



HARERA
GURUGRAM

Complaint No. 675 of 2022

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

Complaint no. :	675 of 2022
First date of hearing:	21.04.2022
Date of Decision:	16.11.2023

1. Sh. Rahul Arora
2. Smt. Vani Arora

Complainants

R/o: H. No.-7, Ground Floor, Street No.-7.3,
Promise Avenue, Near Town Square 2,
Sector-82, Vatika India Next, Gurugram-
Haryana-122004

Versus

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

Respondent

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

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Raj Kumar Hans(Advocate)

Complainants

Sh. Dhruv Gupta (Advocate)

Respondent

ORDER

1. The present complaint 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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the

A

provision of the Act or the rules and regulations made there under or to the allottee as per the apartment buyer's agreement executed inter se.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	"Esencia", Sector 67, Gurugram
2.	Nature of the project	Residential Plotted Colony
3.	DTCP license no. and validity status	21 of 2011 dated 24.03.2011 valid upto 23.03.2019
4.	Name of licensee	Bisram S/o Shera and 20 others
5.	RERA Registered/ not registered	336 of 2017 dated 27.10.2017
6.	RERA registration valid up to	31.12.2019
7.	Unit no.	D1561FF, First Floor, sector/block D (As per page no. 26 of the complaint)
8.	Unit area admeasuring	1572 sq. ft. (As per page no. 21 of the complaint)
9.	Allotment letter	03.08.2012 (As per page no. 21 of the complaint)
10.	Date of Execution of FBA	06.08.2012 (As per page no. 24 of the complaint)
11.	Possession clause	5.1 <i>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 endeavour 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 &</i>



		<p>agreement including but not limited to timely payments by the buyer(s), in terms hereof. The company shall be entitled to extension of time for completion of construction of the unit equivalent to the period of delay caused on account of the reasons stated above. No claim by way of damages/compensation shall lie against the company in case of delay in handing over possession of the unit on account of the aforesaid reasons. However, if the buyer(s) opts to pay in advance of schedule, a suitable discount may be allowed but the completion schedule shall remain unaffected. The buyer(s) agrees and understands that the construction will commence only after all necessary approvals are received from the concerned authorities and competent authorities including but not limited to environment & forest.</p> <p>(As per page no. 35 of the complaint)</p>
12.	Due date of possession	06.02.2016 (Calculated as 36 months plus 6 months from date of execution of floor buyer agreement) Note: Grace period is allowed as the same is unqualified
13.	Date of Tripartite Agreement	31.07.2015 (As per page no. 66 of the complaint)
14.	Total sale consideration	₹ 1,00,26,388/- (As per SOA dated 02.02.2022 on page no. 57 of the complaint)
15.	Amount paid by the complainants	₹ 98,01,675/- (As per SOA dated 02.02.2022 at page 57 of the complaint) ₹ 97,00,875/- (Confirmed by the counsel of both the parties during proceedings)
16.	Occupation certificate /Completion certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the complainant has made following submissions:

- I. That the complainants are residents of H no. 7 Ground Floor, street no. 7.3, Primrose Avenue, Near Town Square 2, Sector 82, Vatika India Next, Gurugram, Haryana-122004.
- II. That the unit in question is Unit-D1561FF (First Floor), 4 BHK, Block- D, having a super area of 1572 sq ft as "Sovereign Floors Esencia" at Sector 67, Gurugram, Haryana.
- III. That the complainants had remitted Rs.12,00,000/- towards booking amount vide cheque dated 01.08.2012 along with the application form. The respondent acknowledged the payment and issued payment receipt on 04.08.2012.
- IV. That on 03.08.2012, the respondent issued an allotment letter of the said unit to the complainants.
- V. That on 06.08.2012, a floor buyer's agreement was executed between the respondent and the complainants.
- VI. That as per clause 3.1 of the FBA the basic sale consideration exclusive of taxes of the unit has arrived at Rs.1,12,00,000/- for the purchase of the said unit @Rs.7124.68/- per sq. ft.
- VII. That as per clause 5.1 of the FBA, the respondent had to complete the construction of the floor and hand over the possession within 36 months plus extended period of 6 months from the date of sanction of the building plans and other government necessary approvals. Therefore, the due date of possession becomes on or before 06.08.2015.
- VIII. That in the matter of **Suryakant Yashwant Jadhav & Anr. v. Bellissimo Hi-Rise Builders Pvt. Ltd. & Ors.** The Maharashtra RERA Appellate Tribunal has held that SPECIFIED "Date of Possession" is binding on the developer and not affected by "grace period" clauses under agreement for sale. Therefore the grace period is to be disallowed and the date of



possession is to be taken as 06.08.2015.

- IX. That on the demand of the respondent till date, the amount of Rs.98,01,675/- has already been paid to the respondent, which is 83% of payable amount, thus fulfilling demand till the milestone of "On completion of brick work".
- X. That the complainants have got a home loan sanctioned from State bank of India amounting to Rs.89,17,000/- vide tripartite agreement executed between the complainants, respondent and the State Bank of India.
- XI. In the matter of **Saurabh Mehrotra Vs.CCI Projects Pvt Ltd Complaint no.CC006000000078611** decided on 06.08.2020. Before Maharashtra Real Estate Regulatory Authority, it was held by the Maha RERA that
"Just because home buyers continued to pay even after the promised possession date had lapsed, they had not "acquiesced" and not consented to the delay in possession"
- XII. That the complainants many a times raised his grievance of late possession by various verbal and written communications to the respondent. During the period of 2017 to 2021, many emails and personal visits were made by the complainants to the respondent for raising the grievance and to get the updated date of possession of the said unit. But the respondent did not reply back to all these mails and did not provide any satisfactory answer to the grievances raised.
- XIII. That on 06.10.2021, the Executive of the respondent replied back through an email informing that respondent shall give the physical possession of the said unit within six months from date of the said email i.e., 06.10.2021.
- XIV. That the complainants visited the project site in February, 2022 and found out that the construction activity had stopped for the last 5 years, the complainants clicked a few pictures of the said unit on that day.



- XV. That the complainants for last many years are living in a rented accommodation and paying a hefty rent of Rs.45,000/- per month for the last many years and are badly in need of their home, for which they have already paid an amount of Rs.98,01,675/-.
- XVI. That the main grievance of the complainants in the present complaint is that in spite of the complainants having paid 83% of the actual amounts of the said unit and capable and willing to pay the rest amount, the respondent has failed to deliver the possession of the residential unit on time.
- XVII. That the complainants had purchased the residential unit with the intention that after purchase, his family will use the said unit for their personal use, but the complainant are compelled to live in a rented accommodation for so many years for which they are paying a hefty amount of rent.
- XVIII. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent and as such, it is liable to be punished and to compensate the complainants.
- XIX. That due to the above acts of the respondent and of the terms and conditions of the floor buyer's agreement, the complainants have been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainants on account of the aforesaid act of unfair trade practice.
- XX. That the first time cause of action for the complaint arose on 01.08.2012 when the application form was filed by the complainants. Further the cause of action for the complaint again arose when a one-sided, arbitrary and unilateral floor buyer's agreement was executed between the parties on 06.08.2012 and again when the complainants

12



paid the last instalment on 07.04.2016. Further, the cause of action arose on 06.08.2015 when the respondent failed to hand over the possession of the floor as per the buyer's agreement. The cause of action again arose on various occasions, till date, when the written and verbal protests were lodged with the respondent about its failure to deliver the project. The cause of action is alive and continuing and will continue to subsist till such time as the Hon'ble Authority restrains the respondent by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):

- I. Direct the respondent company to refund the entire paid-up amount of by the complainants along with interest at the prescribed rate on the paid amount from the date of payment till actualisation.

D. Reply by the respondent:

5. The respondent contested the complaint on the following grounds:

- a. That the complainants were allotted the unit no. D1561, first floor in the project at the basic sale price of Rs.1,12,00,000/- in terms of the floor buyer's agreement dated 06.08.2012. That in terms of the FBA, the taxes, External Development Charges and Internal Development Charges were to be levied upon the complainant separately i.e., over and above the basic sale price.
- b. That the respondent has denied that the complainants have paid Rs.98,01,675/- to him towards the unit. As a matter of record, the complainants have made a total payment of Rs.97,00,875/- till date towards the allotment of the unit out of basic sale consideration of Rs.1,12,00,000/- excluding EDC, IDC charges plus club members fee plus



interest-free maintenance charges plus service charges. Further, the complainants have also paid Rs.3,67,770/- towards the EDC & IDC and Rs.28,000/- towards the interest for delay in payment of installments as per the FBA.

- c. That the respondent received the sanction for construction of the unit only on 31.10.2014. That due to delay on part of the government authorities to issue sanction letter for the construction of the plot for no fault of the respondent was delayed.
- d. That as per the FBA which is binding between the complainants and the respondent, both have agreed upon their respective liabilities in case of breach of any of the conditions specified therein. It is submitted that the liability of the respondent on account of delay is specified in clause 5.4 of the floor buyer's agreement and as such the complainants cannot claim reliefs which are beyond the compensation agreed upon by him.
- e. That the floor buyer's agreement delineates the respective liabilities of the complainants as well as the respondent in case of breach of any of the conditions specified therein. In this view of the matter, the complaint is not maintainable in law and is liable to be dismissed in limine.
- f. It is submitted that the dispute between the parties involves complicated questions of facts and law, which necessarily entails leading of copious evidence. The issues raised by the complainants cannot be addressed before this Hon'ble Authority, which follows a summary procedure. In this view of the matter, the complaint is liable to be dismissed.
- g. That the construction of project of the respondent is dependent upon the amount of money being received from the booking made and money received henceforth, in form of instalments by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced

A

drastically in comparison to the expected bookings anticipated by the respondent at the time of launch of the project. That the reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent henceforth, causing a delay in the construction work of the project.

- h. That the said project of the respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the respondent vide clause 5.2 of the FBA, the complainant has agreed and duly acknowledged that in case the development of the said dwelling unit is delayed for any reasons beyond the control of the company, then no claim whatsoever by way of any compensation shall lie against the respondent. Therefore, the complainants in terms of the FBA has agreed and undertook to waive all their rights and claims in such a situation.
- i. That the new management of respondent is a customer-oriented organization that is committed to delivering high-quality and reliable residential and non-residential projects in the greater metropolitan area. It aims to work towards the development of self-owned real estate including low-rise apartments and dwellings, plotted development, and non-residential developments.
- j. That the said project of the respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the respondent. However, despite all odds, still, the respondent is making all efforts to complete the construction work at the project site at full pace and is expecting to hand over the possession very soon, once the situation of pandemic 'Covid-19' gets over and situation normalizes.
- k. That the delay in handing over the possession of the dwelling unit/ apartment has been caused due to the various reasons which were

beyond the control of the respondent. Following important aspects are relevant which are submitted for the kind consideration of the Hon'ble Authority:

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

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

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

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

12

for some time on regular intervals to reduce air pollution in NCR region.

- i. That apart from the above, it is relevant to mention here that due to the increase in pollution in National Capital Region, the Hon'ble Supreme Court of India vide Order dated 04.11.2019 passed in **Writ Petition (Civil) No. 13029 of 1985** titled as "**M.C. Mehta-Versus-Union of India & Ors**" ("**Writ Petition**") which was ultimately completely lifted by the Hon'ble Supreme Court only on 14.02.2020. In past also the construction was banned by Hon'ble Courts and Tribunals. All the above problems are beyond the control of the developer i.e. the respondent It may be noted that the respondent had on many occasions orally communicated to the complainants that the construction activity at the said project site had to be halted for some time due to certain unforeseen circumstances which are completely beyond the control of the developer.
- m. That in order to curb down the air pollution the Environment & Pollution (Prevention & Control) Authority, for National Capital Region, has reviewed the urgent action that needs to be taken for the implementation of the Graded Response Action Plan (GRAP) vide it's notification dated EPCA-R/2020/L-38 dated 08.10.2020 and has imposed ban on the use of Diesel Generator set with effect from 15.10.2020, which has further led to delay in the construction being raised.
- n. All the above stated problems are beyond the control of the respondent. It may be noted that the respondent had at many occasions orally communicated to the complainants that if the respondent is unable to construct the unit, the respondent shall offer another residential unit of a similar value for which the allottee shall not raise any objections. The respondent could not complete the said project due to certain unforeseen circumstances which were beyond the control of the developer.

RA

6. That in view the facts, circumstances and law relating thereto. It is further submitted that the complainants failed to produce any evidence or specific averments worth its salt to prove its claims. Moreover, there is no quantification of claims as sought for by the complainants under prayer clause, therefore, the instant complaint is liable to be dismissed at the threshold.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

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

E.I Territorial jurisdiction

9. 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case



may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.** SCC Online SC 1044 decided on **11.11.2021** and followed in **M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020** decided on **12.05.2022** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the above-mentioned matter, the authority has the jurisdiction to

A

entertain a complaint seeking refund of the amount and interest on the amount paid by the complainants.

F. Findings on objections raised by the respondent:

F.I Objection regarding force majeure conditions:

14. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as COVID-19 outbreak, demonetisation, certain environment restrictions, weather conditions in NCR region, shortage of labour, increase in cost of construction material, shortage of bricks and non-payment of instalment by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on relief sought by the complainants:

G.I Direct the respondent to refund of paid-up amount of Rs.98,01,675/- along with compound interest at the prescribed rate from date of payments till its actual payment.

15. The complainants were allotted a unit in the project of respondent "Esencia", in Sector-67, Gurugram vide allotment letter dated 03.08.2012 for a total sum of Rs.1,12,00,000/-. A floor buyer's agreement dated 06.08.2012 was executed



between the parties and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.98,01,675/.

16. The due date of possession as per the possession clause of the floor buyer's agreement is 06.02.2016. There is delay of almost 6 years on the date of filing of the complaint i.e., 28.02.2022. The occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoter.
17. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by **Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019**, decided on 11.01.2021: -

" The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottee cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

18. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022 observed as under:

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.

A

19. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of application form or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottees wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
20. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules.
21. **Admissibility of refund along with prescribed rate of interest:** In the present complaint, the complainants intend to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso reads as under:

“Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand of the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

A ✓



Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis Supplied)

22. The complainants are seeking refund of the amount paid by them 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(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(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. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainants are well within their right for seeking refund under section 18(1)(a) of the Act, 2016.
27. The counsel for the respondents vide hearing dated 16.11.2023 brought to the notice of the authority that the total amount paid by the complainants is Rs.97,00,875/- instead of Rs.98,01,675/- as alleged by the complainants in the facts of the complaint. The counsel for complainants and complainants present in person admitted to the fact mentioned by the counsel for the respondents. Thus, the amount paid by the complainants comes to Rs.97,00,875/-.
28. The authority hereby directs the promoter to return the amount received by him i.e., Rs.97,00,875/- 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*.

H. Directions of the Authority:

29. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) The respondent /promoter is directed to refund the amount i.e., **Rs.97,00,875/-** received by him 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 amount.

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

30. Complaint stands disposed of.

31. File be consigned to the registry.

v.l-3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.11.2023