

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

Date of decision: 29.02.2024

NAME OF THE BUILDER		AGRANTE Reality Private Limited.	
PROJECT NAME		BEETHOVENS 8	
S. No.	Case No.	Case title	APPEARANCE
1	CR/3041/2021	Sumit Mitra V/s Agrante Reality Private Limited and Agrante Reality Private Limited and HDFC Bank Limited.	Sh. Shambo Nandy Advocate and Sh. Tarun Vishwas Advocate
2	CR/3049/2021	Shreya Nandy through its power of attorney holder, Sreerupa Chowdhary V/s Agrante Reality Private Limited and Agrante Reality Private Limited and HDFC Bank Limited.	Sh. Shambo Nandy Advocate and Sh. Tarun Vishwas Advocate

**CORAM:**

Shri Vijay Kumar Goyal

**Member****ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.





2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Beethovens 8" (Group Housing Colony) being developed by the same respondent/promoter i.e., M/s **Agrante Reality Private 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 and the compensation.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	<b>AGRANTE REALITY PRIVATE LIMITED "BEETHOVENS-8" SECTOR-107, GURUGRAM.</b>		
<b>Possession Clause</b>	<p>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 <u>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.</u> 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."</p> <p style="text-align: right;"><b>(Emphasis supplied)</b></p>		
<b>Occupation certificate: - Not obtained</b>			
<b>S. NO.</b>	<b>Complaint No. &amp; Case Title</b>	<b>CR/3041/2021</b>	<b>CR/3049/2021</b>
1.	<b>Reply status</b>	Sumit Mitra V/s Agrante Reality Private Limited and Agrante Reality	Shreya Nandy through its power of attorney holder, Sreerupa Chowdhary

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		Private Limited and HDFC Bank Limited Reply received by R1 on 22.09.2022	V/s Agrante Reality Private Limited and Agrante Reality Private Limited and HDFC Bank Limited Reply received by R1 on 28.09.2022
2.	<b>Unit no.</b>	Symphony-J/D/1802 [pg. 14 of complaint]	Minor-H/A/805 [pg. 12 of complaint]
3.	<b>Date of execution of buyer's agreement</b>	16.10.2014 [pg. 13 of complaint]	24.09.2014 [pg. 11 of complaint]
4.	<b>Due date of possession</b>	16.04.2018 [Due date calculated from date of agreement i.e., 16.10.2014]	29.03.2018 [Due date calculated from date of agreement i.e., 29.09.2014]
5.	<b>Total Consideration / Total Amount paid by the complainant(s)</b>	<b>TSC: Rs.1,72,34,475/- AP: Rs.68,42,797/-</b>	<b>TSC: Rs.88,20,500/- AP: Rs.34,92,895/-</b>
6.	<b>Relief sought</b>	<ol style="list-style-type: none"><li>1. Direct the respondent to refund the entire amount paid along with interest.</li><li>2. Direct the Respondent to refund the Home Loan EMI that is being deducted every month from the Complainant's bank account till the loan is closed along with interest calculated as per Rule of the 2017.</li><li>3. Compensation &amp; cost of litigation.</li></ol>	<ol style="list-style-type: none"><li>1. Direct the respondent to refund the entire amount paid along with interest.</li><li>2. Direct the Respondent to refund the Home Loan EMI that is being deducted every month from the Complainant's bank account till the loan is closed along with interest calculated as per Rule of the 2017.</li><li>3. Compensation &amp; cost of litigation</li></ol>

4. The aforesaid complaints were filed by the complainant(s) against the promoter on account of violation of the buyer's agreement executed between the parties in respect of said unit for not handing over the

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possession by the due date, seeking award of refund the entire amount along with interest and compensation.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/3041/2021 titled as Sumit Mitra V/s Agrante Reality Private Limited and Agrante Reality Private Limited and HDFC Bank Limited*** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.

**A. Project and unit related details**

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

***CR/3041/2021 titled as Sumit Mitra V/s Agrante Reality Private Limited and Agrante Reality Private Limited and HDFC Bank Limited***

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

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	Name of licensee	Narendra Kumar Gupta & others
	Licensed area	18.0625 acres
5.	Unit no.	Symphony-J/D/1802 [pg. 14 of complaint]
6.	Unit area admeasuring	2585 sq. ft. [pg. 15 of complaint]
7.	Date of builder buyer agreement	16.10.2014 [pg. 13 of complaint]
8.	Total sale consideration	Rs.1,72,34,475/- [pg. 22 of complaint]
9.	Amount paid by the complainant	Rs.68,42,797/-
10.	Possession clause	<p><b>Clause 18(a)</b> <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 <b>within 42 (Forty-two) months from the date of Allotment, which is not the same as date of this Agreement.</b> 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.</i></p> <p><i>(Emphasis supplied)</i></p> <p>[pg. 29 of complaint]</p>

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11.	Due date of possession	16.04.2018 [Due date calculated from date of agreement i.e., 16.10.2014]
12.	Delay in handing over possession till the date of filing of this complaint i.e., 10.08.2021	3 years 3 months 25 days
13.	Settlement agreement	22.01.2019 [pg. 46 of complaint]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

### B. Facts of the complaint

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

- a. That the complainant was on the lookout for a suitable accommodation which would meet their housing needs for the next few decades. While searching for such a home, the complainant was persuaded and induced by the wide publicity made by the respondent in the year 2013-2014 promising an unmatched lifestyle and timely execution of the project and ultimately they paid a visit to the project site.
- b. That the respondent represented to the complainant that it was planning the construction and development of a group housing colony known as 'Beethoven- 8' vide collaboration agreements with its associates/subsidiary companies in reference to the land admeasuring 18.0625 Acres falling in Sector 107, Gurgaon under the revenue estate of village Dharampur, Tehsil and Distt. Gurgaon (Haryana) and that the legal formalities with respect to the right, title and interest of the company regarding the said land on which 'Beethoven's 8' is to be constructed have been completed.

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- c. That based on the assurance and such representation of the respondent, he approached the respondent showing interest for purchase of an apartment in the project 'Beethoven's 8' being unit no. Symphony J/D/1802 of the respondent and booked an apartment admeasuring 2585 sq. ft. for a sale price of Rs.1,72,34,475/- (calculated at the rate of Rs.5,950/- per sq. ft.). Although the apartment was booked on 31.07.2014, by paying an amount of Rs.18,60,800/-, the agreement to sell was executed on 16.10.2014, i.e., 2.5 months after from the date of booking the said unit.
- d. That upon perusal of the apartment buyer's agreement, the complainant realized that various terms and conditions of the apartment buyer's agreement were wholly one-sided, unfair, unreasonable and unconscionable. The said agreement further provided that the booking amount shall be treated as earnest money. The said agreement further provided that if the vendor cancels the agreement of sale, he shall give due notice to the other parties to the agreement to sale and tender a refund of the amount collected along with simple interest at such rate as may be agreed *but not more than 7% per annum*. The payment was to be made as per the plan attached with the agreement.
- e. The agreement to sale that the vendee will complete the project within the stipulated period of 42 months except influence by *force majeure*. However, if the vendor fails to perform its obligation, under this agreement he shall give due notice to the vendee and tender a refund of the amount collected along with *simple interest at such rates as may be agreed but not more than 7% per annum*.

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- f. That for the purpose of financing the present project, the complainant availed a subvention loan by way of a quadripartite agreement dated 16.10.2014 executed between the complainant, respondent and the financial institution i.e., Housing Development Finance Corporation Ltd.
- g. That as per the agreement, the respondent had agreed and undertaken to deliver the possession of the apartment within 42 months from the date of allotment. When calculated from 16 October 2014 (the date on which the agreement was executed), the said 42 months ended on 16.04.2018 and even the grace period of 180 days ended on 16.10.2018. Although the said deadline has long since been past, there has been no sign of the respondent being in a position to offer the unit for possession. Seeing no signs of the respondent handing over the possession of the apartment, the complainant had no option but to seek an exit from the project and accordingly tried to contact the respondent but to no avail.
- h. Despite inducing the complainant to enter into a settlement agreement, the respondent did not honour any of its obligations under the said agreement. As per the settlement agreement, the respondent agreed to pay the interest on the disbursed amount directly to the bank till handing over the possession. However, the respondent has neither handed over the possession nor paid interest.
- i. That despite a passage of a year from the dispatch of the said notice, the respondent has failed to refund the amounts paid along with interest and the EMI that it had failed to pay directly to the bank. Although the respondent was supposed to pay the subvention interest and EMI directly to the HDFC bank, it failed in its obligations as a result of which the HDFC bank started levying additional interest on the complainant.

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In June 2021, the complainant received an email from the HDFC Bank wherein he was informed that an amount of Rs.10,92,732/- was due to it in the form of outstanding EMIs, Additional interest and incidental charges. To avoid grave repercussions, the complainant had no choice but to pay the said amount from his own pocket. In such a manner, the complainant has therefore paid, either on his own or through his Bank, a sum of Rs.68,42,797/- to the respondent.

- j. Hence, the complainants are constrained to approach this Authority seeking refund of the amounts paid by them along with interest as per rule 15 of the Rules, 2017.

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

9. The complainant has sought following relief(s)
- Direct the respondent to refund a sum of Rs.68,42,797/- along with interest along with interest calculated as per Rule 15 of Rules, 2017.
  - Direct the respondent to refund the home loan EMI that is being deducted every month from the complainant bank account till the loan is closed along with interest calculated as per rule 15 Rules, 2017.
  - Direct the respondent to pay a sum of Rs.5,00,000/- as litigation cost.
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 respondent no. 1.**

11. The respondent no. 1 has contested the complaint on the following grounds:
- That at the very outset it is most respectfully submitted to this Authority that the answering respondent i.e., M/s Agrante Realty Ltd is a company



incorporated under Companies Act and represented by its authorised representative Shri Satish Kumar duly authorised vide board resolution dated 12.09.2022 to file the present reply to the complaint. The complaint admittedly pertains to the project "Beethoven's 8" located at Sector 107, Village Dharampur, Gurugram. The respondent is not the "promoter" as defined under section 2 of the Act, 2016. The respondent company is not the entity who has or is developing the land for the said project. The answering respondent company is merely a sister company of the promoter company with its separate existence and is engaged in other projects. Further, the agreement to sell dated 20.06.2014 executed by the complainant is not with the respondent company. The legal notice dated 24.11.2020 issued by the complainant as annexed in complaint is perhaps sent to the promoter i.e., M/s Agrante Developers Pvt Ltd ("promoter") of the project however the complainant seems to inadvertently arrayed the answering respondent company in the present complaint.

- b. That the complainant has filed the present complaint seeking refund of amount deposited with M/s Agrante Developers Pvt. Ltd. in lieu of unit booked in "Beethoven's 8" project of the respondent company. The complainant has availed subvention scheme and financed the consideration amount from HDFC Bank and an amount of Rs.52,92,846/- was disbursed by HDFC bank to M/s Agrante Developers Pvt Ltd on behalf of the Complainant. A quadripartite agreement was executed by the complainant, HDFC and the promoter wherein in clause 13 the complainant has subrogated his rights to seek refund from M/s Agrante Developers Pvt. Ltd. in case of withdrawal from the project in favour of HDFC bank. As per the said clause M/s Agrante Developers Pvt. Ltd. is



liable to refund the sums received including the sum received from complainant to HDFC Bank. Therefore, HDFC as lender is a necessary party to the complaint and should be arrayed as a party. The complainant either array HDFC as a necessary.

- c. That as per the pleadings of the complainant it seems that the cause of action first arose in favour of the complainant when he alleges that possession was not offered on the due date i.e., 16.04.2018. The complainant has filed the present complaint after a lapse of 3 years now at the time when the possession is about to be offered with all necessary adjustments. He has enjoyed the benefits of remissions of PRE-EMI's by M/s Agrante Developers Pvt Ltd on behalf of the complainant to HDFC Bank who is the lender of the complainant as per the quadripartite agreement annexed with the Complaint for almost 4 years now. It is pertinent to mention that M/s Agrante Developers Pvt. Ltd. has been sincerely remitting the said interest amount on behalf of the complainant with the firm belief that the complainant would take possession of the unit. M/s Agrante Developers Pvt Ltd has till date paid Rs.37,84,999/- as Pre-EMI to HDFC bank on behalf of the complainant and after four years the complainant has sought to withdraw from the project and full refund of the amounts paid. M/s Agrante Developers Pvt. Ltd. has paid more than twice the amount as Pre EMI than what it has received from the complainant. It is submitted that M/s Agrante Developers Pvt. Ltd. has with its own contributions has completed the project milestones and if at this stage after incurring heavy expenses on account of Pre EMI if refund with interest is ordered then M/s Agrante Developers Pvt. Ltd. and the fate of the project will be highly jeopardized. This Authority may kindly



- consider the interest of the promoter as well and issue orders which harmonises the interests of allottees and promoter which in turn saves the project by ensuring completion along with interest of other allottees who wish to continue with the project.
- d. That the promoter has not demanded or is in receipt of more than 40% of the total sale consideration of the proposed apartment from any allottee and is undertaking the cost of construction from its own pocket. The promoter is taking all measures to complete the project with procuring necessary approvals from the competent authority.
- e. That the Tower-J is ready and the construction of building structure comprising of twenty-three floors is almost completed. It is submitted that the promoter would be in a position in all probability to offer possession of the flats in Tower-H in 10-12 months from the date of filing of the present reply. The promoter has incurred and utilised 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 project. 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-J to the complainant.
- f. 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. The Authority is empowered not only to monitor the projects but also

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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.

- g. That M/s RMS Estate Pvt. Ltd. now known as "Agrante Developers Pvt. Ltd." was granted development license from Director Town and Country Planning, Haryana ("DTCP") for development of land spread over a total area of 18.0625 acre of land on which the present project is being developed. The said license was granted on 27.03.2012 and was valid for 4 years.
- h. That subsequent to grant of the above license the promoter had executed a development/collaboration agreement dated 23.05.2013 with M/s Sarvaram Infrastructure Pvt. Ltd. ("collaborator"). An area measuring 10.218 acres out of the aforesaid total land was handed to the collaborator with absolute and exclusive rights for the purposes of developing the same. It is pertinent to mention here that M/s Sarvaram

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Infrastructure Pvt. Ltd. himself or through his nominee had proposed to build a separate project namely "ELACASSA" on that parcel of land with which the promoter has no association whatsoever. Thus, resultantly there were two projects being developed under the same license by two distinct colonizers with rights and liabilities strictly framed under the said collaboration agreement. It would not be out of place to mention here that such agreements were in common practice then.

- i. The development/collaboration agreement dated 23.05.2013 stipulated strict liability on M/s Sarvaram Infrastructure Pvt. Ltd. or his appointed nominee to be in compliance of all statutory compliances, bye-laws applicable as per HUDA, DTCP etc. as applicable for his parcel of land. M/s Sarvaram Infrastructure Pvt. Ltd. was further under the obligation to remit all the dues accrued to governmental authorities arising under the agreement for the portion of land with the collaborator under the agreement.
- j. That M/s Sarvaram Infrastructure Pvt. Ltd., however, started defaulting in his compliance of statutory duties and contractual obligations. The promoter had on several occasions issued written requests and even served legal notices to M/s Sarvaram Infrastructure Pvt. Ltd. to rectify the said defaults *inter-alia* payment of EDC and IDC charges. The promoter had taken every step to ensure compliance of statutory obligations as non-compliance by M/s Sarvaram Infrastructure Pvt. Ltd. would directly prejudice the promoter's project completion having the common license. It is submitted that the license for the land lapsed due to non-renewal, and it cannot be renewed until outstanding EDC & IDC charges along with penalty is not cleared for the total land jointly by the promoter and M/s





Sarvaram Infrastructure Pvt. Ltd. in proportion to their respective projects. Needless to mention here that the promoter is ready and willing to pay its share of EDC and IDC charges for the purposes of renewal of license.

- k. That the bona-fides of the promoter can be further gathered by the fact that the promoter is running post to pillar and has filed a representation before financial commissioner (Haryana) seeking a bifurcation of the license in two parts for two projects respectively and pursuing the same sincerely. It is pertinent to mention that only after renewal of license the promoter will be competent to obtain RERA registration. The promoter has undertaken every possible measure in his armory to salvage the project and complete the same. The process for bifurcation of license is still under consideration.
- l. It is submitted that the promoter has filed for HRERA registration vide order letter dated 09.08.2018 of its project on the said land which was to be with the applicant as per the agreement. The fate of the application is dubious and is still pending as the aforesaid license has lapsed and does not exist anymore as on date and further, EDC and IDC charges are unpaid which were to be paid by the M/s Sarvaram Infrastructure Pvt. Ltd. It is pertinent to mention here that the directors of M/s Sarvaram Infrastructure Pvt. Ltd. are lodged in jail presently. The promoter is crippled in the sense that he is unable to correspond with them, which could perhaps lead to some fruitful results. Moreover, insolvency proceedings are pending against them before the Hon'ble National Company Law Tribunal.

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- m. It is submitted that due to non-registration with HRERA the promoter is unable to sell its proposed units in its project. More particularly the applicant is crippled financially as no demand can be raised by the promoter from its existing members. It is to be kindly considered by this Hon'ble Court that the promoter has accordingly not raised a single demand from its members and has not collected more than 40% of total sale consideration of a unit from any of its members. On the contrary the promoter has undertaken the tedious task of completing the construction of the project from its own finances and loans so as to offer possession and is also remitting the interests on subvention scheme on behalf of customers so as to protect them from further loss. The overall conduct of the promoter plays a vital part in deciding the complaint such as the present one. The promoter is faced with peculiar circumstances which would require mutual co-operation from its members.
- n. That, it would be of high importance to mention one similar complaint filed with this Authority wherein similar issues were being adjudicated. The Authority under HARERA had the opportunity to deal with similar complex issued faced by developers in respect of the licensed land wherein the original licensee had further sub-divided the land for development purposes on the basis of collaboration agreements. This Authority in complaint no. 826/2018, 1402/2018, 1343/2018, 1344/2018 had passed common orders. The issues in these complaints were similar to the applicant's issues. In this case also the original licensee M/s Triveni Ferrous Infrastructure Pvt. Ltd. a joint venture comprising of two groups Seth and Mittal Group who had subsequently divided/assigned development/marketing rights into five separate lands

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holding to be developed separately pursuant to which similar issues arose which are being faced by the applicant. This Authority in that complaint had passed its conclusions and recommendations, particularly the recommendation to Town and Country Planning Department, Haryana stressing the grave importance that DTCP must divide license into five parts. Once the license is bifurcated separate RERA registration would be permissible besides this Hon'ble Authority had also pertinently recommended that DTCP should defer recovery of their overdue EDC so as to leave some cash flow in the hands of the developers for investing in the project. Therefore, the promoter prays with folded hands to refer the present matter to the Authority in light of the aforementioned case law as cited so that similar recommendations can be issued on behalf of the promoter to Town and Country Planning Department, Haryana. It is submitted that such recommendations would be in parlance with the statutory duty of the Authority in section 32 of the Act which states the functions of the Authority for promotion of the real estate sector.

- o. 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.
12. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

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13. In both the complaints, the counsel for the complainant moved an application during proceeding dated 15.12.2022, with regard to impleadment of respondent no. 2 i.e., M/s Agrange Developers Private limited and the respondent no. 3 i.e., HDFC Bank Limited along with amended memo of parties. The same has been taken on record. During proceeding dated 15.02.2022, the counsel for the respondent was no objection of the said application. In view of the same, the application for impleadment of respondent no. 2 and 3 was allowed. Further, respondent no. 2 and 3 failed to put in appearance before the authority and has also failed to file reply. In view of the same, the matter is proceeded ex-parte against respondent no. 2 and 3.

**E. Jurisdiction of the authority**

14. 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**

15. 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**

16. 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:

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**Section 11**

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(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.

17. 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.
18. 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

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*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."*

19. 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 no. 1**

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

20. 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."*

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 16.04.2018. 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

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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 to refund a sum of Rs.68,42,797/- along with interest along with interest calculated as per Rule 15 of Rules, 2017.**

**G.II Direct the respondent to refund the home loan EMI that is being is closed along with interest calculated as per rule 15 Rules, 2017.**

21. In the present complaint(s), 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. Clause 18(a) of the agreement provides for handing over of possession and is reproduced below:

***"18(a).***

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*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."*

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

25. 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.
26. 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., 29.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
27. 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—*

*R*



- (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;"*

28. 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 of the agreement dated 16.10.2014, the possession of the subject apartment was to be delivered within a period of 42 months from the date allotment which is not the same as date of this agreement. The due date is calculated 42 months from date of buyer's agreement i.e., 16.10.2014. Accordingly, the due date of possession comes out to be 16.04.2018.
29. It is pertinent to mention over here that even after a passage of more than 9.4 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 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 91% of total consideration till 2015. 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

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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 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....."*

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*

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*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 complainant is 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 (Inadvertently mentioned as date of surrender i.e., 09.05.2018 in proceeding dated 29.02.2024) till its realization after adjustment of amount paid by the respondent on account of Pre-EMI from the refundable amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
34. Out of total amount so assessed, the amount paid by the bank i.e., respondent no. 3 be refunded first in the bank and the balance amount along with interest if any will be refunded to the complainants.



**F.III. Direct the respondent to pay a sum of Rs. 5,00,000/- as cost of litigation.**

35. The complainant in the aforesaid relief is seeking relief w.r.t compensation *Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021)*, has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the authority**

36. 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):
- The respondent/promoter is directed to refund the paid-up amount 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 deposit till its realization and the amount paid by the respondent towards Pre-EMI shall be adjusted in above refundable amount.
  - Out of total amount so assessed, the amount paid by the bank i.e., respondent no. 3 be refunded first in the bank and the balance amount along with interest if any will be refunded to the complainant.

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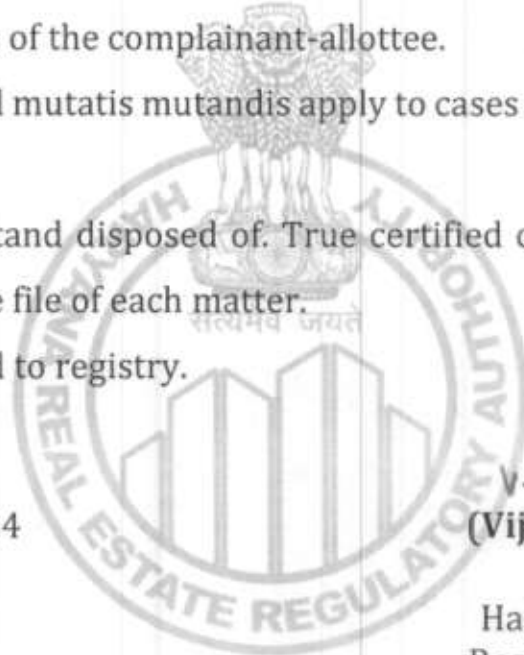


**HARERA**  
**GURUGRAM**

Complaint No. 3041 of 2021  
& 3049 of 2021

- 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.
37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
38. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
39. Files be consigned to registry.

Dated: 29.02.2024



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

**HARERA**  
**GURUGRAM**