

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

Complaint no.: 3748 of 2021
First date of hearing: 22.11.2021
Date of decision: 06.03.2024

Gurpreet Singh Kalsi

R/o: - H-092, DLF New Town Heights, DLF Garden City,
Sector-91, Gurugram, Haryana-12250

Complainant

Versus

1. M/s Agrante Developers Private Limited.
Office address:- 704, DLF Tower-B, Jasola, New
Delhi-11004
2. Arvinder Singh
Address:- House No. 253, Janakpuri, Bareli (U.P.)
3. Yuvraj Singh
Address:- House No. 253, Janakpuri, Bareli (U.P.)
4. Narendra Kumar Gupta
Address:- 146-R, Model Town, Karnal, Haryana.
5. Indiabulls Housing Finance Limited
Address:- M-62 & 63, First Floor, Connaught Place,
New Delhi- 110001

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Kuljeet Singh Proxy (Advocate)

Complainant

None for the respondent no. 1 to 4

Ms. Simran Proxy counsel on behalf of the India Bulls

Respondents

R-5

ORDER

1. The present complaint has been filed by the complainant/allottees 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. 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:

S. N.	Particulars	Details
1.	Name of the project	"Beethoven's 8", Sector- 107, Gurgaon
2.	Nature of project	Group housing complex
3.	RERA registered/not registered	Not Registered
4.	DTPC License no.	23 of 2012 dated 23.03.2012
	Validity status	Not available on record
	Name of licensee	Narendra Kumar Gupta & others
	Licensed area	18.0625 acres
5.	Unit no.	Harmony-I K/E/1803 (As on page 36 of complaint)
6.	Unit area admeasuring	2261 sq. (As on page 36 of complaint)



7.	Allotment letter	18.03.2016 (As on page 32 of complaint)
8.	Date of execution of buyer's agreement	18.03.2016 (As on page 34 of complaint)
9.	Possession clause	Clause 18(a) <i>Subject to other terms of this Agreement/Agreement, including but not limited to timely payment of the Total Price, stamp duty and other charges by the Vendee(s), the Company shall endeavor to complete the construction of the Said Apartment within 42 (Forty-two) months from the date of Allotment, which is not the same as date of this Agreement. The Company will offer possession of the Said Apartment to the Vendee(s) as and when the Company receives the occupation certificate from the competent authority(ies). Any delay by the Vendee(s) in taking possession of the Said Apartment from the date of offer of possession, would attract holding charges @ Rs.05/- (Five) per sq. ft. per month for any delay of full one month or any part thereof. (Emphasis supplied)</i>
10.	Due date of possession	18.09.2019 (Calculated 42 months from date of allotment)
11.	Total sales consideration	Rs.1,68,93,513/- (As on page 33 of complaint)
12.	Amount paid by the complainant	Rs. 72,18,179/- (As per ledger account on page 19 of reply)
13.	Quadra-partite Agreement	18.03.2016

14.	Loan sanction letter	25.03.2016 (As per page 72 of complaint)
15.	Details of subvention scheme	Subvention period from 01.04.2016 to 31.03.2019 (Page 71 of the complaint) Date of commencement of borrower liability to pay Pre-EMI interest on balance term of loan from 01.04.2019
16.	Offer of possession	Not offered
17.	Occupation certificate	Not received
18.	Legal notice sent by the complainant to the respondent for refund on	13.07.2020

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

- I. That the Complainant is a citizen of India and is constrained to file the present complaint for the acts and omissions of the Respondents which amounts to deficiency in service, breach of terms, and conditions of the contract, unfair trade practice and the residential project in question was to be developed by the respondent no. 1 and 2. Respondent no. 3 and 4 will be referred to as the 'Owner'. Respondent no. 1 is controlled and managed by the respondent no. 2 to 4. Respondent no. 5 is a finance company working in collusion and hand in gloves with the owner and respondent no. 1-4/developer.
- II. The respondent no. 1 to 4/Developer had widely advertised sale of ultra-modern residential Flats Beethoven's 8, situated at Sector-107, Gurgaon in Haryana. The advertisement was also circulated by the Respondent no. 1-4/Developer through their accredited agents. The



Respondent no. 1-4/Developer claimed himself to be a reputed builder engaged in the business of real estate and was developing a project under the name and style of Beethoven's 8 in Sector-107, Gurgaon.

- III. That the Complainant was attracted by the advertisement issued by the Respondent no. 1-4/Developer. The Respondent no. 1-4/Developer gave an assurance to the Complainant that the Flat would be under Subvention Plan and amount of the Flat would be paid by the Complainant only after the delivery of possession of the flat. Such an advertisement and assurance were actually misleading and amounts to unfair trade practice. That on false assurance given by the Respondent no. 1-4/Developer in collusion with the respondent no. 5, the Complainant agreed to purchase Apartment in Beethoven's 8 project for a total sale consideration of Rs. 1,61,66,985/-.
- IV. That as per the terms and conditions of the Agreement dated 18.03.2016 the Respondent no. 1-4 had to complete the project within stipulated period of 42 months. The Respondent no. 1-4 had to hand over exclusive vacant possession within 42 months and on failure the Respondent no. 1-4 had agreed to tender a refund of the amount collected along with interest and compensation. The Respondent no. 1-4 had to handover possession by September 2019 which he has failed to.
- V. That the Respondent no. 1-4 as preplanned vide letter dated 18.03.2016 granted permission to mortgage the subject flat to the respondent no. 5, the Indiabulls Housing Finance Ltd. The Respondent no. 1-4 gave NOC to the respondent no. 5 for mortgaging

the Flat allotted to Complainant by way of security for repayment of the loan. On 18.03.2016 the Respondent no. 1-4-raised a demand of Rs. 51,57,406/- as per payment plan.

VI. That pursuant thereto a Quadripartite Agreement dated 18.03.2016 was executed inter se the Respondent no. 1-4, Developers/Owners of the land and confirming party to the project, Mr. Yuvraj Singh and Mr. Narendra Kumar Gupta, the respondent no. 5 and Complainant. The Quadripartite Agreement which was signed on 18.03.2016 was blank and it was filled up later on by the Respondent no. 1-4, the Developers/owners and Respondent no. 5 without the knowledge of Complainant. As per the terms and conditions of the said Quadripartite Agreement dated 18.03.2016 the Owners, i.e Mr. Yuvraj Singh and Mr. Narendra Kumar Gupta and Developers, Respondent no. 1-4, assumed the liability of payments of pre-EMI interest during the agreed subvention period (i.e. till the date of handing over possession) and on failure they agreed to indemnify the Respondent no. 5 to recover its losses. Under the Subvention Scheme till the construction is complete or intimation letter is issued to the Complainant to take possession of the flat, the Respondent no. 1-4/Developers and Owners would pay the Pre-EMI interest to Respondent no. 5.

VII. That all the respondents, i.e., the Respondent no. 1-4/Developers and Owners and the respondent no. 5, the financial institution, in connivance with each other bound Complainant who was going to book the flat under the above said project to borrow the loan from respondent no. 5. It is apparent from the fact that the respondent no.

- 5 first made Quadripartite Agreement dated 18.03.2016 then subsequently sanctioned the loan on 25.03.2016 and executed the Loan Agreement also dated 25.03.2016. Quadripartite agreement is also vague with blanks which were filled up later on. Respondent no. 5 has advanced disbursement facility to the Respondent no. 1-4/Developer on fake project at the cost of Complainant.
- VIII. That vide letter dated 07.04.2016 respondent no. 5 informed Complainant about disbursal of an amount of Rs. 13,87,261/- in its favour which is not understandable and another amount of Rs. 37,70,145/- in favour of the Respondent no. 1-4/Developer which is duly acknowledged by the Respondent no. 1, the Builder/Developer in its statement of account. Respondent no. 5 has disbursed the amount in mechanical manner in collusion with respondents without verifying the facts and monitoring the project.
- IX. That Complainant booked the subject flat in Beethoven's 8 project floated by the Respondent no. 1-4/Developer on assurance given by the Respondent no. 1-4/Developer and Owners that Complainant would get 85% of financial assistance from the respondent no. 5, the Indiabulls Housing Finance Limited and Complainant would not have to pay any instalments or interest prior to the possession of the flat. Complainant attracted by the assurances given by the Respondent no. 1-4 in collusion with the respondent no. 5 and deposited a sum of Rs. 20,00,000/- of his hard earned money at the beginning of his career.
- X. That on the basis of composite proposal as given by the Respondent no. 1-4, i.e. Flat was covered under Subvention Scheme Payment Plan and Home loan was available from the respondent no. 5 and no EMI's

to be paid by Complainant till the date of handing over possession, Complainant was allured by unfair trade practice adopted by the respondents with false assurances and vide application dated 13.02.2016 applied for allotment of an apartment in the proposed unit no. Harmony- 1 K/E/1803.

- XI. That Complainant came to know about connivance amongst all the respondents when on 09.08.2017 he received a mail from the respondent no. 5 for submission of mandate as a repayment towards Complainant loan account from bank account of Complainant. Complainant immediately vide email dated 10.08.2017 apprised respondent no. 5 that the subvention scheme is valid till date of possession, therefore, Complainant need not have to initiate an ECS registration. A copy of the mail was sent to the Respondent no. 1-4 also. It was also informed that the subvention period can be extended if the Respondent no. 1-4 would fail to hand over the possession by March 2019.
- XII. That respondent no. 5 informed Complainant vide email dated 27.02.2019 that the subvention period was getting over and EMI would be debited from Complainant's account. Complainant on receipt of said mail sent a mail to the respondent no. 5 that according to the then interaction of Complainant with the Respondent no. 1-4, Complainant was informed by the Respondent no. 1-4 that request for extension of subvention period has been forwarded to respondent no. 5, therefore, in view of that the respondent no. 5 was apprised/notified that account of Complainant should not be get debited from May'2019 onwards. But the respondent no. 5 jointly and

severally in connivance and collusion with the Respondent no. 1-4 started auto debiting from account of Complainant the amount towards EMI from 10.05.2019 till date and as well as overdue charges for the default committed by the Respondent no. 1-4.

XIII. That the Respondent no. 1-4 in connivance with the Respondent no. 5, took advance money from Complainant in account of Flat but also received the loan amount under Advance Disbursal Facility and thereafter even not started the project and there is no sign of its completion also. In terms of the Agreement to Sale dated 18.03.2016 the Respondent no. 1-4 has also not refunded the amount deposited by Complainant on breach of the terms and conditions of the Agreement. The Respondent no. 1-4 Developer along with Owners of the property Mr. Yuvraj Singh and Mr. Narendra Kumar Gupta, the Respondent no. 3 & 4 not paid any amount to the Respondent no. 5 which amounts to improper business practice.

XIV. That initially vide Statement of Account/Ledger Account of the Respondent no. 1-4, it has taken an amount of Rs. 51,57,406/- on 29.04.2016 in collusion with the Respondent no. 5 from the loan account of the Complainant, per force opened by them by giving allurements that till the date of handing over possession the Complainant does not have to pay a single penny. Respondent no. 1-4/Developer and Owners in collusion with the Respondent no. 5 have taken substantial amount as mentioned above against total sale consideration of Rs.1,61,66,985/-. The respondents are illegally enjoying the benefits arising out of the amount paid by the Complainant as well as advance amount taken by the Respondent no.

1-4/Developer and Owners from the loan of an amount of Rs. 1,25,01,069/- taken in the name of Complainant from the Respondent no. 5 under Quadripartite Agreement, without discharging legal obligation. Now as per the Agreement dated 18.03.2016 and Quadripartite Agreement dated 18.03.2016, the Respondent no. 1-4/Developer and the Owners are jointly and severally liable to return the entire principal amount and loan amount disbursed in their favour from the loan account maintained by the Respondent no. 5 in the name of Complainant, with interest and compensation.

XV. That Complainant has suffered to its detriment by paying a huge sum of Rs. 20,00,000/- from his own hard-earned savings with no returns and an amount of Rs. 37,70,145/- and an amount of Rs. 13,87,261/- from the loan account of Complainant with the Respondent no. 5 on false assurances and undertakings given by the respondents. Now, during this pandemic the respondent no. 5 is deducting EMI from the reduced salary of the complainant which has brought him to severe hardship to make both ends meet along with his advanced age parents with medical ailments.

XVI. That the complainant has served a legal notice dated 13th July 2020 on the respondents for refund of entire amount paid by the Complainant and disbursed from the loan account of the Complainant with interest. The Respondent no. 5 is also notified not to recover any loan amount from Complainant's Bank Account Which Respondent no. 5 is liable to recover from the Respondent no. 1-4/Developer and owners who are the principal debtors and beneficiaries of the advance disbursed by respondent no. 5 from the Home Loan Account

no. HHLGRG00266773. The Respondent no. 5 is also notified to take all steps to remove the name of Complainant from the defaulters list of CIBIL. The Respondent no. 5 is also notified to refund the EMIs and paid overdue charges of an amount of Rs. 14,33,842.40/- taken from Complainant's account for EMIs @ Rs.45,558/- for the month of May 2019 and June 2019 and Rs.51,838/- from July 2019 to August 2021 (March 2021 @ Rs. 45,691.40/-) together with reasonable interest and the Respondent no. 1-4/Developer and the Owners are notified to return the advance amount availed by them from the Respondent no. 5.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s)
 - I. Direct the respondent no. 1 to 4/Builder and Owners to pay principal amount of 85,91,248.40/- with interest @ 24% p.a. from various date of payment till the date of filing of the complaint.
 - II. Direct the respondents to pay interest on the principal amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) (General) Rules, 2016 as framed under Section 84 of the Real Estate (Regulation and Development) Act, 2016 from the date of filing of the complaint and further till the date of its payment.
 - III. Direct the respondents to pay an amount of Rs. 25 lakhs towards damages for the loss of opportunity to acquire suitable alternative site as well as for harassment.

D. Reply filed by the respondent

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

- I. That as per the pleadings of the Complainant it seems that the cause of action first arose in favor of the Complainant when he alleges that possession was not offered on the due date i.e., December, 2017. The Complainant has filed the present complaint after a lapse of more than 3 years now at the time when the possession is about to be offered with all necessary adjustments.
- II. The Complainant herein has admittedly pleaded that the complainant had applied for home loan of INR. 68,50,000/- out of which Rs.55,00,000/- was disbursed by Housing Development Finance Corporation as housing loan that was sanctioned to the Complainant however the Complainant has sought the repayment of EMI to bank against all the due and overdue bank instalments without filing any documentary proof that the complainant has repaid the said amount along with interest to Housing Development Finance Corporation. That the Respondent, as per the mutual understanding with the complainant, has been duly complying and paying the interest/Pre Emi to India Bulls Housing Finance on behalf of the Complainant however some of the payments are pending owing the COVID-pandemic. The Respondent agrees have the dues cleared if the Complainant withdraws the complaint and opts for transfer of his unit to Tower-H.
- III. It is submitted that Tower-H of the project is ready and the construction of the building structure comprising fourteen floors is completed. The necessary electrical wiring and works pertaining to plumbing and sanitation are also ready. It is submitted that the Promoter would be in a position in all probability to offer possession

of the flats in Tower-H in 6-7 months from the date of filing of the present reply. The promoter has incurred and utilized his own funds and loans towards construction of the project and if the complaints pertaining to refunds are entertained at this stage it would jeopardize the fate of the project which would consequently hamper the valuable rights of the other allottees of the project. The Promoter is in the process of applying for Occupation Certificate for Tower- H. The promoter is willing to adjust for the interest components as computed for delay in offering possession towards the balance sale consideration of the Complainant as the promoter will offer possession in Tower-H to the Complainant. That the statement of objects, reasons and preamble of the Act makes it manifestly clear that it is not only the interest of the consumers of the real estate sector which the Act seeks to protect and safeguard but also the promotion of the real estate with a view to ensure sale of plot, apartment etc.

- IV. The Authority is empowered not only to monitor the projects but also to ensure their timely completion where projects are held up or stopped and to take steps so the same are completed in time and in the interest of the allottees who are awaiting possessions of the units in the project. It is not out of place to mention here that due to pending registration of the project with the Authority the Promoter since the implementation of the Act was unable to raise funds from its existing customers nor it could raise finance by selling unsold inventory. The shortage of funds to enable rapid construction had been a determining factor for the delay as it slowed down the pace of

construction considerably. It is reiterated that the Promoter is undertaking costs of constructions from its own pockets and is not demanding anything from the allottees, an act which is unprecedented by any other real estate company and it is now for this Authority to balance the interest of the consumers and the promoters harmoniously to achieve the maximum good and benefits.

V. That lastly it is submitted that the crisis of COVID-19 pandemic has also given a blow to smooth working of the promoter. It is pertinent to mention here that during the lockdown imposed by the Central Government, the workforce at the project site left for their homes and there was a complete halt in the work which added to further delay. It was after sincere efforts of the promoter that the workforce could be again mobilized and presently the works are being carried out at the site. That without prejudice to the above it is submitted that the contents of reply filed by the Respondent to the Complaint may kindly read as part and parcel to this reply and the same are not repeated herein for the sake of brevity.

6. 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

7. 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

8. 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

9. 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.

10. 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.
11. 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."

12. 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 objection raised by the respondent:

F.I Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

13. The Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.)**

no. 88/2020 and LAS 3696-3697/2020 dated 29.05.2020 has observed as under:

69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

14. In the present case also, the respondents were liable to complete the construction of the project and handover the possession of the said unit by 18.09.2019. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant

- G.I** Direct the respondent no. 1 to 4/Builder and Owners to pay principal amount of 85,91,248.40/- with interest @ 24% p.a. from various date of payment till the date of filing of the complaint.
15. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of

subject unit along with interest 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)

16. Clause 18(a) of the agreement provides for handing over of possession and is reproduced below:

"18(a).

*Subject to other terms of this Agreement/Agreement, including but not limited to timely payment of the Total Price, stamp duty and other charges by the Vendee(s), the Company shall endeavour to complete the construction of the Said Apartment **within 42 (Forty-two) months from the date of Allotment**, which is not the same as date of this Agreement. The Company will offer possession of the Said Apartment to the Vendee(s) as and when the Company receives the occupation certificate from the competent authority(ies). Any delay by the Vendee(s) in taking possession of the Said Apartment from the date of offer of possession, would attract holding charges @ Rs.05/- (Five) per sq. ft. per month for any delay of full one month or any part thereof.*

17. 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.
18. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the prescribed rate of interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him 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.

19. 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.
20. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 06.03.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
21. 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;"*
22. 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 18(a) of the agreement dated 18.03.2016, the possession of the subject apartment was to be delivered within a period of 42 months from the date of allotment which is not the same as date of this agreement. The due date is calculated 42 months from date of allotment i.e., 18.03.2016. Accordingly, the due date of possession comes out to be 18.09.2019. It is pertinent to mention over here that even after a passage of more than 8 years (i.e., from the date of BBA/allotment till date) 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 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 42% of total consideration till today. 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.

23. 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....."

24. 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."

25. 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.

26. 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 deposit till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. Further, the respondent/promoter is directed to clear the loan amount first and then pay the remaining amount to the complainant. The respondent was also liable to pay Pre-EMI to the bank in terms of quadra-partite agreement.


D. Directions of the authority

27. 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 respondents/promoters are directed to refund the entire paid-up amount i.e., Rs.72,18,179/- 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. Out of total amount so assessed, the amount paid by the bank/financial institution shall be refunded first and the balance amount along with interest if any will be refunded to the complainant. Further the respondent no.1 /promoter is directed to provide the NOC (No due certificate) to the complainant after getting it from the respondent no.5.
 - iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - iv. The respondent builder is directed not to create third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.
28. The complaint stands disposed of.
29. File be consigned to registry.

Dated: 06.03.2024



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram