

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

**Complaint no.:** 3222 of 2022  
**First date of hearing:** 22.09.2022  
**Date of decision:** 25.01.2024

Mr. Harish Bhatia and another

**R/o:** - House No. 95/2, Vasant Vihar, Dehradun,  
Uttarakhand - 248001

**Complainant**

Versus

1. M/s Agrante Developers Private Limited. (Formerly  
Known as M/s RMS Estates Private Limited) Through  
its Directors/Authorized Signatories

**Office address:-** DTJ-704, 7th Floor, DLF Tower-B,  
Jasola, New Delhi - 110025

2. Housing Development Finance Corporation Limited

**Office at:** - Raman House, 169 Backway Reclamation,  
H.T. Parekh Marg Na, Mumbai MH-400020

**Respondents**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Raghav Sharma (Advocate)

Complainants

Shri. Nishtha Jain (Advocate)

Respondents

**ORDER**

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and

functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Project and unit related details**

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

S. N.	Particulars	Details
1.	Name of the project	"Beethoven's 8", Sector- 107, Gurgaon
2.	Nature of project	Group housing complex
3.	RERA registered/not registered	Not Registered
4.	DTPC License no.	23 of 2012 dated 23.03.2012
	Validity status	Not available on record
	Name of licensee	Narendra Kumar Gupta & others
	Licensed area	18.0625 acres
5.	Unit no.	Harmony 1K/B/204, 2 <sup>nd</sup> Floor, of Beethoven's 8 [Page 48 of complaint]
6.	Unit area admeasuring	1702 sq. ft. [Page no. 48 of complaint]
7.	Date of booking application form	09.02.2014 (Page no. 29 of complaint)
8.	Allotment letter	20.08.2014 [Page no. 38 of complaint]
9.	Date of builder buyer agreement	20.08.2014 [Page no. 39 of complaint]
10.	Possession clause	<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</i>

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		<p><i>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.</i></p> <p><i>(Emphasis supplied)</i></p> <p style="text-align: right;"><i>[Page no. 32 of complaint]</i></p>
11.	Due date of possession	20.02.2018 [Due date calculated from date of allotment i.e., 20.08.2014]
12.	Total sale consideration	Rs.98,82,207/- [Page no. 48 of complaint]
13.	Amount paid by the complainant as alleged by the complainants	Rs.46,86,868/-
14.	Delay in handing over possession till the date of filing of this complaint i.e., 10.06.2022	4 years 3 months and 21 days
15.	Legal notice send by the complainant for seeking refund	15.12.2021 (Page no. 97 of complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

### B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
  - a. That the respondent no. 1 through various social media platforms had approached complainant with a proposal to sell flats in one projects

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namely "**Beethoven 8**", wherein complainant was interested in the said project and thereby was allotted a unit bearing no. Harmony-1 K/B/204 admeasuring 1702 sq. ft., in "Beethoven's 8, Sector 107, Gurgaon vide allotment letter dated 20.08.2014. That respondent no. 1 represented that the said project shall be developed and promoted by the respondent/promoter, however the payments shall be collected only in the favour of you the respondent/promoter.

- b. That the respondents stated and represented that they have already owned, seized and possessed the said project land and are entitled to develop and construct and further also have a right to sell and deal with the said project. That pursuant to the same a quadripartite agreement dated 02.07.2014 was entered into between complainant and respondent no. 1 namely M/s Agrante Developers Private Limited. (Formerly Known as M/s RMS Estates Private Limited and the owner of the land namely Sh. Yuvraj Singh authorized representative of R K Associates and the financial institution namely M/s Housing Development Finance Corporation Limited wherein it was agreed that the total sale consideration shall be a sum of Rs.98,82,708/- towards the sale of the said unit.
- c. That on basis of assurances and representations of respondents and continuous follow up by team members, complainant believing in the assurances of respondents and agreed to purchase the said flat in the said project for a total sale consideration amount of Rs.98,82,708/- and thereby made several payments from time to time as per the demands raised by the respondent no. 1 to the tune of Rs.46,86,868 towards the sale consideration inclusive of the loan amount of Rs.37,00,000/- that

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was released by the HDFC bank directly in the account of respondent no. 1.

- d. That as per the agreed terms and conditions and agreement to sale dated 02.07.2014 which was executed between the parties on dated 20.08.2014, respondents promised to deliver the peaceful physical vacant possession of the said unit to complainant within a period of 42 months from the date of allotment i.e. 20.08.2014. It was mutually agreed that in case of default by any of the parties the defaulting party shall pay a compensation amount to the tune of Rs.5/- per sq. ft. and interest to be calculated @ 8 % per annum on the entire amount (i.e., on the amount paid and the compensation amount).
- e. That after receiving almost half of the amount towards the entire sale consideration, respondents have failed to handover the peaceful physical vacant possession of the said flat as was promised and assured by it It is stated there is a continuous delay of more than 45 months in handing over peaceful physical vacant possession of the said unit and further upon several follow ups it has come to the knowledge of complainants that there is no ongoing construction at the said project.
- f. That it would not be out of place to mention here that the said agreements entered into were all invariably one sided, standard format agreements prepared respondents and which were overwhelmingly in favour of respondents with unjust clauses on delayed delivery. It is stated that complainant or any other individual purchasers had no scope or power to negotiate and had to accept these one sided agreements.
- g. That even after extreme persuasions and multiple reminders of complainant, neither respondents have handed over the peaceful physical vacant possession of the said flat nor have respondents

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released the outstanding dues pending and uprightly parted from lawful payables. That respondents still have not released the outstanding due that is still lying pending, hence instant complaint.

- h. That as per the section 18(1) of the Act of 2016, respondents have failed to fulfill promise and in view of the same complainants wish to withdraw and cancel the said unit in the said project on the ground of delay of more than 45 months in handing over of the peaceful physical vacant possession of the flat, unfair trade practice, unscrupulous exploitation of consumer, misleading representation, breach of trust and contract and false commitment and assurances under the Consumer Protection Act, 2019 and violation of several provisions of the Act of 2016. In view of the deliberate default, respondents are bound to release the outstanding dues.

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

4. The complainant has sought following relief(s)
- a. Direct the respondent to refund the entire paid amount along with interest.
5. The present complaint was filed on 10.06.2022 in the authority. On 10.01.2023, 18.05.2023, 12.10.2023, 04.01.2024 and 25.01.2024 the counsel for the respondent no. 1 put in appearance and was directed to file the reply within 2 weeks in the registry of the Authority. However, despite specific directions and providing an opportunity of being heard, no written reply has been filed by the respondent's no. 1. Thus, keeping in view the opportunity given to the respondent's no. 1, that despite lapse of more than 1.5 years the respondent has failed to file the reply in the

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registry. Therefore, in view of order dated 04.01.2024, the defence of the respondent no. 1 was struck off.

6. During proceeding dated 18.05.2023, the counsel for the respondent raised an objection that the complainant has availed the home loan and the financial institution has not impleaded as a party. The complainant was directed to implead the financial institution as a necessary party. In compliance of the order dated 18.05.2023, the complainant has filed an application for impleadment of the financial institution i.e., HDFC Bank and amended memo of parties. The same has been taken on record. Further, respondent no. 2 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.
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.

**D. 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.

**D.1 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

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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.

**D. II Subject matter jurisdiction**

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

**Section 11**

.....

(4) 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**

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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.

**E. Findings on the relief sought by the complainant**

**E.I Direct the respondent to refund the entire paid amount along with interest.**

14. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them 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***

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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)*

15. Clause 19(a) of the agreement provides for handing over of possession and is reproduced below:

**"18(a).**

*Subject to other terms of this agreement/agreement, including but not limited to timely payment of the total price, stamp duty and other charges by the vendee(s), the company shall endeavour **to complete the construction of the said apartment within 42 (forty-two) months from the date of start of construction 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."*

16. 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

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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.

17. **Admissibility of refund along with prescribed rate of interest:** The complainants are 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.*

18. 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

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reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

19. 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., 25.01.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
20. 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;"*

21. 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 19 of the agreement dated 25.11.2013, the possession of the subject apartment was to be delivered within a period of 42 months from the date of start of construction which is not the same as date of this agreement. The due date is calculated 42 months from date of buyer's agreement (in the absence of date of start of

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construction) i.e., 25.11.2013. Accordingly, the due date of possession comes out to be 25.05.2017. It is pertinent to mention over here that even after a passage of more than 10.1 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 allottees 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 41% of total consideration till 2016. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

22. 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....."*

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23. 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."*

24. 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.
25. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @

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10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of deposit till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid. Further, the respondent/promoter is directed to clear the loan amount first and then pay the remaining amount to the complainants.

**F. Directions of the authority**

26. 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.46,86,868/- received by it from the complainants along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual realization of the amount.
- ii. Out of total amount so assessed, the amount paid by the bank/payee be refunded first in the account of bank and the balance amount along with interest if any will be refunded to the complainants.
- 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 complainants. If any transfer is initiated with respect to the subject

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unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottees.

27. The complaint stands disposed of.

28. File be consigned to registry.

Dated: 25.01.2024

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram



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**GURUGRAM**