

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

Complaint no. : 2294 of 2022
Date of filing of
complaint: 13.06.2022
Date of decision : 07.11.2023

Lokesh Kumar Goel & Vijay Goel R/o: 1879, 1st Floor, Kucha Chelan, Khari Baoli, Delhi.	Complainant
Versus	
1. M/s New Look Builders & Developers Pvt. Ltd.. 2. Sh. Piyush Kumar Gupta 3. Sh. Surender Kumar 4. Abhishek Aggarwal Regd. Address At: 1 st Floor, The Great Eastern Centre 70, Nehru Palace, behind IFCI Tower, New Delhi-110019.	Respondents
CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Prashant Sharma	Advocate for the complainant
Sh. Deeptanshu Jain	Advocate for the respondents

ORDER

1. The present complaint dated 13.06.2022 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Versalia", Sector 67-A, Gurugram
2.	Nature of the project	Residential Plotted Colony
3.	Project area	38.262 acres
4.	DTCP license no.	81 of 2013 dated 19.09.2013 valid upto 19.09.2019
5.	Name of licensee	Lord Krishna Infra Projects Ltd. and 13 others
6.	RERA Registered/ not registered	154 of 2017 dated 28.08.2017 valid upto 31.08.2020
7.	Unit no.	FF3020, First floor (pg. 23 of complaint)
8.	Reallotted unit no.	FF3078 (as per page no. 67 of complaint)
9.	Unit area admeasuring (Super area)	1685 sq. ft.
10.	Allotment letter	19.11.2013 [pg. 63 of complaint]
11.	Date of Buyer Agreement	06.05.2014 [pg. 22 of complaint]
12.	Possession clause	POSSESSION OF FLOOR

		<p>5.1 Subject to clause 5.2 infra and further subject to all the buyers of the floors in the residential colony making timely payment, the company shall endeavor to complete the development of residential colony and the floor as far as possible within 36 months with an extended period of (6) six months from the date of execution of this floor buyer agreement subject to the receipt of requisite building /revised building plans/ other approvals & 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 & agreement including but not limited to timely payments by the buyers), 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.</p> <p>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 & forest.</p> <p>[pg. 45 of complaint]</p>
13.	Due date of possession	06.11.2017 [Note: due date calculated from date of execution of agreement. Grace period of 6 months included being unqualified.]
14.	Total sale consideration	₹ 1,18,75,000/- (As per page no. 27 of complaint)

15.	Amount paid by the complainant	Rs. 39,94,198/- (As alleged by the complainant)
16.	Legal notice for refund	25.02.2022 (As per page no. 91 of complaint)
17.	Occupation Certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

The complainant has made the following submissions in the complaint: -

3. That complainants were one of the prospective buyers of a flat/unit bearing no.3020, first floor, in plot area 225 Sq. mtrs approx. super build up area 156.5 sq. mtrs. in the upcoming project of the respondents i.e. Avante Floors, Versalia in Sector-67-A, Gurugram, Haryana vide their application dated 19.11.2013 for a total sale consideration of Rs.1,28,39,816/-, which the amount was payable as per Annexure-2 i.e. "PAYMENT PLAN" attached with the said application form. It is worthy to point out that complainants paid a sum of Rs.12,31,556/- at the time of applying for the flat in the aforesaid project of respondent no.1. In response to the submission of application for allotment of flat in the aforesaid unit of the respondent no.1, the respondent no.1 allotted flat no.3020 to the complainants vide allotment letter dated 19.11.2013. It is pertinent to mention that the respondents executed no builder buyer agreement with the complainants. However, the respondents had sent an unsigned copy of builder buyer agreement to the complainants which was received by the complainants on 06.05.2014.
4. That at the time of offering sale of unit/flat in the aforesaid Project namely Versalia, the respondent no.1 allured the complainant stating that the

aforesaid project has been launched by "A Group of companies of ANSAL PROPERTIES AND INFRASTRUCTURE LIMITED" which is one of the elite and reputed projects being run by Ansal Brothers. They have further represented the complainants that the said endorsement was also written on the application form as well as on the allotment letter dated 19.11.2013. It is further stated that M/s. 360 Realtors Pvt. Ltd. was instrumental in finalising the said unit/flat being one of the agent of the respondent no.1 having counter within the office of the respondent no.1.

5. That in pursuance of call notice dated 30.12.2013 issued by respondent no.1, the complainants had paid a further sum of Rs.12,31,510/- vide receipt no.2634 and 2635 both of dated 11.01.2014 for Rs.6,15,755/- each. In terms of the next call notice dated 27.01.2014, the complainants had paid an amount of Rs.13,57,932/- vide receipt no.2793 and 2794 both of dated 18.02.2014 of Rs.6,78,966/- each. Further, the complainants had remitted a sum of Rs.1,73,200/- as demanded by the respondent no.1 vide call notice dated 12.01.2015 vide receipt no.3919 and 3920 both of dated 21.01.2015 for Rs.86,600/- each.
6. That it later came across to the knowledge of the complainants that ANSAL PROPERTIES AND INFRASTRUCTURE LTD. had nothing to do with the respondent no.1. And the aforesaid Agents of the respondent no.1 "Ansal Phalak Infrastructure Ltd." misrepresented & misinterpreted the respondent no.1 as Ansal API. On the contrary, the respondent no.1 was only incorporated in the year 2010. However, Ansal API claimed to be serving since 1967.
7. That in month of August, 2014, the respondent no.1 through the aforesaid agent i.e. M/s. 360 Realtors Pvt. Ltd. informed the complainants that the respondent no.1 is inclined to reallocate the originally unit/flat allotted to

the complainants. That the complainants gave their assents and consequently the unit/flat no.3020 first floor was reallocated with the new unit/flat no.3078 first floor, north facing on the basis of same terms & conditions as agreed between the respondent no.1 and the complainants.

8. That the complainants sincerely adhered the payment plan as mentioned in annexure-2 attached alongwith the application form duly submitted by the complainants. In pursuance of the said payment plan the complainants till date had already remitted a total amount of Rs.39,94,198/- to the respondent no.1, as also being acknowledged by the respondent no.1. A reference in this regard is invited to email dated 19.12.2016 and 22.12.2016 of the complainants where-under the complainants had categorically called upon the respondent no.1 to give the status of constructions so as they may remit the amount according to the payment plan and had also requested the respondent no.1 to change their correspondence address in the official records, accordingly. It is stated that aforesaid emails of the complainants, till date had not been replied by the respondent no.1, which speaks in volumes about the faults and clandestine approaches, misconduct & misdeeds of the respondents, as the respondents were blatantly failed to handover the delivery of possession of subject flat to the complainants. However, the complainants were ready and willing to honour their commitments to remit the payments as per payment plan agreed between the respondent no.1 and the complainants.
9. That the complainants had sent email dated 24.09.2017 further requesting the respondent no.1 to update the status of constructions and demand of money, if any, which was replied by the respondent no.1 vide email dated 25.09.2017 informing the complainants that the construction of the flat in

question on the plot will start by December 2017 and the flat will be handed over to the complainants in December 2020.

10. That awaiting for a period of almost of 3 years, as advised by the respondent no.1 vide email of dated 25.09.2017, the complainants again approached the respondent no.1. and consequent to the rigorous & continuous visits of the complainants, in the meeting dated 18.06.2021 held between the officials of the respondent no.1 (Sh. Abhishek Aggarwal) and the complainants, having been duly informed that the respondent no.1 was then not in a position to hand over the delivery of possession of the subject flat to the complainants at the agreed location, on account of their own constrains & compulsions, as in contraventions & breaches their own commitment/promise of the respondent no.1. And accordingly, the complainants were tried to be convinced by Sh. Abhishek Aggarwal officer in charge available in the said meeting held on 18.06.2021 to receive an amount of Rs.39,94,198/- alongwith interest @6% per annum to be calculated from date of amount so received by the respondent no.1 in past from the complainants or to take a flat in some other upcoming project of the respondent no.1.
11. That the respondent no.1 sent an email dated 22.06.2021 (attaching calculation of interest) to the complainants, wherein the respondent no.1 agreed to pay an amount of Rs.57,76,964/- which included an interest component @6% from the date of receipt of money so received by the respondent no.1 or to take up a flat in some upcoming project, construction of that project/flat shall be commencing within 15 days and sought more time of 15 months, thereafter. (Email dated 22.06.2021 containing Calculation of interest is attached as **ANNEXURE C-8**). On the other hand, the complainants were insisting the respondent no.1 to pay an interest at MCLR (the then at 8% P.A.) plus 1% per annum. It is further stated that the

Complainants through email dated 29.06.2021 had categorically demanded refund of money already paid by them alongwith interest, attached herein as **ANNEXURE C-9**). It is further submitted that the complainants received an unsigned copy of builder buyer agreement on 06.05.2014 from respondents. Since, by the time, rate of interest was neither finalised nor accepted to the complainants, the respondent no.1 sent another email dated 12.07.2021 countermanded the previous offer and further reduced the period of interest i.e. from the date of default of the project May, 2017, which was after 42 months from the date of signing of builder buyer agreement (19.11.2013). It is worthy to note that the respondent no.1 did not deliver the possession of the subject flat to the complainants for the reasons of their own faults, negligence & miseries. On the contrary, the complainants are being subjected to penalties for the same by way of reducing interest component as well the period of interest for no fault of their.

12. It is worthy to emphasis that the respondent no.1 vide email dated 25.09.2017 had categorically admitted that by the time the construction of the flat in question had not started and the same shall be starting tentatively by December, 2017 and possession of the flat would be delivered to the complainants in the last quarter of 2020.
13. That the complainants had written numerous emails dated 27.09.2021, 09.11.2021 and 16.12.2021, out of which till date, any of them had not been replied by the respondent no.1, which further goes on to reflect the ulterior and malafides of the respondent no.1.
14. That accordingly an amount of Rs.39,94,198/- is due and outstanding alongwith prevalent MCLR (presently at 12% P.A) plus 2% Per Annum to be calculated from the date of payments so acknowledged by the respondents till the date of remittance of actual payments to the complainants.

15. That the complainants also served a legal notice dated 25.02.2022 upon the respondents and thereby calling upon them to repay an amount of Rs.39,94,198/- alongwith prescribed rate of interest. It submitted that despite service of aforesaid legal notice dated 26.02.2022, the respondents did neither bother to reply to the said legal notice nor complied with the same, constrained to which the complainants now knocked the doors of the present Authority under RERA, Haryana.
16. That the cause of action for filing the present complaint arose on when the respondents issued an allotment letter dated 19.11.2013 in favour of the complainants. The cause of action further arose on 30.12.2013, 27.01.2014 and 12.01.2015 as and when the respondents issued demand money call letters to the complainants and the complainant duly paid the said amount to the respondents, so as demanded by respondents. The cause of action further arose when an unsigned copy of Builder Buyer Agreement was received by the complainants on 06.05.2014 from Respondents. The cause of action arose on 19.12.2016 and 22.12.2016 when the complainants had categorically called upon the respondent to give the status of constructions so as they may remit the amount accordingly. The cause of action had arisen on 25.09.2017 when the respondents had admitted that the construction of the flat would be completing by December 2020. The cause of action also had arisen on 22.06.2021 when the respondents agreed to pay an amount of Rs.57,76,964/- which included an interest component @6% from the date of receipt of money. The cause of action lastly arisen on 25.02.2022, when the complainants served a legal notice upon the respondents to pay back the money illegally withheld by the respondents. The cause of action is still continuing and subsisting in favour of the complainants as well as against the

respondents. Hence, the present complaint being preferred by the complainants.

C. Relief sought by the complainant: -

1. The complainant has sought following relief(s):
 - I. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.
 - II. Direct the respondent to pay the litigation cost of Rs. 2,00,000/-

D. Reply by the respondent

The respondent has contested the complaint on the following grounds.

2. The respondent No. 1 i.e. New Look Builders and Developers Pvt. Ltd. (hereinafter referred to as "**Answering Respondent**") is engaged in the business of construction and development of real estate projects. The instant reply to the captioned complaint on behalf of the answering respondent is being filed through Mr. Anil Kansal who have been duly authorized by the answering respondent vide board resolution dated 26.08.2021, inter alia, to defend the Answering Respondent in various proceedings initiated against it, verify and sign pleadings and other documents etc. and do all such acts, deeds, things as may be considered necessary to represent and act for and on behalf of the Answering Respondent.
3. It is humbly submitted that the complainants through the captioned complaint has prayed for directions of refund under section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 of Rs. 39,94,198/- along with interest to the respondents, which were paid by the complainant towards the allotment of unit no. 3020, first floor (hereinafter

referred to as "**Unit**") in the project "Avante Floors, Versalia" in Sector 67, Gurugram, Haryana (hereinafter referred to as "**Project**").

4. It is humbly submitted that the complainants has made a total payment of Rs. Rs. 39,94,198/- till date toward the allotment of the unit out of basic sale consideration of Rs. 1,18,75,000/- excluding EDC, IDC, club members fee and interest-free maintenance charges and service charges.
5. It is submitted that the captioned complaint is liable to be dismissed in *limine* as the complainants have arrayed Piyush Kumar Gupta as respondent no. 2, Surrender Kumar as respondent no. 3 and Ashishek Aggarwal as respondent no. 4 in the memo of parties of the complaint. However, the respondent no. 2 to 4 are not necessary and proper parties in the present complaint as they in their personal capacity owes no fiduciary or contractual liability to the complainant.
6. It is humbly submitted that the construction of project of the answering respondent is dependent upon the amount of money being received from the booking made and money received henceforth, in form of installments 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 answering respondent at the time of launch of the project. That, reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the installment or cancelled booking in the project, resulted in less cash flow to the answering respondent henceforth, causing a delay in the construction work of the project.

7. Furthermore, it is pertinent to state that the said project of the answering respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the answering respondent.
8. It is submitted that the answering 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 present situation of pandemic 'Covid-19' gets over and situation normalizes. That due to the exponential increase in the cases of 'Covid-19', the Central Govt. had imposed nationwide 'lockdown' w.e.f. 25.03.2020 which has been extended till 30.06.2020, resultantly, the same has caused a serious impact on the economy posing difficult challenges for everyone. It is pertinent to mention that prior, to this unprecedented situation of pandemic 'Covid-19', the respondent no.1 along with the development manager had been carrying out the construction of the project at full pace and was expecting to deliver the units to the buyers by the end of the year 2020, however, due to the sudden outbreak of the pandemic and closure of economic activities, the respondent had to stop the construction work during the 'lockdown', as such, amid this difficult situation of 'force majeure' the answering respondent are not in a position to adhere to the arbitrary demands of the complainants for cancellation of the allotment and refund of the monies along with interest due to the reasons mentioned hereinabove.
9. All other averments made in the complaint were denied in toto.
10. 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

11. 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

12. 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

13. 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.

14. 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.
15. 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.*** "2021-2022(1)RCR(C), 357 and followed 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."

16. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case 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 objection raised by respondent

F.1 Objection regarding force majeure conditions.

17. The respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of 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 which 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."

18. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 06.11.2017. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession

G. Findings on the relief sought by the complainant

- I. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.
19. The complainant had booked the unit in the project of the respondent company situated at sector 67-A for a total sale consideration of Rs. 1,18,75,000/- out of which complainant paid Rs. 39,94,198/- till date. It is pertinent to mention here that earlier the complainants were allotted unit bearing no. FF3020, First Floor vide allotment letter dated 19.11.2013 but in August, 2014, the respondent no. 1 informed the complainant that the respondent no. 1 is inclined to reallocate the originally unit allotted to them and the complainant gave their consent, consequently the unit no. 3020 first floor was reallocated with the new unit no. 3078, north-facing on the basis of terms and conditions agreed between the complainant and the respondent no. 1.
20. The complainant states that the complainant is seeking refund of the deposited amount along with prescribed interest as per provisions of section 18(1) of the Act, 2016 on grounds that the respondent has not been able to handover possession of the unit allotted in terms of the agreement dated 6.5.2014. In fact, the OC for the unit has not been received even till date. A legal notice for refund was sent to the respondent on 25.2.2022 and the respondent has not responded to the same. The due date of handing over of the possession was 06.11.2017 including grace period.
21. On the contrary, the respondent states that the complainant had agreed to accept refund of the amount paid with 6% interest as per email dated 27.09.2021 (page 89 of the complaint). However, the authority is of the view that the complainants are entitled to refund along 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.
22. Keeping in view the fact that the allottee-complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
23. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which 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.....”*
24. 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. 2021-2022(1) R.C.R. (Civil) 357*** reiterated in case of ***M/s***

Sana Realtors Private Limited & other Vs Union of India & others SLP
(Civil) No. 13005 of 2020 decided on 12.05.2022 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

25. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as 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 the unit with interest at such rate as may be prescribed.

26. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 39,94,198/- 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 Litigation Cost:

27. The complainant in the aforesaid relief is seeking relief w.r.t compensation. 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. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has 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.

H. Directions of the authority

28. 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 respondent /promoter is directed to refund the amount received from the complainant i.e., Rs. 39,94,198/- 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 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.

29. The complaints stand disposed of.

30. Files be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.11.2023



HARERA
GURUGRAM