



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

Complaint no.:	2042 of 2022
First date of hearing:	16.09.2022
Date of decision:	15.12.2023

1. Rajeshwar Kumar Garg
2. Poonam Garg

**R/o:** - F-10, Residential Complex, MM University,  
Mullana, Ambala, Haryana-133203

**Complainants**

Versus

1. M/s Bright Buildtech Private Limited  
**Having Regd. office at:-** ACE Studio, 7<sup>th</sup> floor, plot no.  
01B, Greater Noida expressway, Sector-126, Noida-  
201303
2. M/s Orris Infrastructure Pvt. Ltd.  
**Having Regd. office at:-** 9, J-10, DLF Phase 2, Sector  
25, Gurugram, Haryana-122002
3. M/s Lotus Green Developers Pvt. Ltd.  
**Having Regd. office at:-** Lotus Buisness Park,  
Building Block B, Plot No. 8, Sector 127, Noida, UP-  
201304
4. Pratap Singh Rathi director M/s Bright Buildtech Pvt.  
Ltd.  
**Having Regd. office at:-** ACE Studio, 7<sup>th</sup> floor, plot no.  
01B, Greater Noida expressway, Sector-126, Noida-  
201303
5. Joginder Kumar  
**Having Regd. office at:-** 9, J-10, DLF Phase 2, Sector  
25, Gurugram, Haryana-122002
6. Nirmal Singh director M/s Lotus Green Developers  
Pvt. Ltd.  
**Having Regd. office at:-** Lotus Buisness Park,  
Building Block B, Plot No. 8, Sector 127, Noida, UP-  
201304



7. Vijay Gupta Director M/s Orris group  
**Having Regd. office at:-** 9, J-10, DLF Phase 2, Sector  
25, Gurugram, Haryana-122002

**Respondents**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Sh. Uma Kant Mishra (Advocate)

Sh. Deeptanshu Jain (Advocate)

Shri Yogesh Kumar (Advocate)

Complainants

Respondent 1& 3

Respondent 2

**ORDER**

1. The present complaint dated 26.05.2022 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of 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:

S.N.	Particulars	Details
1.	Name of the project	'Woodview Residencies', sector-89-90, Gurugram



2.	Nature of project	Residential plotted colony
3.	<b>RERA registered/not registered.</b>	34 of 2020 dated 16.10.2020 valid upto 15.07.2023 *Since the project registration has been expired the registration branch may take the necessary action under the provisions of the Act, 2016.
4.	<b>DTPC License no.</b>	59 of 2013 dated 16.07.2013
	Validity status	15.07.2021
	Name of licensee	Orris Land & Housing Pvt. Ltd. & 42 Ors.
	Licensed area	100.081 Acres
5.	Unit no.	C-62, 1 <sup>st</sup> floor. [pg. 40 of complaint]
6.	Unit measuring	1415 sq. ft. [pg. 40 of complaint]
7.	Date of allotment	11.02.2015 (pg. 37 of complaint)
8.	Date of execution of Apartment buyer's agreement	Not signed by the respondent
9.	Possession clause	<b>5. Possession of Dwelling Unit</b> 5.1 <i>Subject to clause 5.2 and subject to the buyer making timely payments, the company shall endeavour to complete the construction of the building block in which the dwelling unit is situated within 36 months, with a grace period of 6 (six) months from the date of issuance of allotment letter provided that all amounts due and payable by the buyer has been paid to the company in timely manner. The company shall be entitled to a reasonable extension of time for the possession of the dwelling unit in the event of any default or negligence attributable to the buyer's fulfilment of the terms &amp; conditions of this agreement.</i>



10.	Due date of possession	11.08.2018 (Grace period is allowed being unqualified)
11.	Basic sale price as per BBA on page no. 42 of complaint	₹ 1,24,83,552/-
12.	Total amount paid by the complainant	₹ 31,83,358/- (As per applicant ledger dated 07.11.2019 in reply by R 1 & 3 at pg. 55)
13.	Occupation certificate	Not Received
14.	Offer of possession	Not offered
15.	Surrender request	10.05.2018 (pg. 68 of complaint)
16.	Settlement Deed	Not signed

**B. Facts of the complaint**

3. The complainants have pleaded the complaint on the following facts:

- a. That respondents, during December 2013 /January 2014 promoted and marketed the aforesaid project namely Woodview Residences in Sector 89, Gurugram to complainants through their employees/agents by promising world class constructions and amenities in a low rise stilt, basement + 3 floors configuration with two car parking and features like modular kitchen with chimney hub, VRV/VRF air conditioning, imported marble and engineered wood flooring, ward robes, video door phones, modern bathrooms etc. and falsely representing that the units will be delivered in mid, 2017. Believing in such representations, complainants were induced to book an independent first floor dwelling unit viz: block-A03, flat no-C62, FF(With Terrace), type: 3BHK- for a total consideration cost ₹1,24,83,552.53/- in the names of complainants on plot admeasuring approx. 240 sq. yds.



by parting with an amount of ₹10 lakhs which was paid by cheque no 199450 dated 15.01.2014 Axis Bank, further payments were also made by the complainants in 2014 on demand by the respondents. An allotment letter was issued by the respondents on 11.02.2015.

- b. On 28.07.2015, complainants were made to sign pre-formatted builder buyer agreement. As per the terms of the agreement, any default in payment would attract 18%; delivery of possession to be done 36 months from the date of allotment i.e., 10.02.2018. Respondent no 2, an Orris group company is a partner in development of the land as evident from the first recital in the BBA and as per terms of the clause 4.11 of the agreement, all payments were to be made to the account - "Lotus Green a/c Woodview Residences" controlled by Respondent no 3.
- c. Complainants made further payments as demanded by the builder from time to time. The builder/promoter demanded further instalments amount fraudulently claiming start of construction during January 2016 as a result of which an amount of ₹11,69,201.75/- was transferred by RTGS.
- d. However on site visit during June 2016, complainants found barren land only without any sign of development. When the builder was contacted on phone, it was falsely assured that the work will start soon. The site work progress was subsequently verified on different occasions but to great utter dismay, no progress in development in the allocated unit & project was noticed.



- e. The details of money fraudulently extracted from us by the builder from the complainants amount to ₹ 31,83,468/-. Complainants have been requesting the builder/promoter to refund the money with interest from the date of receipt till the date of refund on phone and by email also since 2018 but the builder has kept mum and is not refunding the money. By either avoiding or by further false pleas, the builder has deprived complainants of his hard earned money through cheating and dishonest means. Meanwhile complainants were informed by the builder and his associate firm ACE Group that the project name has been changed to ACE PALM Floors. Complainants were approached by the ACE Group/ Builder's representative, Mr Mohit Singh to entice complainants to take up another unit which would be completed soon and when complainants informed that such proposal was also made in 2018 to take up a flat which will be handed over in 2019, nothing was done by the builder. Complainants insisted that the payment must be returned. When complainants pursued the demand with telephone calls and emails, complainants were bullied and verbally threatened that the company will deduct 20% of the payments, will not pay any interest and since the builder has other obligations, the payment, if any, will be made after one year or so. Recently the promoter/builder are forcing and compelling complainants to sign a settlement agreement purporting to agree that they do not want any interest on the money otherwise complainants would not get anything at all.



f. The net result is that respondents promised the complainants to give possession of a world class dwelling unit by 10.02.2018, extracted ₹31,83,467.75/- on one false pretext or the other without any intention or effort to start construction of the dwelling unit of the complainants, failed to give delivery of the dwelling unit by the promised date and apparently diverted the funds for other uses and personal gain. Aggravating the complainants' agony, injury and loss, respondents have been illegally, unjustly and unfairly denying refund along with interest and now arm-twisting the complainants to sign another preformatted agreement compelling to forego their rights to interest and other compensation arising from the respondents' noncompliance of their promises, statutory duties and obligations and failure to construct and deliver the possession of dwelling unit to the complainants.

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

4. The complainants have sought the following reliefs:
  - a. Refund of the paid up amount along with the interest.
  - b. Declaration that the respondent by their act and omission as narrated in the complaint has violated the provisions of section 11, 12, 13, 17 & 18 of the Act, 2016.
  - c. Litigation cost-₹2,00,000/-.
5. On the date of hearing, the authority explained to the respondents/promoters about the contravention 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 & 3**

6. The respondents have contested the complaint on the following grounds:

- a. At the very outset, it is most respectfully submitted that the complaint filed by the complainant is baseless and frivolous and the complainant herein is guilty of concealment of material facts and has approached this Hon'ble Court with unclean hands. It is the settled law that a party who approaches the Court with unclean hands, disentitles itself from any relief whatsoever, as such the present complaint deserves outright dismissal.
- b. Respondent no. 1 (Bright Buildtech Pvt. Ltd.) which is a group company of the respondent no. 3, is developing the project namely 'Woodview Residences' (now known as "ACE Palm Floors") on its share in the project land measuring 101.081 acres situated at revenue estate of village Hayatpur, Sector-89 and 90, Gurugram (hereinafter referred to as '**Said Project**'). It is pertinent to mention that the respondent no.1 has appointed M/s. Ace Mega Structures Private Limited ("**Ace**") as 'Development Manager' for development, construction, sales and marketing of the Project vide 'Development Management Agreement' dated 23.05.2019 only with the objective of ensuring expeditious development of the project and to provide professionally proficient customer-care interaction.
- c. Respondent no. 3 i.e., Lotus Greens Developers Pvt. Ltd. (now known as "**Broad Homes Private Limited**") is only the group company of the respondent no. 1 and has initially marketed the





project which is being developed by the respondent no. 1. It is pertinent to mention that there is no privity of contract between the respondent no. 3 and the complainant. The respondent no. 3 does not owe any responsibility whether contractual or otherwise, so far as the completion and delivery of the units in the project is concerned, as such, the name of the respondent no. 3 should be deleted from the array of parties.

- d. It is pertinent to mention that the complainant on his own free will and consent had approached the respondent no. 1 for allotment of 'Dwelling Unit' in said project and initially submitted application form for booking the dwelling unit in the said project. It is pertinent to mention here that at the time of submitting the application, the complainant was allotted 'dwelling unit no. Block A-03, flat no. C-62, first floor (With Terrace), type: 3BHK (hereinafter referred to as '**Said Dwelling Unit**') at the basic sale price plus EDC, IDC charges plus club members fee plus interest free maintenance security totalling to ₹ 1,24,83,552.53/- vide allotment letter dated 11.02.2015.
- e. Subsequently the flat buyer agreement dated 28.07.2015 was executed between the complainant and the respondent no. 1 wherein it was agreed between the parties that timely payment is the essence in terms of contractual obligations of the complainant.
- f. It is pertinent to mention here that it is the complainant besides other customers who are at fault in making timely payment of due instalments which has contributed to delay the construction of the said project besides other factors. Non-payment of the instalments



by the allottees is a 'force majeure' circumstance. Furthermore, the other reasons for delay in project are stoppage of construction activities in NCR region by the orders of court, non-availability of construction material and labour, implementation of nationwide 'lockdown' to contain the spread of 'Covid-19', etc. Moreover, all these situations and adverse conditions is 'force majeure' circumstance which is beyond the control of the answering respondents.

- g. It is further submitted that the complainant is well aware of the fact that the respondent no. 1 have appointed the development manager 'Ace Mega Structures Pvt. Ltd.' for construction and completion of the said project. The respondent no. 1 informed the complainant about the appointment of the "development manager" who is responsible for all activities including the construction and sales of the project as per the development management agreement (DMA) dated 23.05.2019.
- h. 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 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 alongwith 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 year 2020, however, due to the sudden outbreak of the pandemic and closure



of economic activities, the respondents had to stop the construction work during the 'lockdown', as such, amid this difficult situation of 'force majeure' the respondents are not in a position to adhere to the arbitrary demands of the complainant for cancellation of the allotment and refund of the monies along with interest due the reasons mentioned hereinabove.

- i. The natural life cycle was about to come back on track, which was derailed in March 2020, however the sudden outbreak of second wave of pandemic of COVID in April 2021 in the nation made the situation worst from worse and the country once again was under the grip of COVID and subsequently lockdown was imposed in the country all over once again. It is further submitted that the second wave caused severe damage to the economy and real estate sector being no exception was hit the worst.
- j. It is submitted that the complainant had applied for the allotment of the 'dwelling unit' as investment and not for personal use, which fact is abundantly clear and evident from the conduct of the complainant. It is submitted that the complainant has invested in the unit with intent to have monetary gains by way of reselling the unit to a higher bidder at an appreciated value. Thus, in view of the constant precedents upheld by various Real Estate Regulatory Authorities across the country, the present complaint is not maintainable wherein, it is held unanimously that the investors of real estate projects are not entitled to relief from Real Estate Regulatory Authority.

**E. Reply by respondent no. 2**



7. The respondent has contested the complaint on the following grounds:
- a. That the complainant has approached this hon'ble authority with unclean hands and have tried to mislead this Hon'ble Authority by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, is guilty of suppressio very suggestion falsi. The complainant has suppressed and/or misstated the facts and, as such, the complaint apart from being wholly misconceived is rather an abuse of the process of law. On this short ground alone, the complaint is liable to be dismissed.
  - b. The complainants were issued a letter of allotment dated 11.02.2015 or the unit no. C-62-FF, 1st floor, pocket 2, admeasuring 1740 sq. ft. herein referred to as the 'unit') was allotted to the complainants in the project 'Ace Palm Floors' (herein referred to as the "project") which was erstwhile known as Woodview Residencies'. It is pertinent to note that the said allotment was issued by the respondent no. 3 under the signatory of respondent no. 1.
  - c. That thereafter, as per the records provided by the complainant, the buyers/agreement was executed between the respondent no. 1 and the complainants dated 28.07.2015 wherein the signatories to the said agreement are also the respondent no. 1 and the complainants.
  - d. That the complainants on 10.05.2018 wrote a letter to respondent no.1, Bright Buildtech Pvt Ltd and respondent no. 3, Lotus Green Developer Pvt Ltd to refund the money which paid by the complainant to them as the project was still under construction.



- e. That as per the records annexed by the complainant, there was exchange of email dated 05.12.2018 and 07.12.2018 between the complainant and the respondent no. 3 wherein the complainant agreed to wait to take the possession of the unit in question since the respondent no. 1 and 3 were not in a monetary position to refund the monies.
- f. That the complainant was informed by the respondent no. 1 or Ace Mega Structures that the management and control of the project has been taken over by the ace mega structures and the project would be called in the name and style of ace palm floors, the complainant sent an email dated 14.10.2019 seeking information regarding which the respondent no. 1 had appointed ace mega structure as a development manager.
- g. That it is further submitted that the complainant vide Annexure P-8 of his complaint had written one email dated 01.09.2021 to Ace Group seeking detailed map/ building plan for shifting of the unit.
- h. That thereafter the 08.11.2021, 30.11.2021 marked copy of the said complainant wrote letters dated and 10.01.2022 to Ace Group and letter to respondent no. 1 and Lotus Greens seeking refund of monies paid.
- i. That thereafter, the Ace group had shared a settlement deed to the complainant through email dated 21.01.2022 which was declined by the complainant vide email dated 24.01.2022 stating that the complainant will not settle only for refund of principle amount as the complainant needs the interest also due to failure on the part of builder/ promoter.



- j. That therefore, it is pertinent to note at this stage that it is a self-admitted fact by the complainant that the complainant had invested in a project which is in the name of ace palm floors launched by the respondent no. 1 along with lotus greens and ace mega structures, with no involvement of any kind by the respondent no 2 as all the documents which have been annexed by the complainant including but not limited to the execution of the buyers agreement, allotment letters, demand/ payment receipts, email conversations, refund request, etc. have been a dressed by the complainant to the respondent no. 1 and Lotus Greens and Ace Mega Structure. In fact the draft of the settlement deed which was sent to the complainant was to be executed between the respondent no. 1 and the complainant only.
- k. That when the possession was not delivered, and also the refund request was not entertained by the respondent no. 1, the complainant thereafter filed the present frivolous complaint against the answering respondent, i.e., respondent no. 2 in order to harass the respondent no. 2.
- l. That in the present case in and, the respondent no. 1 is the promoter in question who has issued the various documents on record such as the buyers agreement, the allotment letters, demand letters due to which the complainant falls in the category of the being an allottee and the present case does not involve respondent no. 2 anywhere.
- m. That it is submitted that at the inception when the project 'Woodview Residencies' was launched, the respondent no. 2 in



collaboration with the respondent no. 1 wherein both the respondent no. 1 and 3 had equal developmental rights equivalent to 50%.

n. Thus, it is clear from the above that the complainant is neither the customer of the answering respondent, i.e., respondent no. 2 nor the complainant has made any payment to the respondent no. 2 nor any communication, agreement has been exchanged between the complainant and the respondent no. 2 which could imply that the respondent no. 2 holds any liability or accountability towards the complainant.

o. That from the facts as narrated above, the present complaint is liable to be dismissed on the account of mis-joinder of parties wherein the respondent no. 2 has been wrongly impleaded as the party to the present complaint and the complainant is not entitled to any reliefs as claimed herein by this Hon'ble Authority.

8. Respondent no. 4 to 7 have not filed the reply and the counsel for the complainant had no objection for non-filing of reply and wishes to argue the matter vide proceedings dated 15.09.2023.

9. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

10. Written submissions on behalf of the complainant and respondent no. 2 have been submitted on 27.09.2023 & 28.11.2023 respectively which are taken on record.

**F. Jurisdiction of the authority**



11. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**F.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.

**F.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 as per provisions of section





11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant 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.***” ***SCC Online SC 1044*** decided on 11.11.2021 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. Furthermore, the said view has been reiterated by the Division Bench of Hon'ble Punjab and Haryana High Court in ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021.*** The relevant paras of the above said judgment reads as under:

*“23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any*



*provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.*

*24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.*

*25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."*

17. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of *M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*, and the Division Bench of Hon'ble Punjab and Haryana High Court in "*Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others. (supra)*", the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottees along with interest at the prescribed rate

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

**G.I. Direct the respondent to refund the entire amount paid by the complainant.**

18. The complainant was allotted a unit in the project of the respondents detailed above on 11.02.2015 for a total sale consideration of ₹1,24,83,552/-. A builder buyer's agreement have not been executed between the parties till date. The possession of the subject unit was to



be offered within 36 months with a grace period of 6 months from the date of issuance of allotment letter. The due date of possession is calculated from the date of allotment i.e., 11.02.2015. The period of 36 months expired on 11.02.2018. Since in the present matter the possession clause incorporates unqualified reason for grace period/extended period of 6 months accordingly, the grace period of 6 months is allowed to the promoter being unqualified. The due date of possession of the unit comes out 11.08.2018. However, the complainant requested for surrender of the said unit on 10.05.2018 i.e., before due date of handing over of possession seeking refund against the allotted unit. No doubt neither the occupation certificate of the project has been received nor the possession has been offered to the complainant but without waiting for the same and prior to the date fixed, he surrendered the unit seeking refund of the paid-up amount which can be allowed either as per the terms and condition of the buyer's agreement or after deduction of 10% of the basic sale price of the unit in view of settle principal of law laid down in a number of cases by the Hon'ble apex court of the land. Even taking a cue from the same, the authority also farmed regulation in this regard known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, providing as under-

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that*



*the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

19. It is evident from the above-mentioned facts that the complainant had paid a sum of ₹ 31,83,358/- against basic sale consideration of ₹1,24,83,552/- of the unit allotted to him on 11.02.2015. The due date for completion of the project and offer of possession of the allotted unit was 11.08.2018. But without waiting for that date for the builder for complete the project and offer a possession of the unit he requested for refund on 10.05.2018 of the paid -up amount besides interest. So, keeping in view the aforesaid factual and legal provisions, the complainant can be allowed to withdraw from the project and seek refund of the paid-up amount but only as per the provisions of the buyer's agreement entered into between the parties, but since no buyer's agreement is executed between the parties. So, in view of settled proposition of law in this regard the amount of earnest money can't exceed 10% of the basic sale price and the same is supported by the regulation framed in this regard as detailed above. Hence, the respondent is directed to refund the paid-up amount to the complainant after retaining 10% of the basic sale consideration of ₹ 1,24,83,552/- 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, from the date of request for refund i.e.,



10.05.2018 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G.II. Declaration that the respondent by their act and omission as narrated in the complaint has violated the provisions of section 11, 12, 13, 17 & 18 of the Act, 2016.**

20. The abovementioned reliefs stands redundant in view of the findings w.r.t. the relief no. 1

**G.III. Litigation cost-₹2,00,000/-.**

21. The complainant in the aforesaid head is seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & O*₹ (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. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the authority**

22. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent is directed to refund the paid-up amount of ₹31,83,358/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of ₹ 1,24,83,552/- to the complainants. The refund should have been made on the



date of surrender i.e., 10.05.2018. Accordingly, the interest at the prescribed rate i.e., 10.75% is allowed on the balance amount from the date of cancellation till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.

- 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.

23. Complaint stands disposed of.

24. File be consigned to registry.



*(Sanjeev Kumar Arora)*

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.12.2023

**HARERA**  
**GURUGRAM**