



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

Complaint no. :	1565 of 2022
First date of hearing:	10.08.2022
Date of Decision:	26.10.2023

Sh. Lokesh Upreti

R/o: 8-10,2 Petir Road, Maysprings,  
Singapore-678265

**Complainant**

Versus

M/s New Look Builders and Developers  
Private Limited (Earlier known as M/s  
Ansal Phalak Infrastructure Pvt. Ltd.)

**Regd. Office at:** 115, Ansal Bhawan 16,  
Kasturba Gandhi Marg, New Delhi-110001

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. K.K. Kohli (Advocate)

Complainant

Sh. Ashwariya Jain (Advocate)

Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the apartment buyer's agreement executed inter se.

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**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	"Versalia", Sector 67A, Gurugram
2.	Nature of the project	Residential Plotted Colony
3.	Project area	38.262 acres
4.	DTCP license no. and validity status	i. 81 of 2013 dated 19.09.2013 valid up to 19.09.2019 ii. 20 of 2018 dated 09.03.2018 valid up to 08.03.2023
5.	Name of licensee	Lord Krishna Infra Projects Ltd. and 13 others
6.	RERA Registered/ not registered	154 of 2017 dated 28.08.2017
7.	RERA registration valid up to	31.08.2020
8.	Unit no.	FF3216 (Unit has been changed to FF3216 from FF3077) (As per page no. 36 of the complaint)
9.	Unit area admeasuring	1685 sq. ft. (As per page no. 36 of the complaint)
10.	Allotment letter	25.09.2014 (As per page no. 36 of the complaint)
11.	Date of Execution of FBA	29.04.2014 (As per page no. 43 of the complaint)
12.	Possession clause	<b>5.1</b> <i>Subject to clause 5.2 infra and further subject to all the buyers of the floors in the residential colony making timely</i>

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		<p>payment, the company shall endeavour to complete the development of residential colony and the floor as far as possible within <b>36 months with an extended period of (6) six months from the date of execution of this floor buyer agreement</b> subject to the receipt of requisite building /revised building plans/ other approvals &amp; permissions from the concerned authorities, as well as force majeure conditions as defined in the agreement and subject to fulfilment of the terms and conditions of the allotment, certificate &amp; agreement including but not limited to timely payments by the buyer(s), in terms hereof. The company shall be entitled to extension of time for completion of construction of the unit equivalent to the period of delay caused on account of the reasons stated above. No claim by way of damages/compensation shall lie against the company in case of delay in handing over possession of the unit on account of the aforesaid reasons. However, if the buyer(s) opts to pay in advance of schedule, a suitable discount may be allowed but the completion schedule shall remain unaffected. The buyer(s) agrees and understands that the construction will commence only after all necessary approvals are received from the concerned authorities and competent authorities including but not limited to environment &amp; forest.</p> <p>(As per page no. 31 of the reply)</p>
13.	Due date of possession	29.10.2017 <p>(Note: Due date to be calculated 36 months from the execution of floor buyer's agreement i.e., 29.04.2014 plus grace period of 6 months)</p>

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		(Grace period allowed being unqualified)
14.	Total sale consideration	Rs. 1,16,25,000/- (As per page no. 48 of the complaint)
15.	Amount paid by the complainant as per letter dated 04.11.2014	Rs. 37,47,877/- (As per page no. 103 of the complaint)
16.	Certificate of incorporation pursuant to change of name	As New Look Builders and Developers Private Limited from Ansal Phalak Infrastructure Private Limited (As per page no. 17 of the reply)
17.	Occupation certificate /Completion certificate	Not obtained
18.	Offer of possession	Not offered
19.	The authority vide order dated 28.03.2019 awarded DPC from 29.10.2017 till handing over of possession @ 10.75% p.a. in complaint no. 2114 of 2018 filed by the same complainant.	

### B. Facts of the complaint:

3. That the complainant has made following submissions:
- That the grievance of the complainant relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent M/s Ansal Phalak Infrastructure Pvt. Ltd. in regards, to offered to him.
  - That there is no second thought to the fact that the complainant has paid 30% of the amounting to Rs.37,47,877/- as per details placed on file.
  - That as per clause 5.1 of the buyer's agreement, which was entered upon on **29.04.2014**, the possession of the said unit was supposed to be delivered within a period of 36 months from the date of



execution of buyer's agreement plus 6 months grace period from the date of execution of agreement with requisite approvals & permissions from the concerned authorities as well as force majeure conditions. It would be noticed that the due date of delivery of the floor would be on or before **29.10.2017**. The complainant has been regularly inquiring about the status of the construction from the respondent after paying colossal amount 40% of BSP plus taxes.

- d. That is pertinent to mention that the complainant had visited the project site only to be informed that the respondent had still not been completed. The respondent is guilty of unfair trade practices under the Section 2(1)(r) of the Consumer Protection Act 1986.
- e. That the complainant should have received the offer of possession of the unit on date 29.10.2017 but were delayed possession by almost 4 years approx. by the respondent and the possession letter was not received till date.
- f. That the construction is currently stalled, and there is no clear picture as to when the project shall be ready for possession as the construction is completely abandoned and the pace of the work on site coupled the photos of the existing structure, the possibility of the handing over of the possession, even, by the end of 2021, are non-existent and by then the delay would be above 4 years.
- g. That the respondent having breached the terms of the "agreement", more specifically in terms of the delivery of the unit as elaborated buyer's agreement, the respondent has miserably failed to handover the possession if the said unit and is liable to pay an amount of Rs.37,47,877.36/- already paid by the complainant with an interest of **10.75%** till date, on the total amount paid by the complainant from the date of receipt of each payment. It is pertinent to mention that the Authority vide its order 28.03.2019 also gave the





complainant to seek the remedy of refund if the respondent was unable to handover the possession of the said unit on or before the 31.08.2020. The relevant para of the order has been annexed below:

*"If respondent fails to deliver the project on the revised committed date of possession i.e., 31.08.2020 in that case complainant is eligible for refund of the deposited amount alongwith prescribed rate of interest i.e. 10.75% per annum."*

- h. That by having intentionally and knowingly induced and falsely misrepresented to the complainant on the construction activity at site and by giving false delivery schedules and thereby making the complainant to act in accordance with its misrepresentations and owing to all the deliberate lapses/delays on the respondent's part, the respondent is liable to pay the entire amount collected by the respondent with interest from the date of receipt of the individual payments, to the complainant.
- i. That the above said acts of the respondent clearly show that the respondent have been indulging in unfair trade practices and have also been providing gross deficient services and misrepresenting facts to the complainant. All such acts and omissions on the part of the respondent caused an immeasurable mental stress and agony to the complainant.
- j. That the complainant after losing all the hope from the respondent, after being mentally tortured and also losing considerable amount, are constrained to approach the Hon'ble Authority for redressal of their grievance.

**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.37,47,877/- paid by the complainant along with interest at the

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prescribed rate on the paid amount from the date of payment till actualisation.

**D. Reply by the respondent:**

5. 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 complainant was allotted with the unit no. 3216, first floor in the project at the basic sale price of Rs.1,16,25,000/- in terms of the floor buyer's agreement dated 29.04.2014. That in terms of the FBA, the taxes, External Development Charges and Internal Development Charges were to be levied upon the complainant separately i.e., over and above the basic sale price.
  - c. That the respondent has denied that the complainant has paid Rs.37,47,877/- to him towards the unit. As a matter of record, the complainant has made a total payment of Rs.34,87,500/- till date towards the allotment of the unit out of basic sale consideration of Rs.1,16,25,000/- excluding EDC, IDC charges plus club members fee plus interest-free maintenance charges plus service charges. Further, the complainant has also paid Rs.1,26,375/- towards the EDC & IDC only.
  - d. That the timely payment of the consideration in terms of the payment schedule, is the essence of the contract between the complainant and the respondent. That the respondent is relying upon the clause no. 5.2 of the FBA for stating the above. As a matter of fact, the complainant himself admits that he has paid less than 50% of the total sale consideration, when the construction of the unit is in its advance stages. Therefore, it is crystal clear that the complainant has failed to fulfill his obligation in



terms of the Clause 5 of the FBA and as an allottee for the purpose of Section 2(d) of the Act. Hence, the captioned complaint is liable to be rejected with exemplary cost upon the complainant.

- e. That the instant complaint deserves to be dismissed at the threshold in view of the conduct of the complainant. It is the first and foremost principle of law that the party approaching any legal forum/court for dispensation of justice must approach with clean hands. The complaint under reply is not only gross abuse of process of law but the same is filed with mala fide intentions of maligning the reputation and goodwill of the respondent. The contents of the instant complaint would reveal that the complainant has suppressed material facts that are extremely relevant to the adjudication of the instant complaint. The courts have on all occasions come down heavily on litigants who have approached courts suppressing material facts. That the complainant by way of the present complaint is attempting to mislead the Authority by fabrication and concealment of facts which never existed and trying to unduly gain at the cost of the respondent, for which the complainant is not entitled under the law.
- f. That without prejudice to the above, the complainant had filed one complaint no. 2114 of 2018 titled as "Lokesh Upreti vs Ansal Phalak Infrastructure Pvt. Ltd." before the Hon'ble Authority. That the said Complaint was disposed by the Authority vide its order dated 28.03.2019. That the Authority, vide said order had directed the respondent to handover the possession of the property to the complainant & to pay the delayed possession charges @10.75% to the complainant from the due date of possession i.e., 29.10.2017.
- g. That subsequently, the complainant had filed Execution Petition No. E/1706/2021/2114/2018 before the Hon'ble Authority.
- h. That in terms of the final calculation arrived at by the Authority for the amount payable by the respondent to the complainant towards the





delayed possession charges in terms of the aforesaid order was Rs.37,47,877/-. That above mentioned decretal amount was duly paid by the respondent by way of adjustment in his ledger account and the said Execution Petition was disposed by the Authority as satisfied vide its order dated 16.09.2021. Pertinently, the complainant had also agreed to satisfaction of the decree upon receipt of the decretal amount and same was recorded by this Authority vide its order dated 04.08.2021.

- i. That the construction of project of the respondent is dependent upon the amount of money being received from the booking made and money received henceforth, in form of instalments by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the time of launch of the project. That the reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent henceforth, causing a delay in the construction work of the project.
- j. That the said project of the respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the respondent vide clause 5.2 of the FBA, the complainant has agreed and duly acknowledged that in case the development of the said dwelling unit is delayed for any reasons beyond the control of the company, then no claim whatsoever by way of any compensation shall lie against the respondent. Therefore, the complainant in terms of the FBA has agreed and undertook to waive all his rights and claims in such a situation.
- k. That the new management of respondent is a customer-oriented organization that is committed to delivering high-quality and reliable residential and non-residential projects in the greater metropolitan area.

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It aims to work towards the development of self-owned real estate including low-rise apartments and dwellings, plotted development, and non-residential developments.

- l. That the said project of the respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the respondent. However, despite all odds, still, the respondent is making all efforts to complete the construction work at the project site at full pace and is expecting to hand over the possession very soon, once the situation of pandemic 'Covid-19' gets over and situation normalizes.
- m. That the delay in handing over the possession of the dwelling unit/ apartment has been caused due to the various reasons which were beyond the control of the respondent. Following important aspects are relevant which are submitted for the kind consideration of the Hon'ble Authority:

**a. Non-booking of all floors/ units seriously affected the construction:** -It is submitted that the global recession badly hit the economy and particularly the real estate sector. The construction of project of the respondent is dependent on the amount of monies received from the bookings made and monies received henceforth, in form of instalments paid by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the time of launch of the project. The reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent, henceforth, causing delay in the construction work of the project.

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**b. Other various challenges being faced by the respondent:** The following various problems which are beyond the control of the respondent seriously affected the construction;

- a) Lack of adequate sources of finance;
- b) Shortage of labor;
- c) Rising manpower and material costs;
- d) Approvals and procedural difficulties.

In addition to the aforesaid challenges the following factors also played major role in delaying the offer of possession;

- I. There was extreme shortage of water in the region which affected the construction works;
- II. There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln;
- III. Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction work of the respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labor;
- IV. Recession in economy also resulted in availability of labour and raw materials becoming scarce;
- V. There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM);
- VI. Direction by the Hon'ble National Green Tribunal & Environmental authorities to stop the construction activities for some time on regular intervals to reduce air pollution in NCR region.

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- n. That apart from the above, it is relevant to mention here that due to the increase in pollution in National Capital Region, the Hon'ble Supreme Court of India vide Order dated 04.11.2019 passed in **Writ Petition (Civil) No. 13029 of 1985** titled as "**M.C. Mehta-Versus-Union of India & Ors**" ("**Writ Petition**") had put a blanket ban on the construction activities in the National Capital Region. Subsequently vide Order dated 09.12.2019, the Hon'ble Supreme Court of India lifted the ban partially i.e. construction activities were only allowed between 6:00 A.M. to 6:00 P.M. It is pertinent to mention that due to the aforesaid restraining orders passed by the Hon'ble Supreme Court of India all the construction activities in the National Capital Region came to a standstill, resultantly the project got delayed. The said ban is completely lifted by the Hon'ble Supreme Court only on 14.02.2020. In past also the construction was banned by Hon'ble Courts and Tribunals. All the above problems are beyond the control of the developer i.e. the respondent It may be noted that the respondent had on many occasions orally communicated to the complainant that the construction activity at the said project site had to be halted for some time due to certain unforeseen circumstances which are completely beyond the control of the developer.
- o. That apart from the above, it is relevant to mention here that due to the increase in pollution in National Capital Region, the Hon'ble Supreme Court of India vide Order dated 04.11.2019 passed in **Writ Petition (Civil) No. 13029 of 1985** titled as "**M.C. Mehta-Versus-Union of India & Ors**" ("**Writ Petition**") had put a blanket ban on the construction activities in the National Capital Region. Subsequently vide order dated 09.12.2019, the Hon'ble Supreme Court of India lifted the ban partially i.e., construction activities were only allowed between 6:00 A.M. to 6:00 P.M. It is pertinent to mention that due to the aforesaid restraining orders passed by the Hon'ble Supreme Court of India all the construction

activities in the National Capital Region came to a standstill, resultantly the project got delayed. The said ban is completely lifted by the Hon'ble Supreme Court only on 14.02.2020. In past also the construction was banned by Hon'ble Courts and Tribunals.

6. That in view of the above facts and circumstances the demands of the complainant for a refund of the amount paid cannot be allowed the captioned complaint shall be dismissed in limine with exemplary cost upon the complainant.
7. 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:**

8. 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.

9. 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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10. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the above-mentioned matter, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

**F. Findings on objections raised by the respondent:**

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

11. 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."*

12. 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."*

13. 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 force majeure conditions:**

14. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetisation, certain environment restrictions, weather conditions in NCR region, increase in cost of construction material, and non-payment of instalment by different allottees of the project, etc. But all the pleas advanced in this regard are devoid

of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot 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 based on aforesaid reasons and the plea advanced in this regard is untenable.

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

**G.I Direct the respondent to refund of paid-up amount of Rs.37,47,877/- along with compound interest at the prescribed rate from date of payments till its actual payment.**

15. The complainant was allotted a unit in the project of respondent "Versalia", in Sector-67 A, Gurugram vide allotment letter dated 25.09.2014 for a total sum of Rs.1,16,25,000/-. A floor buyer's agreement dated 29.04.2014 was executed between the parties and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.37,47,877/.
16. The due date of possession as per the possession clause of the floor buyer's agreement is 29.10.2017. There is delay of more than 4 years on the date of filing of the complaint i.e., 18.04.2022. The occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoter.
17. 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....."*

18. 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.*

19. 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.
20. 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.

21. **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 the 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)**

22. 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%.*

*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.*

23. 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.

24. 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., 26.10.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.

25. 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;"*

26. 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.

27. The counsel for the complainant vide hearing dated 26.10.2023 brought to the notice of the authority that on delay in handing over of possession the complainant has filed CR No. 2114/2018 before the Authority for refund and was accordingly allowed with further direction that if the respondent fails to deliver the project on the revised committed date of possession i.e., 31.08.2020, the complainant can seek refund alongwith prescribed rate of interest i.e., 10.75% per annum.

28. The counsel for the respondent also brought attention of the Authority to the fact that amount deposited by the complainant is Rs.34,87,500/- instead of Rs.37,47,877/- as mentioned in the earlier order and in compliance of the earlier direction of the Authority, the respondent has credited the decretal amount in the ledger account. However, the complainant has submitted individual receipt dated 07.01.2014, 19.02.2014 and 14.04.2014 and confirmed a total payment of Rs.37,47,877/- and the respondent duly acknowledged vide statement of accounts dated 04.11.2014 (At page no. 103 of the complaint) . But till date the occupation certificate of the unit has not been obtained nor the offer has been made to the complainant.
29. The authority hereby directs the promoter to return the amount received by him i.e., Rs.37,47,877/- 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*.
30. The promoter may deduct the amount if any towards delay possession interest paid in compliance of the order dated 28.03.2019, although no details or proof of its payment have been placed on record by the respondent.

**H. Directions of the Authority:**

31. 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.37,47,877/-** received by him from the complainant (after deducting amount if any paid to the complainant in compliance of the order of the

Authority dated 28.03.2019 in CR No.2114/2018) along with interest at the rate of 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.

- ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii) The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

32. Complaint stands disposed of.

33. File be consigned to the registry.

V.1 -   
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.10.2023

**HARERA**  
**GURUGRAM**