

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

Complaint no.: 6809 of 2022
Date of first hearing: 03.11.2022
Date of decision 11.01.2024

Mr. Ram Kanhaiya
Mrs. Rameshwari Devi

Both RR/o: - House No. 626, Naval Nagar, Aligarh Road,
Hathras, District Hathras (Earlier Mahamaya Nagar) Utter
Pradesh- 204101

Complainants

Versus

M/s KS Propmart Private Limited.

Regd. office at: - Plot No. 14, Ground Floor, Sector- 44,
Institutional Area, Gurugram- 122003 Haryana

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Ram Kanhaiya
Shri Jagdeep Yadav

Complainant in person
Counsel for the respondent

HARERA
ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

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A. Unit and project related details

2. The particulars of unit details, 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:

S. N.	Particulars	Details
1.	Name of the project	Park Street, Sector-85, Gurgaon
2.	Project type	Group housing project
3.	DTCP license no. and validity status	100 of 2013 dated 02.12.2013 valid up to 01.12.2019
4.	Name of licensee	K.S. Propmart Pvt. Ltd.
5.	RERA registered/not registered	Registered vide registration no. 41 of 2019 dated 30.07.2016
	Validity status	30.06.2022 (Additional 6 months grace period as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)
6.	Date of execution of booking application form	04.10.2014 (Page no. 34 of the reply)
7.	Date of allotment letter	01.10.2020
8.	Unit no.	T-02, Second floor
9.	Unit area admeasuring	296.44 sq. ft.
10.	Date of execution of memorandum of understanding	01.10.2020
11.	Assured return clause	3.1 Lease Rental 3.1.1. Pre -Possession Lease Rental The Developer shall pay to the Allottee pre-possession lease rental from 01/10/2020 till the application for offer of possession is filed for Retail Block, at the rate of Rs.51/- (Rupees Fifty One Only) per sq. ft. of super area of premises per month.

		(Hereinafter referred to as the Pre-Possession Lease Rental').
12.	Date of execution of buyer's agreement	Not executed
13.	Due date of delivery of possession calculated as per <i>Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>	04.10.2017 (Note:- calculated from the 3 years from the date of first payment i.e., 04.10.2014)
14.	Total sale consideration	Rs.25,31,598/-
15.	Amount paid by the complainants	Rs.16,43,000/-
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Final opportunity before cancellation	02.09.2022 (page no, 67 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That in the year of 2014, the complainants, lured by the brochures and catalogues shown by the agents/broker/officials/representatives of the respondent decided to book a commercial unit in the project namely '*Park street*' situated in Sector-85, Gurgaon. At the time of booking assurances were given by the respondent that the possession will be given within 3 years from the date of making booking payment. Thus, the complainants believed that he would be delivered the possession of the unit by 13.10.2017 when the initial payment of Rs.5,00,000/- was made.
- II. That the complainant no.1 visited the site of the project in first week of July, 2015, he was astonished to see that even after passing of more than one year from booking the unit, no work was in progress. On confronting the

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- representatives of the respondent company, the complainant no. 1 was told that the work has been delayed due to compliances and other minor issues but the same would be accelerated and completed within the time-frame given to the complainants.
- III. That the complainants were told to deposit another amount of Rs.1,43,000/- which was paid through cheque dated 19.07.2015. That no written document or receipt was provided to the complainants despite request, rather they were told that a formal agreement will be executed at the earliest. The complainant no.1 frequently visited the site and registered office of the respondent company inquiring about the delay in the project and demanding a formal agreement but to no avail. The complainants paid amount as demanded by the respondent company however, there was no news about the status of the project nor any information regarding the builder buyer agreement.
- IV. That the complainants frustrated by the dilly-dallying tactics of the respondent decided to confront the top management by visiting the registered office of the respondent in September, 2020. The complainants were informed that the present project undertaken by the respondent company got delayed due to introduction of the Act of 2016 and financial constraints. They were requested to co-operate with the respondent by making payment of a substantial amount out of the total sale consideration and in return, the complainants were assured of execution of proper agreement, a formal allotment letter and pre-possession rent.
- V. That the complainants made a payment of Rs.10,00,000/- through cheque dated 01.10.2020 and were made to sign on a MOU of the even date with the assurance that a formal buyer's agreement shall be executed at the earliest. The allotment letter dated 01.10.2020 was also handed over to the

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complainants. That no stipulated date for handing over the possession of the property had been mentioned in the MOU. The complainants were allotted unit no. T-02, second floor, having super area of 296.44 sq. ft. The total consideration for the unit was Rs.23,56,698/- which comes to Rs.7,950/- sq. ft. The MOU dated 1.10.2020 contained clause regarding payment of pre-possession rent @ Rs.51/- per sq. ft. The payment of the same was made only for two months.

- VI. The complainant no. 1 visited respondent company again. They were assured that the payment of stipulated pre-possession rent shall begin soon and the arrears shall also be cleared. Instead of making payment of rent, the respondent started demanding balance full payment of the sale consideration for entering into buyer's agreement and payment of rent.
- VII. That the complainants told the respondent to provide account statement and execute conveyance deed after handing over the possession of the property as a condition precedent for making the final payment. They did not receive any response from the respondent company regarding his requests till 10.09.2022, when a pre-dated notice/letter was received threatening to terminate the allotment in case final payment is not made. The letter was duly replied vide reply dated 14.09.2022 explaining all the facts but no response has been received thereafter from the respondent.
- VIII. That only reason why the complainants decided to invest in the project was in lieu of the promises and immense importance laid down by the respondent herein with regard to the timely possession of the project which subsequently turned out to be false thereby causing immense hardship, both physical and mental, to the complainants. It is repeated for the sake of brevity that the respondent has neither executed proper legal documents to thwart the rights of the complainants despite receiving the substantial

payment out of the total price of the unit nor has completed the project and handed over the possession to the complainants.

- IX. That the complainants further wants to bring into the knowledge of this Authority that the respondent is charging an additional amount on account of Goods and Service Tax (GST). That in the catena of Judgement it has been laid by Hon'ble Apex Court and other Court and commissions that the respondent company cannot charge any tax like Service Tax/GST after the due date of handing over the possession. The authority may kindly take note of the same and direct the respondent to not to charge GST from the complainants.
- X. That the respondent company has not even registered its project after the inception of the Act of 2016 as checked by the complainants from the site of this Authority in violation of section 3 of the Act of 2016. The respondent company should be issued notice and penalised as per law under section 59 of the Act of 2016 for violating the provisions of the Act of 2016.
- XI. That on the basis of the above raised submissions it can be concluded that the respondent has failed to complete the construction of the unit in question in time and delay in handing over the possession of the unit of the complainants and have committed grave unfair practices and breach of the agreed terms between the parties.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent company to return the amount received from the complainant with interest @24% per annum.
 - ii. To restrain the respondent from taking any coercive action against the complainants due to non-payment of balance disputable demand.
 - iii. Direct the respondent company not to charge GST/Service Tax;

- iv. Direct the respondent company to get the project registered.
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.

D. Reply by respondent

6. The respondent by way of written reply made following submissions:-
- I. That the complainants have approached this Authority with unclean hands and have tried to mislead the Authority by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, is guilty of suppression very suggestion fall. They have suppressed and/or mis-stated facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the complaint is liable to be dismissed.
- II. That the complainants have neither any cause of action nor any locus standi to maintain the present complaint against the respondent, especially when the complainants defaulted in making payment and now seeking the complete amendment/modification/re-writing of the terms and conditions of the agreement/understanding between the parties. This is evident from the averments as well as the prayers sought in the complaint.
- III. That the complainants in terms of the application form, paid an amount of Rs.5,00,000/- as the booking amount. That in terms of the application form submitted by the complainants, unit bearing no. T-02 having tentative super area 296.44 sq. ft. was provisionally allotted to the complainants vide allotment letter dated 01.10.2020. The basic sales price of the unit in question as per the allotment letter was Rs.23,56,698/-exclusive of EDC/IDC, power backup charges, IFMS, IFCRF, FFC, AC, ECC, PLC, taxes and

- such other charges extra as applicable and more particularly defined under the agreement.
- IV. That a memorandum of understanding dated 01.10.2020 was executed between the parties for the unit T-02 admeasuring 296.44 sq. ft. The total sale consideration was Rs.23,56,698/- that was exclusive of taxes, EDC, /IDC, power backup charges, IFMS, IFCRF, FFC, AC, ECC, PLC, taxes and such other charges etc. as applicable and more particularly defined the said MOU dated 01.10.2020.
- V. That as per the payment plan opted by the complainants. They were supposed to make payments towards EDC/IDC as and when demanded by the respondent as well as were supposed to make a payment of Rs.1,74,900/-at the time of completion of retail super structure. It was well within the knowledge of the complainants that at the time of the signing of the MOU, the retail super structure was already completed in 2020 and therefore, they were liable to make payment as per schedule- 1 of the MOU dated 01.10.2020.
- VI. That in view of the schedule-1 of the MOU, the respondent along with the MOU raised a demand dated 02.09.2022, towards EDC/IDC and payment of Rs.11,19,993.97/- being balance of the agreed sales consideration plus taxes. That the demand letter dated 02.09.2022 was handed over to the complainants by hand at the time of execution of the MOU itself. That a request was made by the phone, complainants that they shall pay the dues as per the demand of Rs.11,19,993.97/-time of the execution of the agreement to sale and the respondent company as a goodwill gesture agreed to the same.
- VII. That the respondent as per the MOU executed between the parties, the complainants were duty bound to make payment towards the demand

- dated 02.09.2022. Despite regular follow ups, the complainants failed to come forward to clear their dues, due to which the respondent are constrained to issue a last and final opportunity letter dated 02.09.2022 to the complainants, requesting them to come forward and clear their dues.
- VIII. That instead of coming forward to clear their dues, the complainants rather chose to send a reply letter dated 02.09.2022 to the respondent company. The said letter was duly replied to by the respondent vide reply letter dated 14.09.2022 wherein the respondent again requested the complainants to come forward and clear their dues, but to no avail.
- IX. That despite several opportunities, the complainant failed to come forward to clear their dues and the respondent was therefore constrained to issue a termination letter dated 02.09.2022 to the complainants. It is submitted that the post cancellation, there is no amount that is liable to be refunded to the complainants.
- X. That on account of the willful breach of the terms of the MOU by failing to clear the outstanding dues despite repeated requests, the respondent was constrained to terminate the allotment of the unit. They have till date made a payment of Rs.16,43,000/- including GST of Rs.1,30,783/-. That the termination has been done in accordance with article 1.5 of the MOU entered between the parties. The respondent has not acted beyond the scope of the MOU dated 01.10.2020 executed between the parties. In terms of the termination letter, the unit of the complainants stand cancelled, and the complainants have no right whatsoever over the said unit.
- XI. That the respondent has incurred various losses/damages on account of the breach of the terms of the MOU by the complainants, which the complainants are liable to pay as per the terms of the allotment. Further in accordance with the provisions of the MOU, the earnest money amount

- along with the brokerage, HVAT and interest on outstanding payment and other applicable charges, if any, are liable to be forfeited.
- XII. That the present complaint has been filed with total disregard to the terms of the MOU executed between the parties. The default of the complainants in making the payment towards the amount due, amounts to default as per the MOU. The complainants, thus in an attempt to avoid the consequences of the breach of the MOU, have filed the present malafide complaint and thereby in essence, the quashing of the terms and conditions of the MOU. Respondent is acting as per the terms and conditions of the MOU executed between the parties.
- XIII. That all the demands by the respondent are as per schedule of payment opted by them. Hence, being totally aware about the payment as per the payment plan, the complainants intentionally failed to make timely payments and therefore are a chronic defaulter and are liable to pay interest to the respondent for the delay in payment under section 19(6) of the Act of 2016 which states that the complainants are responsible to make necessary payments in the manner and within time as specified in the MOU and in case of default the complainants are liable to pay interest for delay under section 19(7) of the Act of 2016.
- XIV. That the present complaint is also not maintainable since the complainants are seeking relief in the nature of specific performance of the contract for which this Authority does not have the jurisdiction. That it is further submitted that Article 1.5 of the MOU specifically provided for timely payment of the demands and was determinable in nature. Section 14 of the Specific Relief Act clearly provides for the nature of a contract which cannot be specifically enforced and includes a contract which is in its nature 'determinable'. The relief of setting aside of cancellation and

restoration of the agreement even on the finding that the breach was committed by the alleged complainants is contrary to the mandate is Section 14 of the Specific Relief Act. The grant of this relief in the present matter cannot be sustained.

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 submissions made by the parties.

E. Jurisdiction of the Authority:

8. The authority has complete territorial and 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)(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.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent company to return the amount received from the complainant with interest @24% per annum.

14. In the present complaint, the subject unit was booked by the complainants by paying booking amount of Rs.5,00,000/- in the project of the respondent namely, "Park street", Sector 85, Gurugram, Haryana. The complainants booked a unit vide booking application form dated 04.10.2014, and were allotted a unit bearing no. T-02, second floor in the said project. The complainants have paid an amount of Rs.5,00,000/- and Rs.1,43,000/- on 13.10.2014 and 19.07.2015 respectively. After, a delay of more than 6 years, the respondent company issued allotment letter on 01.10.2020 in respect of the above mentioned unit for a sale consideration of Rs.25,31,598/-, and on the same day, a memorandum of understanding was executed between the parties for the allotted unit. Thereafter, the complainants paid an amount of Rs.10,00,000/- on 01.10.2020. Though, no buyer's agreement was executed between the parties. Later on, the respondent has cancelled the unit of the complainants vide cancellation letter dated 02.09.2022, and stating that "*we offer you one last and final opportunity to clear your outstanding dues within 10 days from the date of this letter failing which, the provisional allotment of your unit shall be cancelled and it shall be deemed as default on your part and the company shall invoke*". Thereafter, the complainants replied to the said letter on 14.09.2022, and asked some queries in respect of the said project and the allotted unit and the execution of the buyer's agreement. The respondent

company has failed to reply to the same. Accordingly, the complainants failed to abide by the terms of the booking application form executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule.

Now, the question before the authority is whether this cancellation is valid or not?

15. The authority has gone through the payment plan, which was duly signed by both the parties, which is reproduced for ready reference: -

Plan-A, Installment Payment Plan

Construction Schedule	All payment are inclusive of BSP
At the time of booking	10% of BSP
Within 45 days of booking	10% of BSP
On start of Excavation	10% of BSP
On start of Casting of foundation	10% of BSP
On casting of 2 nd Basement Floor Slab	7.5% of BSP + 25% EDC & IDC
Rest as per construction schedule to be decided by the company	45% of BSP + 75% EDC & IDC + 100% PLC
At the time of offer of possession	5% of BSP + IFMS + Power backup + Electric Connection Charges + Air Conditioning charges + IFCRF + Specification Charges + Registration Charges, Stamp duty and other charges as applicable

16. In the present case, the complainants booked the aforesaid unit under the above mentioned payment plan and paid an amount of Rs.16,43,000/- against the total consideration of Rs.25,31,598/- which constitutes 64.89% of the total sale consideration and they have paid the last payment on 01.10.2020. In the instant matter, even after lapse of 8.2 years from the date of first payment till the filling of the present complaint, no buyer's agreement has been executed inter- se parties. The respondent has failed to state reasons as to the non-execution of the buyer's agreement and the authority in a rightful manner can proceed in light of the judicial precedents established by higher courts. When the terms and conditions exchanging (agreement) between parties omits to specify the due date of possession, the reasonable period should be allowed

for possession of the unit or completion of the project. The respondent instead of executing buyer's agreement in terms of the Act of 2016, has executed MOU on 01.10.2020, which is also does not specify the due date of handing over of possession and is also not as per the model agreement to sell provided under the Act and the Rules, thereby violating the provisions of the Act of 2016.

17. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the complainant/allottee. Further, the Hon'ble Supreme Court in the case of **Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018** observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.*

18. In view of the above-mentioned reasoning, the date of signing of booking application form, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 04.10.2017. Further, 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. It is pertinent to mention over here that even after a passage of more than 9.2 years from the date of booking, 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. Further, the authority observes that the respondent has failed to execute the buyer's agreement as per the model agreement provided in Real Estate Regulation and Development Rules, 2017 in according to section 13(1) of the Act, 2016 the respondent shall not accept a sum more than ten percent of the cost of the apartment, plot or building, as an advance payment or an application fee, from a person without first entering into a written agreement for sale. Whereas, in the instant matter the respondent has taken 64.89% of the consideration in the year 2020, without executing the BBA. The relevant section of the Act is as follows: -

"Section 13. No deposit or advance to be taken by promoter without first entering into agreement for sale.

A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."

19. The respondent instead of executing buyer's agreement in terms of the Act of 2016, has executed MOU on 01.10.2020, which also does not specify the due date of handing over of possession and is also not as per the model agreement to sell provided under the Act and the Rules, thereby violating the provisions of the Act of 2016. The respondent has failed to issue any demand cum reminder letters for making outstanding dues as well as status of the construction of the project. Moreover, the cancellation letter dated 02.09.2022, was issued by the respondent without issuing any prior reminder cum demands letter. It is a well settled law that ***"No one can take benefit out of his own wrong"***. In view of the above-mentioned fact, the said cancellation

letter is hereby declared invalid by the authority. 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.

20. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by her along with interest prescribed 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.

21. 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.
22. 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., 11.01.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
23. The definition of term 'interest' as defined under section 2(za) 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;"*

24. 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 allottee 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....."

25. 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."

26. 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.
27. 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*.
- F.II To restrain the respondent from taking any coercive action against the complainants due to non-payment of balance disputable demand.**
- F.III Direct the respondent company not to charge GST/Service Tax;**
28. In view of the findings detailed above on issues no. 1, the above said relief become redundant as the complete amount paid by the complainants is being refunded back.

F.IV Direct the respondent company to get the project registered.

29. The project namely "Park Street" was registered under section 3 of the Act of 2016 vide registration number 41 of 2019 dated 30.07.2019, which was valid up to 31.12.2021. Thereafter, the completion date was extended of the said registration certificate vide number 07 of 2023 dated 10.04.2023, which also expired on 30.06.2023. Since the occupation certificate of the project has not been received till now therefore, the promoter is liable to further extension of the said project. Accordingly, the planning branch is directed to take the necessary action as per provisions of the Act of 2016.

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 i.e., Rs.16,43,000/- received by it from the complainant 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. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant and even if, any transfer

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is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee-complainant.

31. Complaint stands disposed of.
32. File be consigned to registry.

Dated: 11.01.2024

v.1 - 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM