# BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

**Date of decision: 16.02.2024**

| NAME OF THE BUILDER | | RAHEJA DEVELOPERS LTD. |
|---|---|---|
| PROJECT NAME | | RAHEJA REVANTA |
| S. No. | Case No. | Case title |
| 1. | CR/8074/2022 | PEREGRINE GUARDING LTD. V/S RAHEJA DEVELOPERS LTD. |
| 2. | CR/8055/2022 | MICRO AZURE COMPUTERS LTD. V/S RAHEJA DEVELOPERS LTD. |

**CORAM:**
Shri Sanjeev Kumar Arora — **Member**

**APPEARANCE WHEN AGRUED:**
Mr. Venket Rao & Mr. Pankaj Chandola (Advocate) — Complainants
Mr. Garvit Gupta (Advocate) & Ms. Harshita Setia (Advocate) — Respondent

## ORDER

1. This order shall dispose of all the 2 complaints titled as above filed before this authority in form CRA/CAO 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, "RAHEJA REVANTA" (group housing colony) being developed by the same respondent/promoter i.e., M/s Raheja Developers 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, seeking award of refund the entire amount along with interest and the compensation.

3. The details of the complaints, reply to 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:

| **Project Name and Location** | **RAHEJA DEVLOPERS LTD "RAHEJA REVANTA" Sector-78, GURUGRAM.** |
|---|---|
| **Possession Clause: - 4.2**<br>*"That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser* ***within*** *thirty-six (36) months in respect of 'TAPAS' Independent Floors* ***and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell*** *and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller.* ***However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above****. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement to sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."*<br>**(Emphasis supplied)** | |

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| **Occupation certificate: - not obtained** | | | | |
| **Offer of possession: not offered** | | | | |
| **Relief Sought:**<br>The complainants in the abovementioned complaints have sought refund of the amount paid along with the interest. | | | | |
| **Complaint No.** | **Unit details** | **Date of agreement** | **Total consideration(TC) & amount paid (AP)** | **Due date of possession** |
| **CR/8074/2022** | Apartment No. A-433 admeasuring 2457.22 sq. ft.<br><br>[pg. 40 of complaint] | 17.05.2012<br><br>[pg. 45 of complaint] | TC: ₹1,82,89,417/-<br><br>AP: ₹ 1,83,68,437/- | 16.05.2016 |
| **CR/8055/2022** | C-393 admeasuring 3434.38Sq. Ft<br><br>[pg. 39 of complaint] | 01.06.2012<br><br>[pg. 43 of complaint] | TC: ₹₹2,41,66,409/-<br><br>AP: ₹2,41,08,897- | 31.05.2016 |

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of refund the entire amount along with interest.

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 also similar. Out of the above-mentioned case, the particulars of lead case ***CR/8074/2022 M/s Peregrine guarding private ltd. V/s Raheja Developers Ltd.*** are being taken into consideration for determining the rights of the allottee(s) qua refund of the entire amount along with interest and compensation

**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/8074/2022 Peregrine guarding private ltd. V/s Raheja Developers Ltd.**

| S. N. | Particulars | Details |
|---|---|---|

| | | |
|---|---|---|
| 1. | Name of the project | "Raheja Revanta", Sector 78, Gurugram, Haryana |
| 2. | Project area | 18.7213 acres |
| 3. | Nature of the project | Residential Group Housing Colony |
| 4. | DTCP license no. and validity status | 49 of 2011 dated 01.06.2011 valid up to 31.05.2021 |
| 5. | Name of licensee | Sh. Ram Chander, Ram Sawroop and 4 Others |
| 6. | Date of environment clearances | 23.10.2013<br>[Note: - the date of EC is taken from the complaint no. 737/2021/3678/2019 of the same project being developed by the same promoter] |
| 7. | Date of revised environment clearances | 31.07.2017<br>[Note: - the date of revised EC is taken from the complaint no. 737/2021/3678/2019 of the same project being developed by the same promoter] |
| 8. | RERA Registered/ not registered | Registered vide no. 32 of 2017 dated 04.08.2017 |
| 9. | RERA registration valid up to | 31.01.2023<br>5 Years from the date of revised Environment Clearance + 6 Months grace period in view of Covid-19<br>Since the said registration has expired therefore the registration branch may take the necessary actions under the Act, 2016 against the respondent. |

| | | |
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| 10. | Unit no. | Apartment No. A-433<br>(Page no. 40 of the complaint) |
| 11. | Unit area admeasuring | 2457.22 Sq. Ft<br>[pg. 53 of complaint] |
| 12. | Allotment letter | 17.05.2012<br>[pg. 40 of complaint] |
| 13. | Date of execution of agreement to sell – Raheja Revanta | 17.05.2012<br>(pg. 45 of complaint) |
| 14. | Possession clause | **4.2 Possession Time and Compensation**<br>*That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser* ***within thirty-six (36) months in respect of 'TAPAS' Independent Floors*** *and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller.* ***However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above.*** *The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for* |

| | | |
|---|---|---|
| | | *this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."*<br>(Page no. 31 of the complaint). |
| 15. | Due date of possession | 16.05.2016 |
| 16. | Total sale consideration | ₹1,82,89,417/-<br>(pg.80 of complaint) |
| 17. | Amount paid by the complainant | ₹ 1,83,68,437/-<br>(According to S.O.A dated. 20.09.2022 page 38 of complaint) |
| 18. | Occupation certificate /Completion certificate | Not received |
| 19. | Offer of possession | Not offered |

## B. Facts of the complaint

8. The complainant has made following submissions in the complaint:

a. That in year 2012, the Complainant learned about Project through marketing representative of the Respondent. And, believing upon the tall claims and assurances provided by the representatives on behalf of the Respondent, the Complainant booked an Apartment

in the said project believing that Respondent had obtained all approvals/permissions necessary for construction of the project.

b. The respondent through its marketing representatives claimed to be a renowned developer in the real estate sector having good repute. It was assured that the Project is one of the finest and is free from all kind of encumbrances. Further, the Respondent claimed that construction of the Project is in full swing and promised to deliver the possession of the said Apartment as per proposed timeline.

c. That upon believing such assurances and commitments the complainant herein, on 16.01.2012, booked a Residential Apartment admeasuring to 2457.220 Sq. ft. in the aforesaid project and paid a booking amount of Rs. 15,56,265/- on 30.01.2012.

d. The complainant paid an amount of Rs. 44,74,507/- as per agreed payment schedule. The complainant herein further paid an amount of Rs. 60,30,772/- as per agreed payment schedule payable within 60 days of the booking against the total sale consideration of the respective apartment.

e. The respondent vide allotment letter dated 17.05.2012, allotted an apartment bearing no. A-433, admeasuring to 2457.22 Sq. Ft. on 43rd floor in the said project being developed by the respondent.

f. The complainants opted for construction linked plan and the respective instalment was to be raised only upon achieving the proposed milestone. It is pertinent to note that in various instances, the respondent failed to achieve the milestone for the project in question but continued to raise the demands without achieving the particular stage of construction.

g. That an agreement to sell dated 17.05.2012, was executed between the complainant and the respondent for the apartment bearing no. A-433 on 43rd floor admeasuring 2457.22 sq. ft. for a total sale consideration of Rs. 1,82,89,417/-. The respondent promised to handover the possession of the unit within 48 months from the date of execution of the agreement to sell. That the same is also mentioned in article-4.2 of the agreement to sell stating that the possession of the unit is promised to be offered within 48 months from the date of execution of the agreement to sell i.e., by 17.05.2012. That they assured the complainants that there will not be any delay as, they had obtained all requisite sanctions/approvals, and the construction of the project was being commenced. That the officials of the respondent had further promised to provide timely updates about the construction of the project.

h. The Agreement to Sell is completely unfair, one sided and unreasonable agreement and the Complainant was forced to sign the Agreement as the Complainant was left with no choice but to sign the Agreement as they had paid huge amount of money. That it is pertinent to mention that a perusal of the clauses of the Agreement shows the stark incongruities on the remedy available to the Complainant and the Respondent. On one hand, Clause 3.7 of the Agreement entitled the Respondent to charge 18% compound interest p.a. in case of delay in making payments by the Complainant, whereas on the other hand, Clause 4.2 of the Agreement provides that the Respondent shall pay to Complainant/Allottee compensation @ Rs. 7/- sq. ft. of the super

area per month. The respondent being in a dominant position has compelled the complainant to execute the agreement having arbitrary clauses. The clauses of the agreement are arbitrary and one sided, thus, on the same parity, either the complainant shall be entitled for interest @18% p.a. on the payment received by the opposite party or the respondent may be directed to charge interest on the same rate as being provided to the complainant for delay in possession. The respondent may further be directed to refund the additional interest charged from the complainant.

i. That the complainants trusted the respondent based on their promises and representations, however, as the date of possession came closer, the respondent's officials started making excuses and avoiding the complainants' calls for updates of construction. That the respondent repeatedly reassured the complainants that the possession of the apartment would be provided to them by and before October 2021, however, the complainants became extremely demoralized upon visiting the construction site and seeing the state it was in.

j. The complainant had also availed a housing loan from the ICICI bank to the tune of Rs. 1,48,80,000/- in order to pay the timely instalment for the said apartment comprising in the project. It is a matter of fact that the complainant had also been paying EMI's against the said loan, however, the respondent having malafide intention has deliberately failed to complete the construction of the project within agreed timelines.

k. That as per the payment schedule, the complainant herein had evidently paid Rs. 1,83,68,437/- which is more than the total sale

consideration as and when demanded by the Respondent for the apartment.

l. That as per the provision of Article 4.2 of the Agreement so signed and acknowledged, the Respondent proposed to handover possession of the Apartment on or before 16.05.2016. However, to the utter shock of the Complainant, the Respondent herein has utterly failed to complete the construction of the said project as per the agreed timelines and even the project in question is far beyond the scheduled timeline. Despite taking almost the entire Sale Consideration, the Respondent herein has not only violated the terms of the agreement but has misappropriated the monies collected from the Complainant.

m. The respondent had no intention to complete the construction of the project but had extorted the hard-earned money of the complainant on the pretext that the project in question would be completed within the proposed plan. It is to be noted that the respondent had failed to utilize the money received towards the construction of the same and thus had taken benefit of the innocence and cheated the complainant.

n. The complainant herein reserves the right to approach the appropriate forum to file its claim of compensation as the respondent had utterly failed to fulfil its obligations to deliver the possession in time or refund the money along with the interest and as a result had caused loss of money, loss of time, loss of resources, but also mental harassment and agony.

**C. Relief sought by the complainant**

9. The complainant has filed the present compliant for seeking following relief:

   a. Direct the respondent to refund the paid-up amount i.e., ₹1,83,68,437/- along with the interest for every month of delay.

**D. Reply by the respondent.**

10. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

   a. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The agreement to sell was executed between the parties prior to the enactment of the Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively. Although the provisions of the Act, 2016 are not applicable to the facts of the present case in hand yet without prejudice and in order to avoid complications later on, the respondent has registered the project with the authority under the provisions of the Act of 2016, vide registration no. 32 of 2017 dated 04.08.2017.

   b. That the respondent is traversing and dealing with only those allegations, contentions and/or submissions that are material and relevant for the purpose of adjudication of present dispute. It is further submitted that save and except what would appear from the records and what is expressly admitted herein, the remaining allegations, contentions and/or submissions shall be deemed to have been denied and disputed by the respondent.

   c. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the

dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 14.2 of the buyer's agreement.

d. That the complainants have not approached this authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The complaint has been filed by it maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:

- That the respondent/builder is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects such as 'Raheja Atlantis' 'Raheja Atharva', and 'Raheja Vedanta' and in most of these projects large number of families have already shifted after having taken possession and resident welfare associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.
- That the project is one of the most Iconic Skyscraper in the making, a passionately designed and executed project having many firsts and is the tallest building in Haryana with highest infinity pool and club in India. The scale of the project required a very in-depth scientific study and analysis, be it earthquake, fire, wind tunneling facade solutions, landscape management, traffic management, environment sustainability, services optimization for customer comfort

and public heath as well, luxury and iconic elements that together make it a dream project for customers and the developer alike. The world's best consultants and contractors were brought together such as Thorton Tamasetti (USA) who are credited with dispensing world's best structure such as Petronas Towers (Malaysia), Taipei 101(Taiwan), Kingdom Tower Jeddah (world' tallest under construction building in Saudi Arabia and Arabtec makers of Burj Khalifa, Dubai (presently tallest in the world), Emirates palace Abu Dhabi etc.

- That compatible quality infrastructure (external) was required to be able to sustain internal infrastructure and facilities for such an iconic project requiring facilities and service for over 4000 residents and 1200 Cars which cannot be offered for possession without integration of external infrastructure for basic human life be it availability and continuity of services in terms of clean water, continued fail safe quality electricity, fire safety, movement of fire tenders, lifts, waste and sewerage processing and disposal, traffic management etc. Keeping every aspect in mind this iconic complex was conceived as a mixture of tallest high-rise towers & low-rise apartment blocks with a bonafide hope and belief that having realized all the statutory changes and license, the government will construct and complete its part of roads and basic infrastructure facilities on time. Every customer including the complainant was well aware and was made well cautious that the respondent cannot develop external

infrastructure as land acquisition for roads, sewerage, water, and electricity supply is beyond the control of them. Therefore, as an abundant precaution, the respondent company while hedging the delay risk on price offered made an honest disclosure in the application form itself in clause no. 5 of the terms and conditions.

- That the complainants are real estate investor and they have booked the unit in question with a view to earn quick profit in a short period. However, it appears that its calculations have gone wrong on account of severe slump in the real estate market, and they are now raising untenable and illegal pleas on highly flimsy and baseless grounds. Such malafide tactics of the complainant cannot be allowed to succeed.
- That the complainant signed and executed the agreement to sell on 17.05.2012 for apartment no. A-433 and the complainants agreed to be bound by the terms contained therein.
- Despite the respondent fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed miserably to provide essential basic infrastructure facilities such as roads, sewerage line, water and electricity supply in the sector where the said project is being developed. The development of roads, sewerage, laying down of water and electricity supply lines has to be undertaken by the concerned governmental authorities and is not within the power and control of the respondent. The respondent cannot

be held liable on account of non-performance by the concerned governmental authorities. The respondent company has even paid all the requisite amounts including the external development charges (EDC) to the concerned authorities. However, yet, necessary infrastructure facilities like 60 meter sector roads including 24 meter wide road connectivity, water and sewage which were supposed to be developed by HUDA parallelly have not been developed. There is no infrastructure activities/development in the surrounding area of the project-in-question. Not even a single sector road or services have been put in place by HUDA/GMDA/HSVP till date.

- That the respondent had also filed RTI application for seeking information about the status of basic services such as road, sewerage, water, and electricity. Thereafter, the respondent received reply from HSVP wherein it is clearly stated that no external infrastructure facilities have been laid down by the concerned governmental agencies. The respondent can't be blamed in any manner on account of inaction of government authorities.
- That furthermore two High Tension (HT) cables lines were passing through the project site which were clearly shown and visible in the zoning plan dated 06.06.2011. The respondent was required to get these HT lines removed and relocate such HT Lines for the blocks/floors falling under such HT Lines. The respondent proposed the plan of shifting

the overhead HT wires to underground and submitted building plan to DTCP, Haryana for approval, which was approved by the DTCP, Haryana. It is pertinent to mention that such HT Lines have been put underground in the revised Zoning Plan. The fact that two 66 KV HT lines were passing over the project land was intimated to all the allottees as well as the complainant. The Respondent had requested to M/s KEI Industries Ltd for shifting of the 66 KV S/C Gurgaon to Manesar Line from overhead to underground Revanta Project Gurgaon vide letter dated 01.10.2013. The HVPNL took more than one year in giving the approvals and commissioning of shifting of both the 66KV HT Lines. It was certified by HVPNL Manesar that the work of construction for laying of 66 KV S/C & D/C 1200 Sq. mm. XLPE Cable (Aluminium) of 66 KV S/C Gurgaon – Manesar line and 66 KV D/C Badshahpur – Manesar line has been converted into 66 KV underground power cable in the land of the respondent/promoter project which was executed successfully by M/s KEI Industries Ltd has been completed successfully and 66 KV D/C Badshahpur – Manesar Line was commissioned on 29.03.2015.

- That respondent got the overhead wires shifted underground at its own cost and only after adopting all necessary processes and procedures and handed over the same to the HVPNL and the same was brought to the notice of District Town Planner vide letter dated 28.10.2014 requesting to apprise DGTCP, Haryana for the same. That as multiple government and regulatory agencies and their clearances were in

involved/required and frequent shut down of HT supplies was involved, it took considerable time/efforts, investment and resources which falls within the ambit of the force majeure condition. The respondent has done its level best to ensure that the complex is constructed in the best interest and safety of the prospective buyer's.

- That GMDA, office of Engineer-VI, Gurugram vide letter dated 03.12.2019 has intimated to the respondent company that the land of sector dividing road 77/78 has not been acquired and sewer line has not been laid. The respondent/promoter wrote on several occasions to the Gurugram Metropolitan development Authority (GMDA) to expedite the provisioning of the infrastructure facilities at the said project site so that possession can be handed over to the allottees. However, the authorities have paid no heed to or request till date.
- That the construction of the tower in which the plot allotted to the complainant is located is 80% complete and the respondent shall hand over the possession of the same to the complainant after its completion subject to the complainants making the payment of the due installments amount and on availability of infrastructure facilities such as sector road and laying providing basic external infrastructure such as water, sewer, electricity etc. as per terms of the application and agreement to sell. The photographs showing the current status of the construction of the tower in which the unit allotted to the complaint is located. It is submitted that due to

the above-mentioned conditions which were beyond the reasonable control of the respondent, the development of the township in question has not been completed and the respondent cannot be held liable for the same. The respondent is also suffering unnecessarily and badly without any fault on its part. Due to these reasons the respondent has to face cost overruns without its fault. Under these circumstances passing any adverse order against the respondent at this stage would amount to complete travesty of justice.

- That the construction of the tower in which the floor is allotted to the complainants is located already complete and the respondent shall hand over the possession of the same to the complainants after getting the occupation certificate subject to the complainants making the payment of the due installments amount as per terms of the application and agreement to sell.
- That the origin of the present complaint is because an investor is unable to get required return due to bad real estate market. It is increasingly becoming evident, particularly by the prayers made in the background that there are other motives in mind by few who engineered this complaint using active social media.
- That the complaint has been worded as if simpleton apartment buyers have lost their monies and therefore, they must have their remedy. The present case also brings out how

a few can misguide others to try and attempt abuse of the authority which is otherwise a statutory body to ensure delivery of apartments and safeguard of investment of every single customer who puts his life saving for a dream house and social security.

e. That in the present case, as compared to others in the region, the building has been standing tall and with almost 1000 workers working day and late night towards finishing the project to handover to the esteemed hundreds of customers in the waiting. Some flat buyers who had invested in the hope of rising markets, finding insufficient price rise–due to delay of Dwarka expressway, delay in development of allied roads and shifting of toll plaza engineered false and ingenious excuses to complain and then used social media to make other (non-speculator) flat buyers join them and make complaints, in all probability, by giving them an impression that the attempt may mean 'profit', and there is no penalty if the complaint failed.

f. That the three factors: (1) delay in acquisition of land for development of roads and infrastructure (2) delay by government in construction of the Dwarka Expressway and allied roads; and (3) oversupply of the residential units in the NCR region, operated to not yield the price rise as was expected by a few. This cannot be a ground for complaint for refund as the application form itself has abundantly cautioned about the possible delay that might happened due to non-performance by Government Agencies.

g. That amongst those who booked (as one now sees) were two categories: (1) those who wanted to purchase a flat to reside in

future; and (2) those who were looking at it as an investment to yield profits on resale. For each category a lower price for a Revanta type Sky Scaper was an accepted offer even before tendering any money and bilaterally with full knowledge and clear declarations by taking on themselves the possible effect of delay due to infrastructure.

h. That in the present case, keeping in view the contracted price, the completed (and lived-in) apartment including interest and opportunity cost to the Respondent may not yield profits as expected than what envisaged as possible profit. The completed building structure as also the price charged may be contrasted with the possible profit's v/s cost of building investment, effort and intent. It is in this background that the complaint, the prevailing situation at site and this response may kindly be considered. The present complaint has been filed with malafide motives and the same is liable to be dismissed with heavy costs payable to the respondent.

11. 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.

**E. Jurisdiction of the authority**

12. 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**

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, 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**

14. Section 11(4)(a) of the Act 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.*

15. 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.

16. 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."*

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

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

**G. I Direct the respondent to refund the entire amount paid by the complainant along with interest at such rate as may be prescribed.**

18. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under

section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-*
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
> ***he shall be liable on demand to the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act:*
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*
> *(Emphasis supplied)*

19. As per clause 4.2 of the agreement to sell dated 17.05.2012 provides for handing over of possession and is reproduced below:

> **4.2 Possession Time and Compensation**
> *That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser **within** thirty-six (36) months in respect of 'TAPAS' Independent Floors **and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell** and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. **However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above**. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement to sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be*

*liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."*

20. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such a clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

21. **Due date of handing over possession and admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months from the date of the execution of the agreement to sell, in case the construction is not complete within the time frame specified. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation

certificate. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay incompletion of the project.

22. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate interest. However, the allottees intend to withdraw from the project and is seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
>
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

23. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

24. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 08.12.2023 is **8.75%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%.**

25. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per

provisions of rule **28(1),** the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement to sell dated form executed between the parties on 17.05.2012, the possession of the subject unit was to be delivered within a period of 48 months from the date of execution of buyer's agreement which comes out to be 16.05.2026. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 16.05.2016.

26. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the plot in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

27. The authority has further, observes that even after a passage of more than 4 years (from the date of BBA till date of filling) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. It is also pertinent to mention that complainants have paid 100% of total consideration. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of

construction of the project. In view of the above-mentioned fact, the allottees intend 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.

28. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021:***

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

29. 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. it was observed:

> *"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."*

30. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

31. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by him i.e., ₹ 1,83,68,437/- at the prescribed rate of interest i.e., @ 10.75% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

## G. Directions of the authority

32. Hence the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of

obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

a. The respondent/promoter is directed to refund the amount received by it from each of the complainant(s) along with interest at the rate of 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

b. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

c. The respondent is also directed to file an application for extension of registration under section 6 of the Act, 2016 since the said registration has been expired on 31.01.2023.

33. This decision shall mutatis mutandis apply to all the cases mentioned in para 3 of this order.

34. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.

35. Files be consigned to registry.

**Sanjeev Kumar Arora**
**(Member)**
Haryana Real Estate Regulatory
Authority, Gurugram

Dated:16.02.2024