in 2011.
- g. That as per **Clause 11** of the plot buyer's agreement, the respondents-promoters were under an obligation to handover the physical possession of the plot to the complainant within a period of 30 months along with grace period of 6 months from the date of execution of the agreement.

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- h. That thus, the terms of the contract, which are contrary to law, must be read down. Thus, 48 months commitment period would start from 16.01.2018 and it ended on 16.07.2018. Therefore, such type of recitals in the buyer's agreement prove that respondents were never willing to honour their commitments and have acted in a pre-planned manner to dupe the innocent buyers like complainant of their hard-earned money.
- i. That the complainant has sent a number of emails/representations to the respondents for failure on their part in delivering possession of a developed project and calling upon them to refund the amount deposited by the complainant along with interest.
- j. That at the site, no construction activity is there and the project is far from completion and the complainant is suffering because of undue delay on the part of respondents in handing over of the physical possession of the residential plot.
- k. That the respondents have failed to abide by the contractual terms stipulated in the buyer's agreement and they are in breach. The cause of action to file the complaint is continuing as the respondents have failed to deliver possession of residential unit/project.
- l. That the complainant has diligently discharged all his obligations as per the plot buyer's agreement, whereas, the respondents have failed to perform their obligations stipulated in the agreement. That the respondents have failed to develop the project as promised at the time of initial booking/allotment. The complainant has invested their lifelong earning in the project based on assurances given by the respondents; however, he has been cheated and harassed. The respondents have misappropriated the amount paid by the

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complainant and the amount has not been put to use for timely development of the project, thus, the complainant has lost faith.

m. That since the respondents are unable to develop the project and handover physical possession of the residential unit, the complainant is entitled to refund of the entire sale consideration and other charges along with 18% compound interest from the date of respective payments.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- i. Direct the respondent company to refund the entire amount of Rs.1,00,35,500/- paid-up by the complainant along with interest @18% p.a. on the paid amount from the date of payment till actualisation.
- ii. Direct the respondent to compensate with the rent of Rs.31,000/- p.m. which the complainant is paying since 2019.
- iii. Direct the respondent to pay litigation expenses of Rs.50,000/- and compensation of Rs.25,00,000/-.
- iv. To revoke the registration of the respondents under section 7 of Act of 2016.
- v. Direct the respondent to place all statutory approvals and sanctions of the project on record.
- vi. Direct the respondent to provide complete details of EDC/IDC and statutory dues paid to the competent authority.

5. The present complaint has been filed by the complainant against two respondents i.e., M/s Ramprastha Developers Pvt. Ltd. as R1 and M/s Ramprastha Promoters and Developers Pvt. Ltd. as R2. The reply has been filed by the R2 while the receipt of payment has been issued by R1 only. All

the communications were made by the complainant through e-mail to the R1. However, no reply to the said e-mail was made on behalf of the respondents. The registered office address of both the respondents as mentioned in complaint is same. Further, the address mentioned by Sh. Varun, Authorized Representative of the R2 as mentioned in the affidavit dated 06.03.2023 is also same as mentioned in the complaint but he has not distinguished the role and responsibilities between R1 and R2 and both respondents are associated company having same address and hence both are jointly and severally responsible to the complainant-allottee.

6. 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.

D. Reply by the respondent no. 2:

7. The respondent no. 2 contested the complaint on the following grounds:
- a. That at the very outset, it is submitted that the present complaint is not maintainable in its present form and the complaint is strictly liable to be dismissed in view of below enlisted grounds. That the Authority has no jurisdiction to entertain the present complaint.
 - b. That the complainant herein has filed a complaint for the refund of Rs.1,00,35,500/- along with the interest. That however the complainant has not adduced sufficient documentary proof to confirm the amount claimed by the complainant. And only the receipts pertaining to amount Rs.60,35,500/-.
 - c. **That the date of handover of possession has never arrived:**
 - i. It is submitted that the complainant had requested the respondent seeking investment in undeveloped agricultural land in the year 2011 in the hope of making speculative gains on the approval of the

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zoning plans. That the present real estate market conditions are not favorable, the complainant has sought to file this vexatious complaint to extract huge amount of money from the respondent in the form of interest and compensation. That it is submitted herein the respondent has not agreed to provide service of any kind to the complainant unless the zonal plans were approved. The complainant has filed the present complaint with malafide intention of abusing the process of the Authority for wrongful gains in the form of interest at the cost of the respondent.

- II. That the complainant has approached the respondent in the year 2011 to invest in undeveloped agricultural land in one of the futuristic projects of the respondent located in Sector 37-C and 37-D, Gurugram. The complainant fully being aware of the prospects of the said futuristic project and the fact that the said land is a mere futuristic project have decided to make an investment in the said project of the respondent for speculative gains. That thereafter, the complainant has paid a booking amount of Rs.23,00,000/- through cheque bearing no. 123717 dated 08.01.2011 against booking of one plot admeasuring 300 sq. yds. in future potential project of the respondent.
- III. That further the complainant herein has resorted to filing a complaint solely on the basis of false claims and baseless accusations against the respondent while concealing its own defaults and laches for which they are solely liable.
- IV. That the said payments were not full and final payments and further payments inter alia towards government dues on account of other charges are payable at the time of allotment of plot and execution of plot buyer's agreement.

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- V. That further no date of possession has ever been mutually agreed between the parties. That even at the time of booking, it has been clearly stated that a definite plot can be earmarked only once the zoning plans are approved by the statutory authority which is within the knowledge of the complainant.
- VI. The claims for possession are superfluous and non-est in view of the fact that the complainant is actually not even entitled to claim possession of the plot as on date. It is submitted that it is only on default in offer/handover of possession that the complainant's right to claim possession/refund crystallizes.
- VII. The complainant has attempted to create a right in his favour by resorting to terminate transactions which have become hopelessly barred by time and after the period of limitation has lapsed it cannot be revived.
- VIII. That it is pertinent to mention herein that no date of possession was ever committed by the respondent since the project was a futuristic project which was highly reliant upon approval of zonal plans by the concerned state authority and the complainant having complete knowledge of the same has willingly made speculative investments in the said project.
- IX. That it is evident that the complainant has approached the Authority by suppressing crucial facts with unclean hands which is evident from its own complaint. Therefore, the present complaint is liable to be rejected in limine based on this ground alone.

d. Complainant is not consumer 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

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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 complainant does not fall within the four walls of the term "Consumer". That further the complainant is mere investor who had invested in the project for commercial purposes.

- ii. That without prejudice to the above, it is further submitted that the complainant is not "Consumer" within the meaning of the Consumer Protection Act, 2019 since the sole intention of the complainant was to make an investment in a futuristic project of the respondent only to reap profits at a later stage. That further complainant has nowhere provided any supportive averments or proofs as to how they fall within the boundaries of the definition of "Consumer". The complainant has deliberately concealed the motive and intent behind purchasing of the said unit. In this behalf, the Hon'ble Authority may strictly direct the complainant to adduce any documentary evidence in support of their averments.
- iii. That further the complainant is already in ownership of one property which the complainant has materially concealed herein. Hence, by any standard of imagination, the present complainant 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 complainant is plainly investor who has filed the present complaint on the basis of a totally concocted and fabricated story filled with fallacies and concealments. Therefore, the complainant cannot be said to have approached the Hon'ble

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Authority with clean hands and only with malafide intention to harass the respondent in the most harm causing way possible.

- iv. That the complainant has approached the respondent's office in January 2011 and has communicated that the complainant is interested in a project which is "not ready to move" and expressed his interest in a futuristic project. It is submitted that the complainant was 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 complainant, the investment was accepted towards a futuristic project. Now the complainant is trying to shift the entire burden on the respondent as the real estate market is facing rough weather.
- v. That the complainant is mere investor 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 Consumer Protection Act, 2019. Therefore, the complaint is liable to be dismissed merely on this ground.

e. That there is no default on the part of the respondent:

- a. That further the reasons for delay are solely attributable to the regulatory process for approval of layout which is within the purview of the Town and Country Planning Department. The complaint is liable to be rejected on the ground that the complainant had indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and outside the purview of the Authority and in further view of the fact the complainant had knowingly made an investment in a future potential project of the respondent. The reliefs claimed would require an adjudication of the reasons for delay in approval

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of the layout plans which is beyond the jurisdiction of the Authority and hence the complaint is liable to be dismissed on this ground as well.

- b. That the complainant's primary prayer for handing over the possession of the said plot is entirely based on imaginary and concocted facts by the complainant and the contention that the respondent was obliged to hand over possession within any fixed time period from the date of issue of provisional allotment letter is completely false, baseless and without any substantiation; whereas in reality the complainant had complete knowledge of the fact that the zoning plans of the layout were yet to be approved and the initial booking in 2011 was made by the complainant towards a *future potential project* of the respondent and hence there was no question of handover of possession within any fixed time period as falsely claimed by the complainant.
- c. That further the respondent has applied for the mandatory registration of the project with the RERA Authority but however the same is still pending for approval on the part of the RERA Authority. However, in this background it is submitted that by any bound of imagination the respondent cannot be made liable for the delay which has occurred due to delay in registration of the project under RERA. It is submitted herein that since there was delay in zonal approval from the DGTCP the same has acted as a causal effect in prolonging and obstructing the registration of the project under the RERA for which the respondent is in no way responsible. That the approval and registration is a statutory and governmental process which is way out of power and control of

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the respondent. This by any matter of fact be counted as a default on the part of the respondent.

- d. There is no averment in the complaint which can establish that any so called delay in possession could be attributable to the respondent as the finalization and approval of the layout plans has been held up for various reasons which have been and are beyond the control of the respondent including passing of an HT line over the layout, road deviations, depiction of villages etc. which have been elaborated in further detail herein below. The complainant while investing in a plot which was subject to zoning approvals were very well aware of the risk involved and had voluntarily accepted the same for his own personal gain. There is no averment with supporting documents in the complaint which can establish that the respondent had acted in a manner which led to any so called delay in handing over possession of the said plot. Hence the complaint is liable to be dismissed on this ground as well.
- e. The respondent is owner of vast tracts of undeveloped land in the revenue estate of village Basai, Gadauli Kalan and falling within the boundaries of Sector 37C and 37D Gurugram also known as Ramprastha City, Gurugram.
- f. That even in the adversities and the unpredicted and unprecedented wrath of falling real estate market conditions, the respondent has made an attempt to sail through the adversities only to handover the possession of the property at the earliest possible to the utmost satisfaction of the buyers/allottees. That even in such harsh market conditions, the respondents have been

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continuing with the construction of the project and sooner will be able to complete the development of 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 complainant.
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:

10. 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 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.

11. 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."

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12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on objections raised by the respondent:

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

13. The 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 plot 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."

14. 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."

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the plot 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 complainant being investor.

16. The respondent has taken a stand that the complainant is the investor and not consumer. Therefore, he is not entitled to the protection of the Act and is not entitled to file the complaint under section 31 of the Act. The

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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 plot buyer's agreement, it is revealed that the complainant is buyer and paid total price of Rs.1,00,35,500/- to the promoter towards purchase of a unit 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;"

17. 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 complainant is allottee 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 allottee being investor is not entitled to protection of this Act also stands rejected.

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

18. Another contention of the respondent is that if the date of possession was to be construed in December 2017, the period of limitation has come to an end in the year December 2020. 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. 00600000021137 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."

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

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to refund the entire amount i.e., Rs.1,00,35,500/- to the complainant along with 18% interest from the date of respective payments till its complete realization

19. The complainant was allotted a unit in the project of respondent "Ramprastha City", in Sector 37C and 37D, Gurugram vide allotment letter dated 18.06.2015 for a total sum of Rs.66,80,000/-. A plot buyer's agreement dated 17.06.2015 was executed between the parties and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.1,00,35,500/- as alleged by the complainant (Rs.60,35,500/- through cheque and Rs.40,00,000/- in cash).

20. The due date of possession as per the possession clause of the plot buyer's agreement is 17.12.2017. There is delay of 4 years 10 months 25 days on the date of filing of the complaint i.e., 11.11.2022. The part completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter.
21. 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 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 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....."

22. 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.

23. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and

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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.

24. **Admissibility of refund along with prescribed rate of interest:** In the present complaint, the complainant intend to withdraw from the project and is seeking refund of the paid-up amount as provided under 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)

25. The complainant is seeking refund of the amount paid by him 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%.

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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.

26. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
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 definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- “(z) “interest” means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;”*
29. 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.
30. The counsel for the respondent has brought to the notice of the authority vide hearing dated 29.08.2023 that the complainant has not placed any

receipt of the amount of Rs.40,00,000/- paid by him in cash and acknowledges only the amount of Rs.60,35,500/- The complainant has not objected this fact during the proceedings and did not place any record on file till date. Thus, the amount paid by the complainant comes to Rs.60,35,500/-.

31. The authority hereby directs the promoter to return the amount received by him i.e., Rs.60,35,500/- 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.50,000/- to the complainant as cost of present litigation and Rs.25,00,000/ as compensation and amount of rent which the complainant is paying as Rs.31,000/- p.m. since 2019.

32. 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.

G.III Direct the respondent to provide complete details of EDC/IDC and to place on record all statutory approvals and sanctions of the project and revoke the registration granted under Section 7 of the Act of 2016.

33. Since, the complainant is seeking refund of the entire amount paid and thus, the aforesaid relief sought becomes redundant.



H. Directions of the Authority:

34. 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 respondents /promoters are directed to refund the amount i.e., **Rs.60,35,500/-** 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 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 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.

35. Complaint stands disposed of.

36. File be consigned to the registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.10.2023