

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

**Complaint no.:** 1767 of 2022  
**Date of filing complaint:** 21.04.2022  
**Date of decision:** 16.11.2023

1. Mr. Alex Kurian
2. Mr. Salcy
3. Mr. Jubin Kurian
4. Mr. Ravinder Pal Singh

**All R/o:** - Thenakara Kaduthuruthy, P.O., Kottayam District  
Kerala, India - 686604

**Complainants**

Versus

1. Ansal Housing Limited (Formerly Known as Ansal Housing and Construction Limited)

**Registered Office at:** - 2<sup>nd</sup> Floor, Ansal Plaza, Sector- 1, Near Vaishali Metro Station, Vaishali, Ghaziabad Utter Pradesh - 201010

2. Samyak Projects Private Limited

**Registered Office at:** - 111, 1<sup>st</sup> Floor, Antriksh Bhavan, 22 K.G. Marg, New Delhi- 110001

**Respondents**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri. Gaurav Rawat (Advocate)

Smt. Sparsh Choudhary (Advocate)

None

Complainants  
Respondent no. 1  
Respondents no. 2

**ORDER**

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 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 as provided under

the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Hub 83 Boulevard", Sector-83, Gurugram
2.	Total area of the project	2.60 acres
3.	Nature of the project	Commercial complex part of residential colony
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid up to and 71 of 2010 dated 15.09.2010 valid up to
5.	Name of licensee	Buzz Estate Pvt. Ltd. & othrs.
6.	Registered/not registered	Registered vide no. 09 of 2018 dated 08.01.2018 for 2.80 acres Valid up to 31.12.2020
7.	Unit no.	F-055 [pg. 38 of complaint]
8.	Area of the unit	474 sq. ft. [pg. 38 of complaint]
9.	Date of execution of buyer's agreement	20.05.2015 [pg. 34 of complaint]
10.	Possession clause	<b>Clause 30.</b> <i>30. The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in</i>



		<p><i>clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.</i></p> <p><i>(Emphasis supplied)</i></p> <p><i>[page 45 of complaint]</i></p>
11.	Due date of possession	20.05.2019 (Note: 42 months from date of agreement i.e., 20.05.2015 as the date of start of construction is not known + 6 months grace period allowed being unqualified)
12.	Delay in handing over possession till the date of filing of this complaint i.e., 21.04.2022	2 years 11 months and 1 day
13.	Basic sale consideration as per payment plan annexed with BBA at page 38 of complaint	Rs.45,35,706/-
14.	Total amount paid by the complainant as per sum of receipts	Rs.17,63,161/-
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained

### B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
- That the complainants are law abiding citizen and consumer who has been cheated by the malpractices adopted by the respondent is stated to be a builder and is allegedly carrying out real estate development, since many years, the complainant being interested in the project as it was a commercial complex and the complainants desired his own office for himself.
  - That the respondent company under the guise of being a reputed builder and developer has perfected a system through organized tools and techniques to



cheat and defraud the unsuspecting, innocent and gullible public at large. The respondents advertised its projects extensively through advertisements. They were allured by an enamoured advertisement of the respondent and believing the plain words of respondent in utter good faith the complainants were duped of their hard earned monies which they saved from bona fide resources as well as taken home loan from relatives or personal loan.

- c. That due to the malafide intentions of the respondent and non-delivery of the unit, the complainants have accrued huge losses on account of the career plans of their children and himself and the future of the complainants and their family are rendered dark as the planning with which the complainants invested their hard earned monies have resulted in sub-zero results and borne thorns instead of bearing fruits. After passing 7 years of booking complainant wasn't got possession of property.
- d. That the complainants approached to the respondent initially for booking of a unit admeasuring 474 sq. ft. in the project "Ansal Hub Boulevard" located at Sector-83, Gurugram, Haryana and paid booking amount Rs.85,000/- through cheques on dated 19.03.2015. Thereafter, the complainants were allotted the unit no. F-055 admeasuring 474 sq. ft. in the said project and being developed by M/s Ansal Housing Limited and M/s Samyak Projects Pvt. Ltd.
- e. That the respondent to dupe the complainants in their nefarious net even executed buyer's agreement signed between the parties on dated 20.05.2015. Just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant.
- f. That as per clause 23 of the buyer's agreement the buyer was charged very high interest rate i.e. 24% per annum, compounded quarterly. Furthermore,

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according to clause 24 of agreement if buyer fails to pay due instalments within stipulated period, the respondent could cancel the agreement and forfeit the earnest money, without giving any notice to buyer which in itself is perverse in nature.

- g. That the complainants further submit that as per clause 34, the developer/ respondent had very cleverly and specifically accepted a meagre liability to pay Rs.5/- per sq. ft. per month on the super area for the delay in offering of possession.
- h. That the total cost of the said commercial unit is Rs.45,35,706/- and a sum of Rs.17,63,161/- was paid by the complainants in time bound manner. This amount constituted more than 35% of the total sum taken from the complainants within 1.5 years. This amount was taken by the respondents through fraudulent means by erecting a bare structure within 2018. The respondents declined to complete the project after collecting money and there has been little progress in construction from 2016 onwards.
- i. That as per section 19 (6) the Act, 2016, the complainants have fulfilled their responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainants are not in breach of any of its terms of the agreement.
- j. That the complainants had paid all the demanded installments by respondent on time and deposited Rs.17,63,161/-, before starting of construction, builder extracted more than 35% amount which is unilateral, arbitrary and illegal. That respondent in endeavor to extract money from allottees, devised a payment plan under which respondent linked 90% amount for raising the super structure only. The total sale consideration to the time lines which is not depended or co-related to the development of the site at all. After taking the



same respondent has not bothered to initiate any development of the project till today. That after taking more than 35% amount in 2015 and from last 7 years project is abandoned.

- k. That as per clause 30 of the buyer's agreement the respondent was liable to hand over the possession of a developed commercial unit on or before 19.05.2018. They visited project site many time and found that builder had not carried out development work even super structure also incomplete, even during year 2015 to 2022 (7 year), project was abandoned and development work was not carried out by the builder. That the complainants tried to approach the builder for knowing the reason for inordinate delay, but builder didn't reply.
- l. That in view of the above said facts and circumstances of the case the complainants are seeking refund of his paid amount with interest till the actual payment from the respondents. That such an inordinate delay in the delivery of possession to the allottee is an outright violation of the rights of the allottees under the provisions of the Act of 2016 as well the agreement executed between the parties. The complainant's demands return of Money with Interest in terms of section 18(1) read with section 18(3) of the Act, along with principles of Justice, Equity and Good Conscience.

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

4. The complainants have sought following relief(s)
- Direct the respondent to refund the entire amount paid by the complainant along with the interest.
  - Restrain the respondent in raising any fresh demand.
  - Direct the respondent to quash one sided clause from BBA.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

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

6. The respondent no. 1 has contested the complaint on the following grounds.
- a. That the present complaint is neither maintainable nor tenable by both law and facts. The present complaint is not maintainable before this authority, as the complainants have admitted that they have not paid the full amount. The complainants have filed the present complaint seeking interest. The present complaint is liable to be dismissed on this ground alone.
  - b. That even otherwise, the complainants have no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions the allotment letter/buyer's agreement dated 20.05.2015, which is evidentiary from the submissions made in the following paragraphs of the present reply.
  - c. That the complainants approached the respondents sometime in the year 2015 for the purchase of an independent unit in its upcoming residential project "ANSAL HUBS" situated in Sector-83, District Gurgaon (Haryana). The complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were being fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondents

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to undertake development of the same and they took an independent and informed decision to purchase the unit, un-influenced in any manner.

- d. Thereafter, the complainants applied to the respondent for provisional allotment of a unit in the project on 19.03.2015. The complainants, in pursuant to the application, was allotted shop/office space bearing no. FF-055 in the said project. The complainants were consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that they should remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants.
- e. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The construction work of the project is swing on full mode and the work will be completed within the prescribed time period as given by the respondent to the authority.
- f. That without prejudice to the aforesaid and the rights of the respondent, the respondent would have handed over the possession to the complainants within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No. 20032 of 2008 through which the shucking/extraction of water was banned which is the



backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal thereby restraining the excavation work causing Air Quality Index being worst, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the major factor to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The sudden restriction on withdrawals led the respondent unable to cope with the labor pressure. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana Government.

- g. That the respondent is carrying his business in letter and spirit of the builder buyer agreement but due to COVID-19 the lockdown was imposed throughout the country in March, 2020 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent. That similarly lockdown was imposed in the year 2021 which extended to the year 2022 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent.
- h. That the ban on construction was imposed by the Hon'ble supreme court of India in the year 2021 due to the alarming levels of pollution in Delhi NCR which severely affected the ongoing construction of the project.

- i. That the Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the builder buyer's agreement, vide which complainants were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. They further agreed to pay his proportionate share in any future enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.
7. The authority issues a notice dated 06.05.2022 to the respondents no. 2 in the above-mentioned complaint was sent through speed post and through email address i.e., [samyakprojects@gmail.com](mailto:samyakprojects@gmail.com)); the delivery report of which shows that delivery was completed and the delivery reports have been placed in the file. Despite service of notice, the respondents no. 2 has preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Therefore, in view of order dated 16.11.2023, the authority was left with no other option but to decide the complaint ex-parte against the respondent no. 2.
8. 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**

9. 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**

10. 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**

11. 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) The promoter shall-

*(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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

12. 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.
13. 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***

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**Limited Vs State of U.P. and Ors. (Supra) and 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** 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."*

14. 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 the 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.**

15. The respondent raised an objection that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no 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)** decided on 06.12.2017 which provides as under:

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

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

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

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be*





*entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

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

**F. II Objection regarding delay in completion of construction of project due to force majeure conditions.**

17. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 20.05.2015 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 20.05.2019. The events such as 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 as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of

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occupation certificate. Hence, in view of aforesaid circumstances, no period grace period 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 ~~an~~ ~~hold due to fault of~~ some of the allottees. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

As far as delay in construction due to outbreak of Covid-19 is concerned, 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."*

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 20.05.2019 and 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.

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

**G.I Direct the respondent to refund the entire amount paid by the complainants along with the interest.**

18. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

***"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 to 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)*

19. As per clause 30 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

***"30.***

***The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."***

20. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being

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in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

21. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 42 months plus 6 months from date of agreement or the date of commencement of construction whichever is later. The authority calculated due date of possession from the date of agreement i.e., 20.05.2015 as the date of construction is not known. The period of 42 months expired on 20.11.2018. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.
22. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the



subject unit 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., 16.11.2023 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(za) 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:

"(za) "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. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 30 of the agreement executed between the parties on 20.05.2015, the possession of the subject apartment was to be delivered within stipulated time i.e., by 20.11.2018. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 20.05.2019. It is pertinent to mention over here that even after a passage of more than 8.5 years (i.e., from the date of BBA till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid almost 38% of total consideration till 2015. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
27. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. 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, 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."*

29. 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 allottees 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 allottee, as he wishes 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.

30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.75% p.a. (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 Restrain the respondent in raising any fresh demand.**

**G.III Direct the respondent to quash one sided clause from BBA.**

31. In view of the findings detailed above on issues no. 1, the above said relief become redundant as the complete amount paid by the complainants is being refunded back.

**H. Directions of the authority**

32. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- I. The respondents/promoters are directed to refund the amount i.e., Rs.17,63,161/- 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 deposited amount.

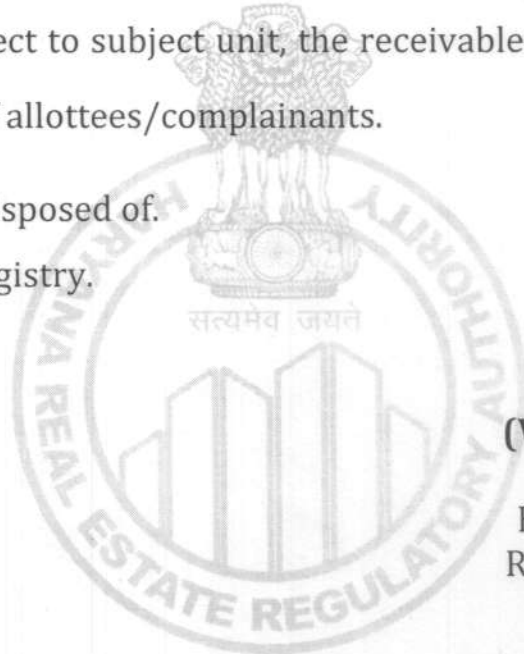


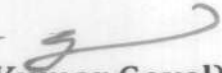
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- II. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
- III. The respondents are further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottees/complainants.
33. The complaint stand disposed of.
34. File be consigned to registry.

Dated: 16.11.2023



v.l -   
(Vijay Kumar Goyal)  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
**GURUGRAM**