

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

<b>Complaint no.</b> :	<b>6845 of 2022</b>
<b>Date of filing complaint:</b>	<b>27.10.2022</b>
<b>Date of decision</b>	<b>30.01.2024</b>

Abhay Singh Mehta R/O: N-108 Panchsheel Park	<b>Complainant</b>
Versus	
M/S Dss Buildtech Pvt. Ltd. Regd. Office: 506, 5th Floor, Time Square Building, B-Block, Sushant Lok-1, Gurugram	<b>Respondent</b>

<b>CORAM:</b>	
Shri Arun Kumar	<b>Chairman</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Khush Kakra (Advocate)	Complainant
Sh. Harshit Batra (Advocate)	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 29 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 under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name of the project	"The Melia" Sector-35, Gurugram,
2.	Project area	17.41875
3.	Nature of the project	Residential
4.	DTCP License no. & validity status	77 of 2013 dated 10.08.2013 upto 09.08.2024
5.	Name of Licensee	Smt. Aarti Khandelwal and two others
6.	RERA Registered / not registered	Registered vide no. 288 of 2017 dated 10.10.2017
7.	RERA registration valid up to	30.01.2024 (Inadvertently mentioned in the proceeding of the day as 09.08.2024)
8.	Date of allotment letter	10.08.2015 (Annexure C of page 29 of the complaint)
9.	Unit No.	G-202 on second floor (Annexure C of page 29 of the complaint)
10.	Unit admeasuring	1350 sq. ft. (Annexure C of page 29 of the complaint)
11.	Date of apartment buyer agreement	25.04.2017 (Page 31 of the complaint)
12.	Possession clause	14.1 Subject to the terms hereof and to the buyer having complied with all the terms and conditions of this agreement, the company proposes to hand over possession of the apartment within a period of 48 months from

		the date of receiving the last of approvals required for commencement of construction of the project from the competent authority or the date of signing the agreement whichever is later.
13.	Date of approval of building plan	21.04.2016 (Taken from the project details)
14.	Date of environment clearance	20.09.2016 (Page 42 of reply )
15.	Date of consent to establish	12.11.2016 (Taken from the similar complaint of the same project)
16.	Payment plan	Construction linked payment plan
17.	Due date of possession	25.10.2021 (Calculated from the date of signing of the agreement being later plus six months of covid)
18.	Total sale consideration	Rs. 74,38,775/- (As alleged by the complainant in the fasct on page 16 of the complaint)
19.	Total amount paid by the complainant	Rs. 74,38,779 /- (As per applicant ledger dated 11.04.2022 on page 68 of the complaint)
20.	Occupation certificate	Not obtained
21.	Offer of possession	Not offered

### B. Facts of the complaint:

3. the complainant in the year 2013 was looking to purchase a residential property and approached by the respondent for purchasing of a unit in the residential integrated township being developed by the respondent named "The Melia" located at sector 35, Sohna, District Gurugram, Haryana. While

the complainant was looking for a unit to buy, the respondent approached him and made elaborate representations and promises about the project.

4. That based on the representations made by the respondent, the complainant booked a unit on 24.10.2013 by paying a substantial amount of Rs. 6,00, 000/- to the respondent. The booking of the unit made by the complainant was acknowledged by the respondent vide letter dated 09.11.2013. Only after collecting a substantial amount of Rs. 13,09,305/- and after an inordinate delay of almost 22 months from the date of booking of the unit, the complainant was allotted a unit bearing No. G-202 on 2<sup>nd</sup> Floor, in Tower-G, admeasuring 1350 sq. ft. vide allotment letter dated 10.08.2015. That the total sale consideration of the unit is Rs.74,38,775/-.

5. That even after 2 years, the apartment buyer agreement of the unit was not executed. The allotment letter provided by the respondent, had no terms and conditions mentioned pertaining to the allotment. The Complainant time and again requested the respondent to share with him the terms and conditions but with no results. After a delay of more than four years an apartment buyer agreement was executed on 25.04.2017. The buyer agreement issued by the respondent contained various one-sided, unilateral and arbitrary clauses, however, the complainant could not negotiate on any of them since the respondent had by then collected a substantial amount towards the consideration of the unit and any disagreement thereof would have led to the cancellation of the unit thereby forfeiture of the earnest money i.e., 10 % of the basic price of the Unit as per Clause 8.1 of the buyer

agreement. Thus, the complainant had no other option but to sign on the dotted lines of the buyer agreement.

6. That it is pertinent to mention that the agreement was filled with one-sided and arbitrary terms and conditions. For instance, the respondent had, as per clause 11.1.2 of the agreement, empowered itself that it can charge an interest @ 15% p.a. in case there is a delay in making payment by the complainant. However, in case there was a delay in delivering possession of the unit by the promised time period, the complainant, as per clause 16.1 of the agreement, was only entitled to receive a compensation at the rate of Rs. 10/- per sq. ft. of the super area of the apartment per month or part thereof subject to a maximum period of 12 months. Since, a significant amount of money had already been paid to the respondent; the complainant could not have negotiated the terms of the agreement due to the apprehension that his earnest money would be forfeited by the respondent.

7. That as per clause 14(1) of the agreement, the possession of the unit was to be delivered within 48 months with a further grace period of 180 days from the date of receiving the last approval required for commencement of construction of the project from the competent authority and or the date of signing the agreement whichever is later i.e., by 12.05.2021 as the last approval received by the Respondent was by the Haryana Pollution Control Board- Consent to Establish Certificate on 12.11.2016.

8. That the complainant sought regular updates from the respondent through several emails, meetings, and telephonic conversations, with respect to the

progress of construction work of the project and were assured that the same was progressing as per schedule and that possession of the unit would be offered within the time promised as per the agreement i.e. by March 2021. The respondent had collected a total amount of Rs. 74,38,779/- which is 100% of the sale consideration of the unit . However, the respondent failed to offer possession of the unit to the complainant within the time period stipulated in the agreement and even till date.

9. That the complainant had booked the Unit under a construction linked payment plan whereby the complainant was obligated to make payments as per the construction stages of the project The complainant in order to avoid defaulting in making payments had also availed a loan from the ICICI Bank for a sum of Rs. 50,00,000/-.

10. That the complainant repeatedly made several inquiries with respect to the construction status of the project vide several emails date 09.04.2021, 12.04.2021, 17.06.2021, 19.07.2021, 06.02.2020 and 28.02.2020, however, all the queries fell on the deaf ears. Since no proper response was made by the respondent, the complainant were forced to visit the project personally and to their utter shock, the complainant realized that the construction of the project is still incomplete and there is no possibility that the respondent would be able to complete the said project in near future.

11. That the possession of the unit was promised to be offered by 12.05.2021 but the same has not been done till date. The status of the project has not changed since 2019 and the respondent has only built the super structure of

the tower. That since a significant amount of money lies with the respondent, the complainant is thus hereby seeking refund of the amount paid by him along with prescribed interest.

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

12. The complainants have sought following relief(s):

- i. Direct the respondent to refund the amount paid by the complainant along with prescribed interest.
- ii. Direct the respondent to pay compensation of Rs. 5,00,000/- for mental agony ,harassment and discomfort and Rs. 2,00,000/- towards litigation cost.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions: -

13. That on 15.11.2013, the complainant has approached the respondent and submitted an application for booking a 2 bhk apartment admeasuring 1350sq. ft. at the basic sale price of Rs. 4750/- per sq. ft. plus other statutory charges and taxes applicable for the total sale consideration of Rs. 77,66,100/- and paid a sum of Rs. 6,00,000/- as booking amount. The complainant has agreed for the construction linked plan.

14. That the respondent obtained the Building Plan (BR-III) on 21.04.2015. It is pertinent to mention that clause 3 of the sanctioned Plan stipulates that the Developer shall obtain clearance/NOC from the Fire Department, Gurugram before starting the construction/execution of development works at site. Furthermore Clause 17 (iv) of the sanctioned Building Plan stipulated

that the Developer shall obtain an NOC from the Ministry of Environment & Forests as per provisions of the Notification No. S.O. 1533 9EI dated 14.09.2006 before starting the construction/execution of development works at site.

15. That vide allotment letter dated 30.07.2015 , a residential unit bearing no. G-2020 situated on the second floor of tower G , was allotted to the complainant in the said project. On 19.08.2015 the respondent herein sent two copies of apartment buyer agreement to the complainant for its execution however the same has not been executed by the complainant.

16. That the Fire Clearance/NOC was obtained by the company on 09.02.2016 and the same was submitted to DTCP Haryana. On 20.09.2016 the respondent received the Environmental Clearance from State Environment Impact Assessment Authority (SEIAA). Thereafter, in terms of the provisions of the Environmental Clearance dated 20.09.2016, the respondent herein applied for the 'Consent to Establish' from the Haryana State Pollution Control Board, and was granted the same on 12.11.2016.

17. That on 20.04.2017 the respondent herein again sent a letter and requested the complainant to return the signed copies of the agreement . On 25.04.2017 a builder buyer agreement was executed between the parties. As per clause 14.1 of the aforesaid buyer's agreement provides for the time and manner of handing over possession of the said unit to the complainants stating that the unit shall be handed over within a period of 48 months from the date of receiving the last of approvals required for commencement of



construction of the project or date of signing this agreement whichever is later. The last approval required for commencement of construction of project which is the consent to establish was obtained from Haryana State Pollution Control Board on 12.11.2016. Therefore the period of 48 months and grace period should be calculated from 12.11.2016.

18. That it is pertinent to mention that the said SBA expressly provides a force majeure clause. It is to be noted that the construction was banned for 163 days in the state of Haryana, details of which are provided hereinafter.

Dated	Authority	Order	Days
16.11.2021- 21.11.2021	CAQM Direction	All the construction activity in the entire NCR to remain closed	06 days
24.11.2021- 20.12.2021	Supreme Court Writ Petition (C) No. 1135/2020 r/w CAQM Direction	Ban imposed by Supreme Court on construction activities	26 days
23.03.2020 to 19.04.2020	Ministry of Home Affairs	Ban imposed by MHA due to covid 19 pandemic	27 days
01.01.2020 to 10.02.2020	Newspaper Report	Ban imposed by on construction activities	40 days
04.11.2019 to 16.12.2019	Supreme court in CWP No. 13029/1985	All the construction activity in the entire NCR to remain closed	42 days
01.11.2018 to 10.11.2018	EPCA	All the construction activity in the entire NCR to remain closed	10 days



24.12.2018 to 26.12.2018	Environment pollution control authority	Construction activities in Delhi, Gurugram, Ghaziabad and Noida to remain closed till 26.12.2018	03 days
09.11.2017 to 17.11.2017	OA 21/2014 NGT	All the construction (Structural) activity in the entire NCR is hereby prohibited till the next date of hearing	09 days
<b>Total no's of days</b>			<b>163 days</b>

19. That further, Haryana Real Estate Regulatory Authority, Gurugram vide notification dated 26.05.2020 had given extension of 180 days under Force Majeure keeping in view of the Covid - 19 pandemic situation in the country. Therefore, by purview of clause 14.1, 14.2.1 of the apartment buyer's agreement the date of handing over the possession of the said unit shall be 48 months from 12.11.2016+180 days grace period+163days due to force majeure clause+180 covid - 19 pandemic. Therefore, the due date of possession comes out to be 12.05.2022. That it is humbly submitted on 18.08.2023, vide application before the DTCP, the Respondent herein has also applied for the Occupation Certificate for towers A, D, E & F of the said project.

20. That as per statement of account dated 30.10.2023, an amount of Rs. 4,34,226/- is outstanding and payable towards the sale consideration. Despite of non-payment of dues by the other buyers like the complainant and stay of construction by the National Green Tribunal at several instances,

the construction work of the said project is complete and the internal and external development work of the said project is going on with full swing.

21. That since the commencement of the development of the project, the respondent has been sending regular updates regarding the progress of the project to all the buyers including the complainant and also the customer care department of the respondent is in regular touch with the buyers for providing them assistance and updates on the progress of the project.

22. That the complainants have now filed the present complaint before the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram seeking refund of the amount paid by him

23. All other averments made in the complaint were denied in toto.

24. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be denied on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

25. 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**

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**

26. 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)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

27. 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.

28. 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."*

29. 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. Objection regarding force majeure**

30. The respondent is claiming that there was delay in constructing the project due to construction bans, due to various order of the Authorities and covid.

31. All the pleas advanced in this regard are devoid of merit. First of all, the

unit in question was allotted in the year 2015. The respondent has been granted benefit of extension of 6 months due to covid period. Further, the respondent himself has stated that despite stay of construction by the National Green Tribunal at several instances, the construction work of the said project is complete. Hence the promoter respondent cannot be shown any leniency on basis of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong and the plea raised in this regard is devoid of merit.

**G. Entitlement of the complainant for refund:**

**G.I Direct the respondent to refund the amount paid by the complainants along with prescribed interest.**

32. In the present complaint, the complainant 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***

*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."*

33. Clause 14 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

*14.1 Subject to the terms hereof and to the Buyer having complied with all the terms and conditions of this Agreement, the Company proposes to hand over possession of the Apartment within a period of 48 (forty eight months) from the date of receiving the last of Approvals required for commencement of construction of the Project from the Competent Authority and or the date of signing the agreement whichever is later and to this period to be added for the time taken in getting Fire Approvals and Occupation Certificates and other Approvals required before handing over the possession of the Apartment or for such other requirements/conditions as directed by the DGTCP The resultant period will be called as "Commitment Period". However, this Committed Period will automatically stand extended by for a further grace period of 180 days for issuing the Possession Notice and completing other required formalities (emphasis supplied)*

34. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to handover the possession of the apartment within a period of 48 (forty eight months) from the date of receiving the last of Approvals required for commencement of construction of the project from the competent authority and or the date of signing the agreement whichever is later. An extension of 6 months is to be given in view of notification no. 9/3-2020 dated 26.05.2020, on account of force

meajure conditions due to outbreak of Covid – 19 pandemic. The authority calculated the due date of possession from the date of signing of the buyer agreement being later i.e 25.04.2017 plus 6 months of Covid- 19, so the due date of the subject unit comes out to be 25.10.2021.

**35. Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them at the prescribed rate of interest as the allottee intend to withdraw from the project on account of failure of the respondent to deliver the unit within the stipulated time, in terms of section 18(1) of the RERA Act of 2016 . The prescribed rate of interest is provided under rule 15 of the rules and is 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.*

36. 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.

37. 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., 30.01.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

38. The definition of term 'interest' as defined under section 2(z) 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:

*"(z) "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;"*

39. 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) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14 of the agreement executed between the parties on 25.04.2017, the possession of the subject unit was to be delivered within stipulated time i.e by 25.10.2021. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 25.10.2021. 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 good amount. 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.

40. 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 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....."*

41. Further in the judgement of 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. it was observed

*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*

42. 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 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 the unit with interest at such rate as may be prescribed.

43. As such, the respondent 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 each payment till the actual date of refund of the deposited amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G.II Direct the respondent to pay compensation of Rs. 5,00,000/- for mental agony ,harassment and discomfort and Rs. 2,00,000/- towards litigation cost.**

44. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**H. Directions of the Authority:**

45. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent /promoter is directed to refund the amount i.e. Rs. 74,38,779/- received by it from the complainant along with interest at

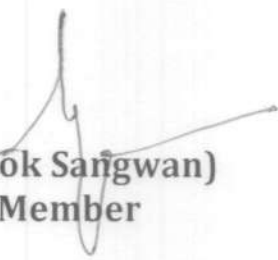
the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.


- ii) Out of the amount so assessed , the amount paid by the ICICI Bank shall be refunded to it and the balance amount if any , shall be refunded to the complainant .
- iii) The respondent - promoter shall obtain a copy of no objection certificate from the ICICI bank at the time of refunding the amount paid by the complainant.
- iv) 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.

46. Complaint stands disposed of.

47. File be consigned to the registry.

  
(Sanjeev Kumar Arora )  
Member

  
(Ashok Sangwan)  
Member

  
(Arun Kumar)  
Chairman

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 30.01.2024**