

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

Complaint no.: 3458 of 2022
First date of hearing: 14.07.2022
Date of decision: 18.01.2024

Tanuj Shori
R/o: - House No. G-30, 1st Floor, Vikas puri,
New Delhi- 110018

Complainant

Versus

M/s Agrante Reality Limited.
Office address:- DTJ-704, 7th Floor, DLF
Tower-B, Jasola, New Delhi - 110025

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Mohd Absar Ahmad (Advocate)
Shri. Tarun Biswas (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions 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, date of proposed handing over of 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.	H/A/0801 [Page no. 21 of complaint]
6.	Unit area admeasuring	1300 sq. ft. (As alleged by the complainant in his brief facts)
8.	Allotment letter	Not annexed
9.	Date of buyer agreement	Not annexed
11.	Total sale consideration as alleged by the complainant	Rs.82,35,000/- [page no. 18 of complaint]
12.	Amount paid by the complainant as per sum of receipts	Rs.29,26,041/-
13.	Possession clause	<i>Not known</i>
15.	Due date of delivery of possession calculated as per <i>Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>	19.10.2016 (Note:- calculated from the 3 years from the date of first payment i.e., 19.10.2013)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
 - a. That the respondent had represented to be a reputed professional builder who piously construct and completes their projects with strict adherence to

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the terms and conditions agreed with its customers, and deliver the agreed accommodations by strict timelines. Further, they had allured the complainant with the representation that they used to undertake to pay the penalty to its customers, in case of failure to deliver the possession of the accommodation within agreed time period.

- b. That the respondents through various social media platforms had approached the complainant with a proposal to sell flats in one of their projects namely "Beethoven 8", wherein the complainant was interested in the said project and thereby was allotted a flat bearing flat no. H/A/0801, in Beethoven 8 Sector 107, Gurugram, Haryana admeasuring area of 1300 sq. ft. It is stated that the respondent no. 1 through respondent no. 2 had represented that they have obtained all the necessary and license for the development and construction of said group housing complex and the same has been issued by DTCP Haryana vide license no. 23 dated 23.03.2012 and building plans are approved vide Memo No. ZP810/AD (RA)2013/28905 dated 17.01.2013. Further the respondents had assured that the they have owned, seized and possessed the said project land and entitled to develop and construct and further have a right to sell and deal with the said project land. (**Note:** - As per proforma -B and the memo of parties in the present complaint, the complainant has made the respondent no. 1 only M/s Agrante Reality Limited)
- c. That believing in the representations of the respondent to be true and correct, complainant had agreed to take the above mentioned unit with proportionate share in common areas, passages, lobbies, staircases and other areas of common use in the said project and the complainant made a payment of Rs.29,26,041/- as booking amount towards the total sale consideration amount to the respondents and the respondent provisionally

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allotted the said flat to the complainant after execution of the application for allotment for sale. It is stated that after several requests and follow ups the copy of the said application for allotment of sale was never provided by the respondents.

- d. That as per the terms and conditions of the executed documents, the respondents had to handover the possession of the said flat within 42 months from the date of booking i.e. 19.10.2013, even after several requests the respondents did not provide with the copy of allotment letter.
- e. That it is stated that despite receiving huge sums towards the sale consideration of the said flat, the respondents failed to handover the physical possession of the said flat within the stipulated time period as mentioned in the clauses. It is further stated that time is the essence of such agreements and there has been no modification with regard to the said clauses and the respondent have failed to adhered to the terms and conditions stipulated under the agreements and has blatantly breached the terms of the agreement. That till date the complainant has sent several mails but the respondents have neither handed over the possession of the said flat nor have refunded the amounts as paid by the complainant.
- f. That the said act and conducts of the respondents falls in the categorically of events of defaults and consequences mentioned in the agreement but the respondents failed to handover the possession of the said flat within the stipulated time period. As per the agreed terms, the respondents were bound to handover the said flat in a habitual condition which was complete in all respects. That the instant complaint is being filed by the SPA holder of the complainant.

- g. That it was mutually agreed that in case the respondents failed to handover the possession of the said flat within the stipulated time period as per the agreement then the respondent shall be liable to compensate the complainant @ Rs.7/- per sq. ft. of the super area and accordingly the due date of possession was 19.04.2017. Therefore, there is a clear delay of 53 months in handing over the possession and thereby the compensation amount comes to the tune of Rs.4,82,300/-.
- h. That the respondents failed to handover the possession of the said flat pursuant to which the complainant was forced to withdraw from the said project and issued a legal notice dated 22.10.2021 to that effect on the ground of delay of more than 53 months in handing over the possession of the said flat, and the respondents are bound to refund the amount so received along with the interest @ 9 % per annum on the said amount which comes to the tune of Rs.13,58,089/- under the provisions of the Act of 2016.
- i. The complainant as suffered a loss and damage in as much as he had deposited the money in the hope of getting the said Unit for commercial purposes. He has not only been deprived of the timely possession of the said Unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the BBA.
- j. That the complainant is the one who has invested his life savings in the said project and is dreaming of a space for himself and the Respondents have not only cheated and betrayed them but also used their hard earned money for their enjoyment.
- k. That the complainant being an aggrieved person filing the present complaint under section 31 with the Authority for violation/ contravention

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of provisions of this Act. As per section 18 of the Act 2016, the promoter is liable to refund the entire amount paid by the allottee of a unit along with prescribed rate of interest, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s)
 - a. Direct the respondent to make refund of the amount deposited by the complainants against booking of the allotted unit along with applicable interest from the date of deposit of the money till date of refund.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:
 - a. That the complainant unit is booked in tower-H, which is ready and the construction of a building structure comprising fourteen floors is completed. The necessary electrical wiring and works pertaining to plumbing and sanitation are also ready. The promoter would be in a position in all probability to offer possession of the flats in tower-H in 4-5 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 allottee(s) 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.

- b. 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 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 could it 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.
- c. That M/s RMS Estate Pvt. Ltd. now known as "Agrante Developers Private Limited" 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.



- d. 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 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.
- e. 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.
- f. 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-

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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.

- g. 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.
- h. 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.

- i. That due to non-registration with HARERA 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 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.
- j. 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 issues 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 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 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.

- k. 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.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

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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.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (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."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent:

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

14. 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."

15. 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 19.06.2016. 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 to make refund of the amount deposited by the complainants against booking of the allotted unit along with applicable interest from the date of deposit of the money till date of refund.

16. That the complainant made a payment of Rs.7,15,000/- dated 19.10.2013 and Rs.15,00,000/- dated 04.01.2014 and Rs.7,11,041/- dated 06.01.2014 totalling to the tune of Rs.29,26,041/- towards the total sale consideration to the respondent/promoter. The respondent issued a demand letter dated 11.12.2013, and mentioned a unit bearing no. H/A/0801, in the project of the respondent namely "*Beethoven 8*", situated in Sector- 108, Gurugram.

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Neither the respondent issued the allotment letter in respect of the aforesaid unit, nor the respondent execute the buyer's agreement of the said project till date. The complainant due to the neglectful behaviour of the respondent filed the present complaint pleading for refund along with interest before this authority. 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."

(Emphasis supplied)

17. The respondent has failed to state reasons as to the non-execution of the buyer's agreement and the authority in a rightful manner can proceed in light of the judicial precedents established by higher courts. When the terms and conditions exchanging (agreement) between parties omits to specify the due date of possession, the reasonable period should be allowed for possession of the unit or completion of the project.
18. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating

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the same to the complainant/allottee. Further, the Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018* observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.**

19. In view of the above-mentioned reasoning, the date of issuing of first payment, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 19.10.2016. Further, there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. It is pertinent to mention over here that even after a passage of more than 10.2 years (i.e., from the date of booking till date) neither the construction is completed 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.
20. **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 intends 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.

21. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
22. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 18.01.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
23. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

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the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

24. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainant is well within his right for seeking refund under section 18(1) of the Act, 2016.
25. During proceeding on 18.01.2024, the counsel for the respondent raised an objection that the receipt has been issued by the M/s Agrante Reality Limited, while the project is being development by M/s Agrante Developers Private Limited being a sister company. However the counsel for the complainant states that all payments were received by M/s Agrante Reality Ltd. and the demand letters were also issued by M/s Agrante Reality Ltd. and hence is solely responsible for refund of the amount deposited as till date neither unit is completed nor any offer of possession has been received by the complainant and hence the complainant is entitled for full refund along with interest on the amount deposited by him.
26. On the documents and submissions made by both the parties, the Authority observes that all the demand for various payment were raised against the allotted unit by respondent i.e., M/s Agrante Reality Limited and the receipts were also issued by the M/s Agrante Reality Limited. Thus, it shows that there is no privity of contract between the M/s Agrante Developers Private Limited and the complainant and as such the plea of the respondent is devoid of merits.
27. Moreover, the authority 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....."

28. 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."

29. 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). 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.
30. 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

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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*.

H. Directions of the authority

31. 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 is directed to refund the entire paid-up amount i.e., Rs.29,26,041/- 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.
32. The complaint stands disposed of.
33. File be consigned to registry.

Dated: 18.01.2024

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