

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

Date of decision: 06.03.2024

NAME OF THE BUILDER		JASMINE BUILDMART PVT. LTD.	
PROJECT NAME		PROVENCE ESTATE	
S. No.	Case No.	Case title	Appearance
1	CR/7560/2022	Deepak Gupta V/s M/s Jasmine Buildmart Pvt. Ltd.	Sambit Nanda (Complainant) Shivam Rajpal (Respondent)
2	CR/7582/2022	Sanjay Gupta and Ekta Gupta V/s Jasmine Buildmart Pvt. Ltd.	Sambit Nanda (Complainants) Shivam Rajpal (Respondent)

**CORAM:**

Ashok Sangwan

Member

**ORDER**

1. This order shall dispose of the 2 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Provence Estate situated at Sector 2, Gurugram being developed by the respondent/promoter i.e., Jasmine Buildmart Pvt. Ltd. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question. The complainant(s) have previously filed the complaints seeking possession and delay possession charges at prescribed rate of interest. However, the respondent has already created third party rights on the unit in question during pendency of complaints before this Authority, despite filing of an application under section 36 of the Act by the complainant(s), which was bad in law. The counsel for the complainant(s) during proceedings dated 10.01.2024 stated that in case it is not possible to restore the unit which was initially allotted to the complainant(s), then the respondent may be directed to refund the amount deposited alongwith interest to which the counsel for the respondent had no objection and the matter was reserved for orders with liberty to the parties to file written submissions. Accordingly, the complainant(s) has filed written submissions dated 25.01.2024 after supplying a copy of the same to the respondent, vide which he has made a request before this Authority that the relief of the complainant(s) may be amended from delay possession charges to refund of the entire paid-up amount alongwith prescribed rate of interest, to which no reply/objection has been filed by the respondent till date. Therefore, after considering the facts and circumstances of the

cases mentioned above, the request for amendment of relief is hereby allowed.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	<b>"Provence Estate" at Sector-2, Gurgaon, Haryana</b>
<b>Project area</b>	12.32 acres
<b>DTCP License No.</b>	105 of 2008 dated 15.05.2008 valid upto 14.05.2020
<b>Name of Licensee</b>	Jasmine Buildmart Pvt. Ltd.
<b>RERA Registration</b>	282 of 2017 dated 09.10.2017 valid up to 30.03.2019
<b>Possession Clause: 3.1 Possession:</b>	
<i>"Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/ restrictions from any courts/ authorities and subject to the Purchasers) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to hand over the possession of the Apartment to the Purchasers) within a period of 36 (thirty six) months from the date of commencement of construction or execution of this Agreement, whichever is later, subject to Force Majeure. The Purchasers) agrees and understands that the Seller shall be entitled to a grace period of 180 (one hundred eighty) business days, after the expiry of 36 (thirty six months, for applying and obtaining the occupation certificate in respect of the Project from the Authority."</i>	
<b>Occupation Certificate: 29.10.2019</b>	

Sr. No	Complain t No., Case Title, and Date of filing of complaint	Date of apartmen t buyer agreemen t, Date of surrender	Unit No.	Unit adm easu ring	Due date of Possessio n	Basic Sale Consideratio n / Total Amount paid by the complainant	Relief Sought
1.	CR/7560/2022  Deepak Gupta V/s Jasmine	28.09.2012 [Page 63 of complaint]	A-802, 8 <sup>th</sup> floor, Tower - A	5800 sq. ft. [page 68 of complaint]	28.09.2015 (Calculate d as 36 months from date	Basic Sale Consideration: Rs.3,24,80,000 /- (Page 101 of complaint)	Refund

	Buildmart Pvt. Ltd.  <b>DOF:</b> 12.12.202 2  <b>Reply Status:</b> 09.08.202 3	Date of surrender: 08.08.201 9 (page 127 of complaint)	[page 68 of complaint]		of execution of BBA as the same is later) Grace period is not allowed as application for OC was filed only on 13.05.2019	Amount Paid: - Rs.3,10,44,968 /- (Page 217 of complaint)	
2.	CR/7582/2022  Sanjay Gupta and Ekta Gupta V/s Jasmine Buildmart Pvt. Ltd.  <b>DOF:</b> 12.12.202 2  <b>Reply Status:</b> 09.08.202 3	28.09.201 2 [Page 62 of complaint] Date of surrender: 08.08.201 9 (page 119 of complaint)	A- 1102, 12 <sup>th</sup> floor, Tower - A [page 68 of complaint]	5800 sq. ft. [page 69 of complaint]	28.09.201 5 (Calculated as 36 months from date of execution of BBA as the same is later) Grace period is not allowed as application for OC was filed only on 13.05.2019	Basic Sale Consideration: Rs.3,39,30,000 /- (Page 92 of complaint)  Amount Paid: - Rs.3,22,77,854 /- (Page 261 of complaint)	Refund

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking refund of the total paid up amount.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case *CR/7560/2022 Deepak Gupta V/s Jasmine Buildmart Pvt. Ltd.* are being taken into consideration for determining the rights of the allottee(s).

**A. Project and unit related details**

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

***CR/7560/2022 Deepak Gupta V/s Jasmine Buildmart Pvt. Ltd.***

S. No.	Particulars	Details
1.	Name and location of the project	"Provence Estate (PH-1, Tower A & B)", Sector 2, Gurugram
2.	Project area	12.32 acres
3.	Nature of the project	Group housing project
4.	DTCP license no. and validity status	105 of 2008 dated 15.05.2008 Valid upto 14.05.2020
5.	Name of licensee	Jasmine Buildmart Pvt. Ltd.
6.	RERA registered/ not registered	282 of 2017 dated 09.10.2017 Valid up to 30.03.2019
7.	Unit no.	A-802, 8 <sup>th</sup> floor, Tower- A [page 68 of complaint]

8.	Unit area admeasuring (Super area)	5800 sq. ft. [page 68 of complaint]
9.	Allotment Letter	07.07.2011 [pg. 96 of complaint]
10.	Date of buyer's agreement	28.09.2012 [Page 63 of complaint]
11.	Possession Clause	<p>3.1.  <i>Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to hand over the possession of the <b>Apartment to the Purchaser(s) within a period of 36 (thirty six) months from the date of commencement of a construction or execution of this Agreement, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 180 (one hundred eighty) business days, after the expiry of 36 (thirty-six) months, for applying and obtaining the occupation certificate in respect of the Project from the Authority.</b></i></p> <p>[pg. 73 of complaint]</p>
12.	Date of start of construction	06.08.2011 (Page 102 of complaint)

13.	Due date of possession	28.09.2015 (Calculated as 36 months from date of execution of BBA as the same is later) Grace period is not allowed as application for OC was filed only on 03.07.2019
14.	Basic Sale Consideration	Rs.3,24,80,000/- (Page 101 of complaint)
15.	Amount paid	Rs.3,10,44,968/- (Page 217 of complaint)
16.	Occupation certificate	29.10.2019
17.	Offer of possession	11.11.2019 (Page 135 of complaint)

**A. Facts of the complaint**

3. The complainant has made the following submissions: -

- I. That the complainant was allotted an apartment bearing no. A-802, 4 BHK, admeasuring 5800 sq. ft., in Tower A, 8<sup>th</sup> Floor in the project of the respondent named "Provence Estate", Gwal Pahari Village, Gurugram vide allotment letter dated 07.07.2011, for a basic sale price of Rs.3,24,80,000/-. Thereafter, an apartment buyer's agreement was executed between the parties in respect of the said unit on 28.09.2012.
- II. That as per clause 3.1 of the agreement, the respondent was obligated to handover the possession of the said apartment to the complainant within a period of 36 months from the date of commencement of construction or execution of the agreement, whichever is later. The respondent further shall be entitled to a grace period of 180 business days for applying and obtaining the occupation certificate in respect of the project from the competent authority. Further, as per clause 3.3, of the agreement, the respondent shall be liable to pay compensation

equivalent to the amount calculated on the basis of 10% per annum of the entire sum timely and promptly paid by the complainant to the respondent for the delayed period of offer to handover possession of the apartment.

- III. That as on 24.12.2013, in terms of the construction linked plan, the complainant had paid a sum of Rs.3,10,44,968/- out of the total base selling price of Rs.3,24,80,000/- in respect of the said apartment to the respondent as and when demanded by it. Notably, the balance payment was to be made on the commencement and completion of internal flooring, and on possession.
- IV. That all the demands raised by the respondent throughout the construction period, though paid by the complainant, were absolutely unlawful as the construction was nowhere close to completion. Even till the date of filing the present complaint, the internal finishing and flooring is incomplete.
- V. That on 15.11.2017, the respondent issued a letter raising a further demand of a sum of Rs. 31,23,685.62/-. However, the said demand was again erroneous as the said work had not even begun. Therefore, since the demand was itself erroneous and contrary to the terms of the agreement, the complainant was under no obligation to make any further payment.
- VI. That on 15.11.2018, the respondent sent a reminder notice, reiterating its demand raised on 15.11.2018. The very fact that the respondent waited for over 1 year to reiterate its demand buttresses the fact that the demand raised in 15.11.2017 was without any basis and illegal.



- VII. That on 19.07.2019, the respondent again raised another demand of Rs.36,37,760/- and alleged that the apartment would be ready for fit out and fixtures by 19.08.2019. This was again a false statement being made by the respondent to coerce the complainant into making any further payment. Pertinently, the respondent was liable to pay interest at the rate of 10% per annum on all the sums paid by complainant from the date of possession. Therefore, the interest liability of the respondent was in any event far more than the remaining dues of the complainant towards the respondent.
- VIII. That on 08.08.2019, the complainant sent a reply to the Demand Notice dated 19.07.2019 stating that the demand raised by the respondent was frivolous, and due to the inordinate delay in the completion of the project by the respondent, which was still not even close to completion, the complainant was not willing to wait any longer and instead was willing to take a refund of the amount paid by him with interest.
- IX. That on 28.09.2019, the respondent sent an offer of possession, claiming that it had applied for an occupancy certificate, but since it had not received any refusal from the DTCP, Haryana, it had deemed that the occupancy certificate had been granted. The respondent further called upon the complainant to take possession after clearing all his dues. This was again a frivolous assertion, inasmuch as the project was not completed, and the building constructed was not in a habitable condition. In fact, construction was still going on in the project at the said time, and even the lifts had not been installed as yet.

The said offer of possession was therefore not a valid offer of possession.

- X. That on 05.11.2019, the complainant sent a response to the alleged letter of possession, where it was reiterated that the respondent had miserably failed to comply with the terms of the agreement, and since the project was not even completed, the respondent should issue a refund to the complainant.
- XI. That on 11.11.2019, the respondent sent another letter of possession, claiming that it had received an occupancy certificate on 29.10.2019, and called upon the complainant to take possession after making payment of a sum of Rs.1,26,41,827/- which was allegedly due.
- XII. That due to the inordinate delay by the respondent, the complainant was constrained to file proceedings before the Hon'ble National Company Law Tribunal, Delhi under Section 7 of the Insolvency and Bankruptcy Code, 2016, registered as *Deepak Gupta & Ors. V. Jasmine Buildmart Pvt. Ltd., IB-3366(ND)/2019* seeking initiation of insolvency proceedings and claiming a sum of Rs.5,40,93,077/- as being due from the respondents. Further, around December 2018, certain other homebuyers in the respondent's project had filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 due to the delay in completion of the project against the respondent. On 28.11.2019, the National Company Law Tribunal, Delhi admitted the petition under Section 7 of the IBC and appointed Mr. Jugraj Singh Bedi as the Interim Resolution Professional.
- XIII. That on 22.06.2020, the IRP sent a notice to the respondent, claiming that the entire project was completed and was ready for occupation

and called upon the complainant to take possession after clearing all the dues.

- XIV. That on 12.07.2020, in terms of the order of the Hon'ble NCLT, the complainant filed its claims before the IRP, seeking a sum of Rs.5,40,84,359/-, being the sums paid by the complainant along with interest. In order to verify the claim of the IRP in its notice dated 22.06.2020, the complainant, on 16.07.2020, went to inspect to the project and was shocked to find that even the unit booked by the complainant was not ready for occupation. The common areas and facilities were in a shambolic state and construction was going on in most areas. On 17.07.2020, the complainant sent a detailed response to the IRP of the respondent, setting out the several deficiencies in the project which was nowhere close to completion.
- XV. That the respondent filed an appeal before the National Company Law Appellate Tribunal against the order of the NCLT dated 28.11.2019, which was dismissed by the Hon'ble NCLAT on 09.11.2020. Thereafter, the respondent filed an appeal before the Hon'ble Supreme Court against the Order of the NCLAT dated 09.11.2020, being Civil Appeal No. 3778 of 2020, titled as Amit Katyal v. Meera Ahuja. The proceedings were settled between the parties before the Hon'ble Supreme Court, and, in the Judgment dated 03.03.2022 the court recorded the undertaking of the respondent that it shall complete the entire project within a period of 1 year and offer possession to the respective homebuyers. As per the undertaking, the apartment along with common areas and amenities had to be completed by the respondent by 03.03.2023.

- XVI. That on 09.11.2022, the respondent sent a further demand notice, claiming that the unit has been ready for possession since October 2019, and called upon the complainant to clear unpaid dues of Rs.1,00,08,696/- and threatened to cancel the allotment of the complainant in case the same was not paid.
- XVII. That on 17.11.2022, the complainant responded to the said letter, stating that the demand letter has failed to account for the interest on delayed possession which the respondent is liable to pay the complainant.
- XVIII. That on 01.12.2022, to the shock of the complainant, instead of agreeing to hold a meeting to discuss the settlement of account, the respondent proceeded to arbitrarily cancel the allotment letter. This cancellation was absurd, inasmuch as there had never been any default on the part of the complainant, who had paid almost 90% of the sale consideration as far back as in 2013. It is the respondent who misappropriated the money paid by the innocent buyers and caused an inordinate delay in the offering possession. Further, it is evident from the proceedings before the Hon'ble NCLT and the Hon'ble Supreme Court, that the units were not even ready for possession till March 2022, and, therefore, the offers of possession in 2019 were malicious and were made with the sole motive of extracting further money from the complainant and other buyers. Therefore, the complainant is entitled to penal interest for the entire period of delay on the part of the respondent @24% per annum i.e. at the rate of interest which has been applied by the respondent against the

complainant in the cases of delay in payment on the part of the complainant.

**B. Relief sought by the complainant:**

4. The complainant has sought following reliefs:

a. Direct the respondent to refund the paid-up amount alongwith prescribed rate of interest.

5. On the date of hearing, the authority explained to the respondent/promoter 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.

**C. Reply by the respondent.**

6. The respondent has contested the complaint on the following grounds:

i. That after conducting his own independent due diligence and being fully satisfied with the particulars of the said project, the complainant voluntarily approached and applied to the respondent and expressed his interest in purchasing an apartment in the said project being developed by the respondent. As per his request, the respondent agreed to allot an apartment the bearing no. 802, Tower-A, 8th Floor admeasuring 5800 sq. ft.to the complainant in its project named "Krrish Provence Estate", Gwal Pahari, Sector-2, Gurugram for a basic sale price of Rs.3,78,06,414/- against which the complainant has only paid Rs.3,10,44,968/- to the respondent.

ii. That the complainant was extremely irregular as far as the payment of installments in terms of the apartment buyer's agreement. Even though the respondent was under no obligation to grant time or to allow the unjustified and inexcusable demands of the complainant. However, to the utter shock and dismay to the respondent, the

complainant outrightly refused to make any payment in furtherance of the agreed terms of the apartment buyer's agreement, thereby willfully and fragrantly violating the agreed terms of the apartment buyer's agreement.

- iii. That due to the persistent defaults of the complainant, the respondent was compelled to issue demand notices, reminders etc., calling upon the complainant to make payment of outstanding amounts payable by him under the payment plan/instalment plan opted by the complainant.
- iv. That the respondent has already completed the construction of the tower in which the unit of the complainant is situated. The Town & Country Planning Department, Haryana has issued occupation certificate dated 29.10.2019 to the respondent for Tower A and EWS occupation certificate of the said project of the respondent and has offered possession of the unit to the complainant after payment of the dues towards the said unit and execute the conveyance deed in his favour vide notice of possession dated 11.11.2019. In the said notice of possession, the respondent had also informed the complainant that in case he fails to pay the amount and complete all the requisite formalities, necessary documentation and submission of relevant details, information, documents, certifications and attestation etc. by 11.12.2019, then the respondent shall be eligible to charge interest @10.5% per annum from the date of default till the time such payment is received by the respondent
- v. That as there was an inordinate delay on part of government department/authorities in providing relevant permissions, licenses

approvals and sanctions for project which resulted in inadvertent delay in the project which constitute a force majeure condition as anticipated in clause 11 of the apartment buyers agreement, as delay caused in these permissions cannot be attributed to respondent, for very reason that respondent had been very prompt in making applications and replying to objections, if any raised for obtaining such permissions.

- vi. That thereafter the complainant filed a proceeding before the Hon'ble National Company Law Tribunal, Delhi under Section 7 of the Insolvency and Bankruptcy Code, 2016, titled as Deepak Gupta & Ors. Versus. Jasmine Buildmart Pvt. Ltd., IB-3366(ND)/ 2019 seeking initiation of insolvency proceedings against the respondent. That the NCLT vide Order dated 28.11.2019 admitted the petition under Section 7 of the IBC and appointed Mr. Jugraj Singh Bedi as the Interim Resolution Professional.
- vii. That the respondent filed an appeal before the National Company Appellate Tribunal against the order of the NCLT dated 28.11.2019, which was dismissed by the NCLAT vide order dated 09.11.2020. Thereafter, the promoter of the respondent filed an appeal before the Hon'ble Supreme Court against the order of the NCLAT dated 09.11.2020, being Civil Appeal No. 3778 of 2020, titled as Amit Katyal Versus. Meera Ahuja. That the Hon'ble Supreme Court vide Judgment dated 03.03.2022 directed the respondent to complete the entire project within one year from 01.03.2022 and offer the possession to the respective home buyers.

- viii. That in terms of the judgment of the Hon'ble Supreme Court the respondent vide letter dated 09.11.2022 issued final reminder cum cancellation notice to the complainant for taking possession of the said unit and also to deposit the payable dues and complete formalities for timely execution and registration of the conveyance deed of the said unit.
- ix. That the complainant failed to pay the outstanding dues towards the unit in question, thereby failing to take over possession of the apartment, hence the respondent vide letter dated 01.12.2022 was constrained to cancel the said unit allotted to the complainant. The respondent had also requested the complainant to collect the amount due to them in terms of the apartment buyer's agreement. Therefore, there is no default on the part of the respondent.
- x. That the respondent vide letter dated 08.02.2023 issued three cheques bearing no. 079454 dated 07.02.2023, 079455 dated 07.02.2023 and 079457 dated 28.02.2023 drawn on Union Bank of India for an amount of Rs.50,00,000/-, Rs. 50,00,000/- and Rs.1,34,54,095/- to the complainant as full and final eligible amount as per the apartment buyer's agreement dated 28.09.2012, thereby refunding the permissible amount to the complainant.
- xi. That as per clause 3.1 of the agreement, the respondent was supposed to complete the construction of the said project within 36 months from the date of signing of the agreement i.e. 28.03.2016 unless there was delay due to a force majeure condition or due to other reasons mentioned in clause 3.1. Despite exercising diligence and continuous pursuance of project to be completed, project of respondent could not



be completed due to orders passed by the NGT staying the construction, restriction on use of underground water by the orders of Hon'ble High Court of Punjab and Haryana, delay on part of government agencies in providing relevant permissions, licenses approvals and sanctions for project, unavailability of construction workers in NCR region, increase in cost of construction, implementation of social schemes like NREGA, reduction in availability of bricks and sand due to restrictions imposed by Ministry of Environment and Forest and the Ministry of Mines, demonetization, introduction of GST etc. Therefore, it is most respectfully submitted that in view of the aforementioned facts and circumstances, the present complaint is liable to be dismissed with an exemplary cost.

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.

**D. Jurisdiction of the authority**

8. The authority observed 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 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.

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. 2021-2022 (1) RCR (Civil), 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

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

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**E. Findings on the objections raised by the respondent.**

**F.I. Objection regarding force majeure conditions.**

14. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as competent authorities, High Court and Supreme Court orders, demonetization, delay on part of govt. authorities in granting approvals and other formalities, shortage of labour force in the NCR region, ban on the use of underground water for construction purposes, heavy shortage of supply of construction material etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 28.09.2015. Hence, events alleged by the respondent do not

have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Further, time taken in governmental clearances cannot be attributed as reason for delay in project. Furthermore, as far as entitlement of grace period according to the clause mentioned in the BBA is concerned the clause requires grace period of 180 (one hundred eighty) business days after the expiry of 36 (thirty-six) months for applying and obtaining the occupation certificate in respect of the project from the authority. Since in the present matter the respondent applied for grant of occupation certificate in the competent authority only on 03.07.2019 i.e., much later than the lapse of 36 months from the date of BBA. Accordingly, authority holds that the respondent is not entitled to invoke grace period clause for delay. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

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

**G.I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.**

15. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

***"Section 18: - Return of amount and compensation***

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

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

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

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

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

*(Emphasis supplied)*

16. Clause 3.1 of the buyer's agreement dated 28.09.2012 provides the time period of handing over possession and the same is reproduced below:

*3.1 Possession:*

*"Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to hand over the possession of the Apartment to the Purchaser(s) within a period of 36 (thirty six) months from the date of commencement of a construction or execution of this Agreement, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 180 (one hundred eighty) business days, after the expiry of 36 (thirty-six) months, for applying and obtaining the occupation certificate in respect of the Project from the Authority."*

17. The complainant was allotted an apartment bearing no. A-802, 4 BHK, admeasuring 5800 sq. ft., in Tower A, 8<sup>th</sup> Floor in the project of the respondent named "Provence Estate", Gwal Pahari Village, Gurugram vide allotment letter dated 07.07.2011, for a basic sale price of Rs.3,24,80,000/-. Thereafter, an apartment buyer's agreement was

executed between the parties in respect of the said unit on 28.09.2012. As per clause 3.1 of the buyer's agreement, the possession of the unit was to be handed over within 36 months from the date of commencement of a construction i.e., 06.08.2011 or execution of that agreement i.e., 28.09.2012, whichever is later alongwith a grace period of period of 180 (one hundred eighty) business days after the expiry of 36 (thirty-six) months for applying and obtaining the occupation certificate in respect of the project from the authority. Since in the present matter the respondent applied for grant of occupation certificate in the competent authority only on 03.07.2019 i.e., much later than the lapse of 36 months from the date of BBA. Accordingly, authority holds that the respondent is not entitled to invoke grace period clause for delay. Thus, the due date for handing over of possession comes out to be 28.09.2015.

18. The complainant has submitted that as on 24.12.2013, in terms of the construction linked plan, the complainant had paid a sum of Rs.3,10,44,968/- out of the total base selling price of Rs.3,24,80,000/- in respect of the said apartment to the respondent as and when demanded by it and the balance payment was to be made on the commencement and completion of internal flooring, and on possession. However, the respondent erroneously and contrary to the terms of the agreement kept on demanding several demands from the complainant. Therefore, due to the inordinate delay in the completion of the project by the respondent, the complainant vide letter dated 08.08.2019, surrendered the unit and made a request for refund of the paid-up amount alongwith interest. Thereafter, on 11.11.2019, the respondent offered possession

of the unit to the complainant alongwith several illegal demands. Further, on 09.11.2022, the respondent sent a further demand notice, claiming that the unit has been ready for possession since October 2019, and called upon the complainant to clear unpaid dues of Rs.1,00,08,696/- and threatened to cancel the allotment of the complainant in case the same was not paid. The complainant responded to the said letter vide reply dated 17.11.2022, stating that the demand letter has failed to account for the interest on delayed possession which the respondent is liable to pay the complainant and shows his willingness to pay outstanding dues if any, after adjustment of the said amount. Consequently, instead of agreeing to hold a meeting to discuss the settlement of account, the respondent proceeded to arbitrarily cancel the allotment vide cancellation letter dated 01.12.2022 despite receipt of almost 90% of the sale consideration far back in 2013 from the complainant.

19. The respondent has contended that it has already completed the construction of the tower in which the unit of the complainant is situated and has obtained occupation certificate from the competent authorities on 29.10.2019. Thereafter, the respondent offered possession of the unit to the complainant vide letter dated 11.11.2019 subject to payment of the outstanding dues towards the said unit. However, the complainant failed to pay the outstanding dues towards the unit in question, hence the respondent vide letter dated 01.12.2022 was constrained to cancel the said unit allotted to the complainant.
20. As per record, the due date of possession was 28.09.2015. The occupation certificate was granted by the component authority on

29.10.2019 and thereafter possession of the unit was offered to the complainant on 11.11.2019, whereas it is observed that the complainant has surrendered the unit in question due to inordinate delay on part of the respondent vide letter dated 08.08.2019 i.e., prior to obtaining occupation certificate. Due to default on part of the respondent in refunding the paid-up amount, the complainant and some other allottees of the project filed their claim before the Hon'ble NCLT, New Delhi. Accordingly, on 28.11.2019, the National Company Law Tribunal, Delhi admitted the petition under Section 7 of the IBC and appointed Mr. Jugraj Singh Bedi as the Interim Resolution Professional. The respondent filed an appeal before the National Company Appellate Tribunal against the order of the NCLT dated 28.11.2019, which was dismissed by the NCLAT vide order dated 09.11.2020. After this, the respondent filed an appeal before the Hon'ble Supreme Court against the order of the NCLAT dated 09.11.2020, being Civil Appeal No. 3778 of 2020, titled as Amit Katyal Versus, Meera Ahuja and the Hon'ble Supreme Court vide judgment dated 03.03.2022 directed the respondent to complete the entire project within one year from 01.03.2022 and offer the possession to the respective home buyers. Thereafter on 09.11.2022, the respondent issued a final reminder for possession cum cancellation letter to the complainant threatening to cancel the allotment in case the allottee fails to pay the outstanding dues. The complainant responded to the said letter vide reply dated 17.11.2022, stating that he is willing to pay the outstanding dues only after adjustment of the compensation payable by the respondent on account of delay in possession. However, the respondent completely



ignored the request of the complainant and ultimately cancelled the allotment vide letter dated 01.12.2022, which shows the unfair trade practise of the respondent. Further, even after filing of the complaint and during pendency of complaint before the Authority, the respondent has created third party rights over the unit in question, which also shows the conduct of the respondent. Therefore, after considering the factual and legal circumstances of the case as well as surrender letter dated 08.08.2019, the Authority is of view that the cancellation letter dated 01.12.2022, cannot be held valid in the eyes of law.

21. The respondent has contended that vide letter dated 08.02.2023, it has issued three cheques bearing no. 079454 dated 07.02.2023, 079455 dated 07.02.2023 and 079457 dated 28.02.2023 drawn on Union Bank of India for an amount of Rs.50,00,000/-, Rs. 50,00,000/- and Rs.1,34,54,095/-, thereby refunded the permissible amount to the complainant as full and final eligible amount as per the apartment buyer's agreement dated 28.09.2012. However, as per record, the complainant vide reply dated 15.02.2023, has returned the above said cheques to the respondent as the same was not acceptable to him. Therefore, in view of the above, the contention of the respondent w.r.t. the payment of refundable amount to the complainant stands rejected.
22. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him along with interest prescribed rate of interest 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., 06.03.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
25. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 3.1 of the agreement executed between the parties on 17.06.2016, the possession of the subject apartment was to be delivered by 28.09.2015.
26. Further, the authority observes that the respondent has obtained the occupation certificate on 29.10.2019, whereas the offer of possession was made on 11.11.2019. However, the complainant has already withdrawn from the project by sending letter dated 08.08.2019 and sought refund of the paid-up amount with interest i.e., prior to obtaining occupation certificate, due to inordinate delay on part of the

respondent. In view of the above-mentioned facts, the allottee intends to withdraw from the project and is well within the right to do the same in view of section 18(1) of the Act, 2016.

27. Moreover, 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."*

28. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy

available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G. Directions of the authority**

30. 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 entire paid-up amount of Rs.3,10,44,968/- received by it from the complainant(s) along with interest at the rate of 10.85% 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 realization of the amount.
  - ii. Out of total amount so assessed, the amount paid by the bank/payee be refunded in the account of bank and the balance amount along with interest if any, would be refunded to the complainant.

- iii. 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.
31. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
32. Complaint stands disposed of.
33. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.03.2024



**HARERA**  
**GURUGRAM**