

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

**Complaint no.:** 4127 of 2022  
**Date of decision:** 20.03.2024

Meena Dhandhanian  
**R/o:** - D N Singh Road, Sujanganj, Bhagalpur,  
Bihar-812002.

**Complainant**

Versus

M/s Newlook Builders & Developers Private Limited.  
**Office address:-** 115, Ansal Bhawan, 16, K.G Marg,  
New Delhi-110001.

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Nitin Jaspal  
Shri. Nitin Harsh Gupta

Complainant  
Respondent

**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:

Sr. No.	Particulars	Details
1.	Name of the project	"Sovereign Floors, Esencia", Sector-67, Gurgaon, Haryana.
2.	Project Area	2.165 acres
3.	Nature of project	Residential
4.	DTCP license no.	Licence no.- 26 of 2012 Dated- 27.03.2012
5.	RERA registered	Registered 313 of 2017 dated 17.10.2017
6.	Unit no.	D-1570FF, Floor-1 <sup>st</sup> , Block-D (As on page no. 22 of complaint)
7.	Unit area	2198.00 sq.ft. (As on page no. 22 of complaint)
8.	Allotment letter	07.06.2013 (As on page no. 15 of complaint)
9.	Date of execution of buyer's agreement  (Note:- Between complainant and M/s Ansal Phalak Infrastructure Pvt. Limited)	22.06.2013 (As on page no. 18 of complaint)

10.	Possession clause	<p><b>Clause 5 POSSESSION OF FLOOR</b></p> <p><i>5.1 Subject to Clause 5.2 infra and further subject to all the buyers of the Floors in the Residential Colony making timely payment, the Company shall endeavor to complete the development of Residential Colony and the Floor as far as possible <b>within 36 months with an extended period of (6) six months from the date of execution of this Floor buyer agreement subject to the receipt of requisite building/ revised building plans/other approvals &amp; permissions from the concerned authorities</b>, as well as Force Majeure Conditions as defined in the agreement and subject to fulfilment of the Terms and Conditions of the Allotment, Certificate &amp; Agreement including but not limited to timely payments by the Buyer(s), in terms hereof. The Company shall be entitled to extension of time for completion of construction of the Unit equivalent to the period of delay caused on account of the reasons stated above. No claim by way of damages/compensation shall lie against the Company in case of delay in handing over possession of the Unit on account of the aforesaid reasons.....(to be continued)</i></p> <p>[Emphases supplied] (As on page no. 29 of complaint)</p>
11.	Due date of possession	<p>22.06.2016</p> <p>(Grace period of 6 months not included)</p>

12.	Total consideration	Rs.1,64,59,550/- (As per customer ledger dated 26.07.2022 on page no. 65 of reply)
13.	Total amount paid by the complainant	Rs.1,39,22,807/- (As per customer ledger dated 26.07.2022 on page no. 65 of reply)
14.	E-mails sent by complainant seeking status of the project	15.07.2018 13.10.2018
15.	Occupation certificate	Not received
67.	Offer of possession	Not offered

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- I. The respondent launched a project under the name and style of "Sovereign Floors, Esencia" at sector-67, Gurugram and were marketing and publicizing to attract prospective buyers through various mediums.
  - II. That the complainant after going through the prospectus of the project, decided to book a residential unit in the said project for a total sale consideration of Rs.1,55,00,000/- . On 07.06.2013 the unit was booked on construction link plan and duly signed allotment letter was issued in the name of the complainant.
  - III. At the time of booking, the complainant made a payment of Rs.16,55,731/-. And from time to time the respondent issued payment demands and the complainant made the payments. It is imperative to mention that all the payments were made in the name of "Ansal Phalak Infrastructure Pvt. Ltd." .



- IV. That on 31.03.2016 as per the demand of the respondent, the complainant paid an amount of Rs.1,23,04,632/-. The complainant in order to fulfil her part of obligation and making the balance payment took a home loan of Rs.16,19,549/- from ICICI Bank, which was sanctioned and the loan was then disbursed by the bank in the name of the respondent.
- V. That Builder Buyer Agreement was executed between the complainant and Ansal Phalak Infrastructure Pvt. Ltd. on 22.06.2013. As per clause 5.1 of the said agreement, the respondent was bound to handover possession of the unit within 36 months with an extended period of 6 months from the date of execution of the builder buyer agreement.
- VI. It is pertinent to mention that the work at the project site started with a very low pace. Upon noticing such delay in work the complainant started losing confidence upon the credibility of the respondent. For a long time there was no communication from the respondent about the progress of the project. When the complainant made verification about the progress of the said project, to the shock of the complainant, the said project was much delayed. But the respondent kept on demanding the instalments, keeping the complainant in dark about the actual progress of the unit.
- VII. That on 15.07.2018, the complainant's husband Mr. Atul Dhandhanian then wrote an e-mail enquiring about the delivery and status of the construction. The said e-mail was then replied by the respondent on 16.07.2018 in the most vague manner and with an

apology for the delay and committing of giving delay penalty as mentioned in the agreement.

- VIII. Thereafter, also the respondent was not only callous in attitude but was nowhere giving the clear picture to the complainant. Hence, on 13.10.2018 the complainant's husband wrote an email explaining therein that the purpose of buying the flat failed as the respondent failed to fulfil the commitment and sought refund of he paid amount.
- IX. That vide email dated 12.08.2019 the complainant again stated that the construction work is not operational since two years and again asked for refund of the her money. But the respondent neither replied nor adhered to the email.
- X. The complainant and her husband has been continuously also writing whatsapp messages to the executives of the respondent to adhere to the terms of the builder buyer agreement. Hence, this complaint.

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

4. The complainant has sought following relief(s)
- I. Direct the respondent to refund the amount paid by the complainant alongwith interest.

**D. Reply filed by the respondent**

5. The respondent had contested the complaint on the following grounds:
- I. That the name of the respondent i.e., Ansal Phalak Infrastructure Pvt. Ltd. has been changed to "New Look Builders and Developers Pvt. Ltd." on 23.10.2020. The respondent is engaged in the business of construction and development of real estate projects.

- II. It is humbly submitted that the complainant has arrayed "Ansal Phalak Infrastructure Pvt. Ltd." as the respondent in the present complaint. However, the name of "Ansal Phalak Infrastructure Pvt. Ltd." was changed to "New Look Builders and Developers Pvt. Ltd." on 23.10.2020. Hence, the present complaint is not maintainable for mis-joinder of parties and same is liable to be dismissed with exemplary cost upon the complainant the aforesaid reason alone.
- III. That complainant was allotted the said unit vide allotment letter dated 07.06.2013 and the floor buyer agreement was executed on 22.06.2013 for a basic sale price of Rs.1,55,00,000/- .
- IV. That in terms of clause No. 5.1 of the flat buyer agreement, the respondent undertook to complete the construction of the unit and to deliver its possession to the complainant within forty two months from the date of execution of the flat buyer agreement i.e. 22.12.2016 or from the date of receiving the approval of the building plan from the Department of Town and Country Planning, whichever is later.
- V. That till date the complainant has paid Rs.1,29,29,466/- towards the basic sale price of the unit, Rs.5,14,104/- towards the external development charges , Rs.3,86,918/- towards the preferential location charges and Rs.92,318/- towards the interest for delayed payment as per the flat buyer agreement.
- VI. It is pertinent to mention that the construction of the unit is already complete and the respondent has applied for the occupancy certificate of the said unit vide its letter dated 27.09.2022 before Department of District Town Planner, Gurugram. However, till date



the occupancy certificate has not been issued. That as on date, the unit is complete in all aspect and the respondent has already offered possession to the complainant subject to payment of the due after adjustment of the delay possession charges in terms of the floor buyer agreement. Therefore, in such circumstances where the construction of the unit is already complete and the consideration paid by the complainant in lieu of the floor buyer agreement has been utilized in construction of the unit, the direction for refund of the consideration paid by the complainant towards the unit would be against the interest of justice and settled proposition of law.

- VII. It is submitted that due to license granted for additional land, the layout plan of the housing project developed by the respondent was changed which led to delay in certain approvals from competent authorities and consequently caused delay in the construction of the said project. It is most respectfully submitted that many of the buyers who have booked the Flats/Villa in the project have defaulted in making the timely payment and therefore also the project was delayed.
- VIII. It is submitted that non-payment of the instalments by the allottee is a 'force majeure' circumstance, as stated in Clause 5.2 of the floor buyer agreement. Furthermore, the other reasons for delay in project are stoppage of construction activities in NCR region by the orders of Court, non-availability of construction material and labour, demonetisation of currency and change of tax regime, implementation of GST, implementation of nationwide lockdown to contain the spread of 'Covid-19', etc. Moreover, all these situations



and adverse conditions are force majeure circumstances which are beyond the control of the respondent.

- IX. Furthermore, it is pertinent to state that the said project of the respondent is reasonably delayed because of 'force majeure' situation which is beyond the control of the respondent. Vide clause 5.2 of the flat buyer agreement, the complainant has agreed and duly acknowledged that in case the development of the said unit is delayed for any reasons beyond the control of the company, then no claim whatsoever by way of any compensation shall lie against the respondent.
- X. Other than the above reasons, the delay in handing over the possession of the unit has been caused due to the various reasons which were beyond the control of the respondent. Following important aspects are relevant which are submitted for the kind consideration of the authority:
- i. **Non-booking of all Floors/ Units seriously affected the construction:-** It is submitted that the global recession badly hit the economy and particularly the real estate sector. The construction of project is dependent on the monies received from the bookings made. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated at the time of launch of the project. The reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the



project, resulted in less cash flow to the respondent. Hence, causing delay in the construction work of the project.

- ii. **Other various challenges being faced by the respondent:** The following various problems which are beyond the control of the respondent seriously affected the construction;
- a. Lack of adequate sources of finance;
  - b. Shortage of labour;
  - c. Rising manpower and material costs;
  - d. Approvals and procedural difficulties.
- XI. In addition to the aforesaid challenges the following factors also played major role in delaying the offer of possession;
- a. There was extreme shortage of water in the region which affected the construction works.
  - b. There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln.
  - c. Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labor.
  - d. Recession in economy also resulted in availability of labour and raw materials becoming scarce.
  - e. There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM);



- f. Direction by the National Green Tribunal & Environmental authorities to stop the construction activities for some time on regular intervals to reduce air pollution in NCR region.
- XII. It is pertinent to mention here that the construction of the project was stopped several times during the year 2016, 2017, 2018 and 2019 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India. It is most respectfully submitted that due to the increase in the level of pollution in the NCR region, the Hon'ble Supreme Court vide its order dated 14.11.2019 passed in the matter of "MC Mehta Vs Union of India & Others" bearing Writ Petition (c) No. 13029/1985 imposed complete ban on construction and excavation work across the National Capital Region from 04.11.2019, which was ultimately lifted on 14.02.2020. Ban on construction caused irreparable damage to the delivery timelines and the real estate developers' finances as the respondent was not able to undertake any construction work during the aforesaid period and the same was beyond the control of the respondent.
- XIII. All the above stated problems are beyond the control of the respondent. It may be noted that the respondent had at many occasions orally communicated to the complainant that if the respondent is unable to construct the unit, it shall offer another residential unit of a similar value for which the allottee shall not raise any objections.
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 force majeure.**

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 respondent was liable to complete the construction of the project and handover the possession of the said unit by 18.09.2019. It is claiming the 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 to refund the amount paid by the complainant alongwith interest.**

15. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her 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 5.1 of the agreement provides for handing over of possession and is reproduced below:

***"5.1***

*Subject to Clause 5.2 infra and further subject to all the buyers of the Floors in the Residential Colony making timely payment, the Company shall endeavour to complete the development of Residential Colony and the Floor as far as possible within 36 months with an extended period of (6) six months from the date of execution of this Floor buyer*

*agreement subject to the receipt of requisite building/revised building plans/other approvals & permissions from the concerned authorities, as well as Force Majeure Conditions as defined in the agreement and subject to fulfilment of the Terms and Conditions of the Allotment, Certificate & Agreement including but not limited to timely payments by the Buyer(s), in terms hereof. The Company shall be entitled to extension of time for completion of construction of the Unit equivalent to the period of delay caused on account of the reasons stated above. No claim by way of damages/compensation shall lie against the Company in case of delay in handing over possession of the Unit on account of the aforesaid reasons. However, if the Buyer(s) opts to pay in advance of schedule, a suitable discount may be allowed but the completion schedule shall remain unaffected. The Buyer(S) agrees and understands that the construction will commence only after all necessary approvals are received from the concerned authorities and competent authorities including but not limited to Environment & Forest.*

*[Emphasis supplied]*

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 complainant 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 allottee 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 allottee intends to withdraw from the project and is seeking refund of the amount paid by her 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., 20.03.2024 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 5.1 of the agreement dated 22.06.2013, the possession of the subject apartment was to be delivered within a period of 36 months with an extended period of 6 months from the date of execution of the floor buyer agreement. The due date is calculated 36 months from date of the agreement dated 22.06.2013. Accordingly, the due date of possession comes out to be 22.06.2016. It is pertinent to mention over here that even after a passage of more than 7 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 her and for which she has paid a considerable amount of money towards the sale consideration. It is also

to mention that complainant has paid almost 80% 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 is 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 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....."*

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 allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as she wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received 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 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 till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**E. 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 respondent/promoter is directed to refund the entire paid-up amount i.e., Rs.1,39,22,807/- 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 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: 20.03.2024

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