

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

Date of decision: 22.02.2024

NAME OF THE BUILDER		ANSAL HOUSING AND CONSTRUCTION LIMITED.	
PROJECT NAME		"Ansal Hub 83 Boulevard"	
S. No.	Case No.	Case title	APPEARANCE
1	CR/4333/2021	Rakesh Rayoo V/s Ansal Housing and Construction Limited.	Shri E Krishan Dass Advocate and Shri. Amandeep Kadyan Advocate
2	CR/4335/2021	Ravi Ji Raiou V/s Ansal Housing and Construction Limited.	Shri E Krishan Dass Advocate and Shri. Amandeep Kadyan Advocate

**CORAM:**

Shri Vijay Kumar Goyal

**Member****ORDER**

1. This order shall dispose of both the complaint(s) titled as above filed before this authority in form GRA 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,

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namely, "Ansal Hub 83 Boulevard" (commercial complex part of residential colony) being developed by the same respondent/promoter i.e., M/s Ansal Housing and Construction Limited. 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.

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:

<b>Project Name and Location</b>	<b>"Ansal Hub 83 Boulevard" Sector-83, Gurugram.</b>	
<b>Possession Clause: - 30</b>	<i>"The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."</i>	
	<b>(Emphasis supplied)</b>	
<b>Note:</b>	Grace period is allowed being unqualified & included while computing due date of possession.	
<b>Occupation certificate:</b>	- Not obtained	
<b>Complaint No., Case Title</b>	<b>CR/4333/2021 Rakesh Rayoo V/s Ansal Housing and Construction Limited.</b>	<b>CR/4335/2021 Ravi Ji Raiou V/s Ansal Housing and Construction Limited</b>
<b>Reply status</b>	26.07.2022	26.07.2022
<b>Unit no.</b>	F-039 [Page no. 15 of complaint]	F-038 [Page no. 16 of complaint]
<b>Area admeasuring</b>	452 sq. ft. [ Page no. 15 of complaint]	474 sq. ft. [ Page no. 16 of complaint]

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<b>Date of apartment buyer agreement</b>	28.01.2016 [Page no. 11 of complaint]	12.01.2016 [Page no. 12 of complaint]
<b>Due date of handing over of possession</b>	28.01.2020 (Note: 42 months from date of agreement i.e., 28.01.2016 as the date of commencement of construction is not known + 6 months grace period allowed being unqualified)	12.01.2020 (Note: 42 months from date of execution of agreement i.e., 12.01.2016 as the date of construction is not known + 6 months grace period allowed being unqualified)
<b>Offer of possession</b>	Not offered	Not offered
<b>Total Consideration / Total Amount paid by the complainant(s)</b>	TSC: Rs.51,65,487/- (As per payment plan annexed with BBA at page 31 of complaint) AP: Rs.16,31,964/- (As per sum of receipts annexed by the complainant)	TSC: Rs.51,71,728.68/- (As per payment plan annexed with BBA at page 32 of complaint) AP: Rs.16,50,835/- (As per sum of receipts annexed by the complainant)
<b>The complainant in the above complaint(s) have sought the following reliefs:</b> 1. Direct the respondent company to refund the entire amount of Rs16,31,964/- being the principal booking amount with up-to-date interest @ 18% p.a. from the date of making the payment till the date of actual realization of the amount from the respondent. 2. Direct the respondent be penalized Rs.2,00,000/- for illegally pressurizing the complainants to pay for more money and for not fulfilling their own commitments in the facts and circumstances of the present case in the interest of justice.		
<b>Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:</b> <b>Abbreviation Full form</b> TSC Total Sale consideration AP Amount paid by the allottee(s)		

- 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 possession and delayed possession charges along with interest.
- 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,

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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/4333/2021, case titled as Rakesh Rayoo V/s Ansal Housing and Construction Limited.** are being taken into consideration for determining the rights of the allottee(s) qua possession and delayed possession charges 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(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

**CR/4333/2021, titled as Rakesh Rayoo V/s Ansal Housing and Construction Limited.**

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Hub 83 Boulevard", Sector-83, Gurugram
2.	Total area of the project	2.60 acres
3.	Nature of the project	Commercial complex part of residential colony
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid up to and 71 of 2010 dated 15.09.20210 valid up to
5.	Name of licensee	Buzz Estate Pvt. Ltd. & others.
6.	Registered/not registered	Registered vide no. 09 of 2018 dated 08.01.2018 for 2.80 acres Valid up to 31.12.2020
7.	Unit no.	F-039 [pg. 15 of complaint]
8.	Area of the unit	452 sq. ft. [pg. 15 of complaint]

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9.	Date of execution of agreement	28.01.2016 [pg. 11 of complaint]
10.	Possession clause	<b>30</b> <i>The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.</i> (Emphasis supplied) [page 22 of complaint]
11.	Due date of possession	28.01.2020 (Note: 42 months from date of agreement i.e., 28.01.2016 as the date of commencement of construction is not known + 6 months grace period allowed being unqualified)
12.	Basic sale consideration as per payment plan annexed with BBA at page 31 of complaint	Rs.51,65,487.64/-
13.	Total amount paid by the complainant as per sum of receipts	Rs.16,31,964/-
14.	Offer of possession	Not offered
15.	Occupation certificate	Not obtained
16.	Delay in handing over possession till the date of filing of this complaint i.e., 29.10.2021	1 year 9 months 1 day

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**B. Facts of the complaint**

8. The complainant has made the following submissions in the complaint: -
- a. That the complainant is a law-abiding citizen and previously in the year 2013 on the basis of representations and inducements made by and on behalf of respondent company regarding timely possession of the upcoming project by their marketing officials and channel partners in respect of their then commercial project namely, "Ansal HUB 83 Boulevard" being developed on a commercial piece of land measuring 2.60 acres at Village Sihi, Tehsil & District Gurugram at Sector-83, Gurugram, Haryana.
  - b. That all the negotiations and booking formalities were carried out at the aforesaid address of respondent company and the marketing staff of respondent company has assured the complainant that the company would offer the possession of the commercial unit within a period of 42 months. That in view of the said assurances about the timely possession of the unit, the complainant agreed to book one commercial unit to meet out his personal commercial requirements. That the said booking was made in the name of complainant on 29.4.2013 by placing the cheque for a sum of Rs.3,00,000/- and dated 24.4.2013 drawn on HDFC Bank Limited and Rs.2,00,000/- dated 24.04.2013 drawn on ICICI Bank Limited which amount was duly acknowledged by respondent company.
  - c. That subsequently vide agreement dated 28.01.2016, respondent company had executed the builder buyer's agreement with the complainant and respondent company allotted unit bearing number F-039, shop measuring 452 sq. ft. for a total basic sale price of Rs.46,75,940/- to the complainant and respondent company also claimed



and charged Rs.2,33,797/- towards PLC from complainant and the total amount of the said unit fixed was Rs.49,09,737/-.

- d. That the respondent company after taking substantial amount from the complainant by way of advance registration got the builder buyer agreement wherein respondent company's officials have wrongly state that respondent/promoter would handed over the physical possession of the unit booked within a period of 42 months from the date of execution of the agreement.
- e. That the complainant has paid a total sum of Rs.16,31,964/- as per demands raised by the respondent company. That subsequent to the said payments made, complainant and his family members on their regular visit to the site, found that respondent company has neglected to carry out the construction of the project at the site and were shocked to find out no construction activities were being carried out and no development activities were being carried out and the development of the entire project was totally at standstill.
- f. That on account of the same, complainant and his brother were forced to visit the office of respondent company and asked about the tentative date of offer of possession as the period of 42 months from the date of execution of builder buyer agreement dated 28.1.2016 also stands expired in the July 2020.
- g. That in the month of June & July 2020 the officials posted at the administration branch assured and represented that since there was a recession in the market, the respondent company has slowed the project. Subsequently in the month of November 2020, the complainant again



visited the site and was shocked that respondent company had totally neglected to execute the project. That the site supervisor had no clue when the construction would resume and he was giving evasive answer.

- h. That finding no reply from the office of respondent company, the complainant visited the office of respondent company again but it was told that the office has been closed due to some proceedings pending before NCLT. That it is highly unfortunate that respondent company along with its staff have cheated the complainant by previously giving false promises and mis-leading assurances to get the booking regarding the timely possession of the commercial unit on which the complainant has booked the unit and now intentionally after expiry of about 8 years from the date of advance registration, respondent company is intentionally not completing the project and deliberately neglecting in offering the physical possession of the unit booked by him.
- i. That finding no other way the complainant was forced to get the legal notice dated 06.02.2021 issued to the respondent company through his counsel vide speed post on 08.02.2021, which was duly served upon the respondent company. That complainant through the said legal notice has cancelled the booking due inordinate delay in completion of the project by the respondent company and in offer of possession of the unit booked by complainant and further sought the refund of the entire amount with 18% interest p.a. from the date of respective deposit till the date of its actual payment.
- j. That the respondent company has send a false and frivolous reply dated 04.03.2021 thereby refusing his liability to offer timely possession. The

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complainant therefore has no other efficacious remedy available under the law except to file the present complaint.

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

9. The complainant has sought following relief(s)

a. Direct the respondent company to refund the entire amount of Rs16,31,964/- being the principal booking amount with up-to-date interest @ 18% p.a. from the date of making the payment till the date of actual realization of the amount from the respondent.

b. Direct the respondent be penalized Rs.2,00,000/- for illegally pressurizing the complainants to pay for more money and for not fulfilling their own commitments in the facts and circumstances of the present case in the interest of justice.

10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

11. The respondent has contested the complaint on the following grounds.

a. That the present complaint is neither maintainable nor tenable by both law and facts. The present complaint is not maintainable before this authority, as the complainants have admitted that they have not paid the full amount. The complainants have filed the present complaint seeking interest. The present complaint is liable to be dismissed on this ground alone.

b. That the complainant approached the respondents sometime in the year 2013 for the purchase of an independent unit in its upcoming residential project "ANSAL HUBS" situated in Sector-83, District Gurgaon (Haryana).

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The complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was being fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same and they took an independent and informed decision to purchase the unit, un-influenced in any manner.

- c. That even otherwise, the complainants have no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions the allotment letter/buyer's agreement dated 28.01.2016, which is evidentiary from the submissions made in the following paragraphs of the present reply.
- d. That the current cannot be governed by the Act of 2016, because of the fact that the builder buyer's agreement was never signed between the parties. The regulations at the concerned time period would regulate the project and not a subsequent legislation i.e., Act of 2016. The parliament would not make the operation of a statute retrospective in effect. Furthermore, in the absence of any contract between the parties the complainant cannot take benefit of the agreement that came into being between a different buyer and the respondent.
- e. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The construction work of the project is swing on full mode and the work will be completed within the prescribed time period as given by the respondent to the authority.

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- f. That without prejudice to the aforesaid and the rights of the respondent, the respondent would have handed over the possession to the complainants within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No. 20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal thereby restraining the excavation work causing Air Quality Index being worst, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the major factor to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The sudden restriction on withdrawals led the respondent unable to cope with the labor pressure. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana Government.
- g. That the respondent is carrying his business in letter and spirit of the builder buyer agreement but due to COVID-19 the lockdown was imposed throughout the country in March, 2020 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent. That similarly lockdown was imposed in the year 2021 which extended to the year 2022 which badly affected the construction and consequently



respondent was not able to handover the possession on time as the same was beyond the control of the respondent.

- h. That the ban on construction was imposed by the Hon'ble supreme court of India in the year 2021 due to the alarming levels of pollution in Delhi NCR which severely affected the ongoing construction of the project.
  - i. That the Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the builder buyer's agreement, vide which complainants were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. They further agreed to pay his proportionate share in any future enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.
12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

13. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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**

14. 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**

15. 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.

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

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17. 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. (Supra)* 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."*

18. 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.

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

**F. I Objection regarding delay in completion of construction of project due to force majeure conditions.**

19. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting

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construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 28.01.2016, and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 28.01.2020. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than four years and even some happening after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent/builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

20. The respondent also took a plea that the construction at the project site was delayed due to Covid-19 outbreak. In the instant complaint, the due date of handing over of possession comes out to be 28.07.2019 and grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builder.

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

- G.I Direct the respondent company to refund the entire amount of Rs16,31,964/- being the principal booking amount with up-to-date interest @ 18% p.a. from the date of making the payment till the date of actual realization of the amount from the respondent.**

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21. 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 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)*

22. As per clause 30 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

***"30.***

***The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."***

23. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all



provisions, formalities and documentation as prescribed by the promoter. 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 fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement 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 mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

24. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 42 months plus 6 months from date of agreement or the date of commencement of construction whichever is later. The authority calculated due date of possession from the date of agreement i.e., 28.01.2016 as the date of construction is not known. The period of 42 months expired on 28.07.2019. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.
25. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him along with interest 18% rate of interest. However, the allottee intend to withdraw from the project and are 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.

26. 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.
27. 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., 22.02.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
28. The definition of term 'interest' as defined under section 2(z a) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the*

*allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

29. 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 30 of the agreement executed between the parties on 28.01.2016, the due date of possession is calculated from the date of execution of builder buyer's agreement i.e., 28.01.2016. The period of 42 months expired on 28.07.2019. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 28.01.2020. It is pertinent to mention over here that even after a passage of more than 8.1 years (i.e., from the date of BBA till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees 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 him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid almost 31% of total consideration till 2017. Further, the authority observes that there is no document placed 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 facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
30. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents

/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....."*

31. Further, 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."*

32. 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 him in respect of the unit with interest at such rate as may be prescribed.

33. 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 them 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. II Direct the respondent be penalized Rs.2,00,000/- for illegally pressurizing the complainants to pay for more money and for not fulfilling their own commitments in the facts and circumstances of the present case in the interest of justice.**

34. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

**H. Directions of the authority**

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

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

- I. The respondent/promoter is directed to refund the amount received by it from each of 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 date of refund of the deposited amount.
  - II. 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.
  - III. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee/complainant.
36. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
37. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
38. Files be consigned to registry.

Dated: 22.02.2024

V. J - 3  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram