

<b>PROCEEDINGS OF THE DAY</b>		<b>8</b>
Day and Date	Thursday and 25.01.2024	
Complaint No.	MA NO. 459/2023 in CR/5323/2022 Case titled as Anup Mangla VS RAHEJA DEVELOPERS LTD	
Complainant	Anup Mangla	
Represented through	Shri Pushkar proxy counsel	
Respondent	RAHEJA DEVELOPERS LTD	
Respondent Represented	Ms. Harshita Setia proxy counsel	
Last date of hearing	App. u/s 39 of the Act	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

### Proceedings

The complainant has filed an application for rectification dated 12.12.2023 regarding rectification in the proceedings dated 28.09.2023.

The above-mentioned matter was heard and disposed off. vide order dated 28.09.2023. The area of the unit mentioned in the detailed order dated 28.09.2023 is 243.370 sq. ft. but in the proceedings dated 28.09.2023 is 243.370 sq. ft.

S.No.	Subject matter to be rectified	Existing details on page no. in proceedings dated 28.09.2023	Correct details
1.	Area of the unit	243.370 sq. ft. [Page no. 2, of the proceedings]	243.370 sq. yds. (As per builder buyer's agreement as well as allotment letter.)



HARERA  
GURUGRAM


HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी. डब्ल्यू. डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

Therefore, in view of section 39 read with section 38(2) of the Real Estate (Regulation and Development) Act, 2016 as the error is only clerical in nature and rectification in the detailed order dated 12.12.2023 is allowed. File be consigned to the registry.

v.1   
Vijay Kumar Goyal  
Member  
25.01.2024

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

**Complaint no. :** 5323 of 2022  
**First Date of Hearing:** 04.10.2022  
**Date of Decision:** 28.09.2023

1. Sh. Anup Mangla  
2. Smt. Alka Mangla  
**R/o:** House No.-3058, Sector-23, Gurugram,  
Haryana-122016

**Complainants**

**Versus**

1. M/s Raheja Developers Limited  
2. Sh. Navin M Raheja, Chairman and MD  
of M/s Raheja Developers Limited  
**Regd. office:** W4D, 204/5, Keshav Kunj,  
Western Avenue, Cariappa Marg Sainik  
Farms, New Delhi-110062

**Respondents**

**CORAM:**  
Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**  
Sh. Sachin Yadav (Advocate)  
Sh. Garvit Gupta (Advocate)

**Complainants**  
**Respondents**

**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 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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name and location of the project	"Raheja's Aranya City", Sector 11 & 14, Sohna, Gurugram
2.	Nature of the project	Residential Plotted Colony
3.	Project area	107.85 acres
4.	DTCP license no.	i. 19 of 2014 dated 11.06.2014 valid up to 10.06.2018 ii. 25 of 2012 dated 29.03.2012 valid up to 28.03.2018
5.	RERA Registered/ not registered	Not Registered
6.	Unit no.	F146, Tower-F (As per page no. 62 of complaint)
7.	Unit area admeasuring	243.370 sq. yds. (super area) (As per page no. 62 of complaint)
8.	Allotment letter	30.06.2014 (As per page no. 50 of complaint)
9.	Date of execution of agreement to sell	30.06.2014 (As per page no. 59 of complaint)
10.	Possession clause	<b>4.2 Possession Time and Compensation</b> <i>That the seller shall sincerely endeavor to give possession of the plot to the purchaser within thirty-six (36) months from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer &amp; water in the sector by the Government, but subject to force majeure conditions or nay Government/Regulatory authority's action, inaction or omission and reasons beyond</i>



		<p><i>the control of the seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the development is not within the time period mentioned above. In the event of his failure to take over possession of the plot provisionally and/ or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the purchaser shall be liable to pay @ Rs. 50/- per sq. yds. of the plot area per month as holding charges for the entire period of such delay...."</i></p> <p>(As per page no. 67 of complaint)</p>
11.	Grace period	<p><b>Allowed</b></p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the part completion certificate by June 2015. As per agreement to sell, the construction and development work of the project is to be completed by June 2015 which is not completed till date. <b>Accordingly, in the present case the grace period of 6 months is allowed.</b></p>
12.	Basic sale price	<p>Rs. 64,67,558/-</p> <p>(As per page no. 62 of the complaint)</p>
13.	Total sale consideration	<p>Rs. 80,51,289/-</p> <p>(As per page no. 77 of the complaint)</p>
14.	Amount paid by the complainant	<p>Rs. 79,94,327/-</p> <p>(As per page no. 15 of the complaint)</p>
15.	Payment Plan	<p>Construction linked plan</p>
16.	Occupation Certificate/	<p>Not received</p>

	completion certificate	
17.	Due date of possession	30.12.2017 (Note: 36 months from the date of first payment i.e., 30.06.2014 + six months grace period)
18.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. That on 01.04.2012 after seeing many alluring advertisements of the respondent no. 1 in different newspapers about offering a residential plot in their said upcoming project i.e. "Raheja's Aranya City" at Sector 11 & 14, Sohna, Gurugram the complainants contacted the respondents to purchase a plot in the said project and the complainants have booked a residential plot bearing No. F146 admeasuring 243.370 sq. yds. for a basis sale price of Rs. 64,67,558/- excluding the other payments such as EDC/IDC/IAC, PLC, AGC, club membership charges, IFMS etc., and paid a sum of Rs. 6,00,000/- to the respondents.
4. That the respondents had allotted the aforesaid property vide allotment letter dated 30.06.2014 and on the same day the respondents had executed an agreement to sell between the respondent no. 1 and the complainant in respect of the aforesaid plot.
5. That the complainants made payment as per payment plan and demands raised by the respondents. A total sum of Rs. 79,94,327/- were paid by the complainants to the respondents in respect of the above said unit.
6. That as per clause 4.2 of the agreement dated 30.06.2014, the respondents have assured the complainants that the physical possession of the plot of the complainants would be handover to the complainants within a period of 36 months from the date of signing of this agreement and the said period of

36 months expired in the month of June, 2017 and the grace period had also expired but till date the physical possession of the above said plot/unit which was booked by the complainants, was not handed over to the complainants.

7. That as per the terms and conditions of the agreement to sell, if the developer fails to handover the actual physical possession of the plot to the allottee, in that case the developer will be liable to pay compensation calculation @ Rs. 50/- per sq. yds. per month for the period of delay in offering the possession of the said plot beyond the period of 42 months.
8. That the complainants have visited the office of the respondents, mentioned above, to know the exact date for delivery of possession of the said plot, but the respondents linger on the matter on one pretext or the other and did not give any satisfactory reply regarding the handing over of the plot.
9. That the respondents have also not performed their part according to the terms and conditions of the agreement as the respondents have not given the possession of the property to the complainants within the fixed time period of 36 months or till date. Further, the respondents are also under the legal obligation to pay the compensation amount to the complainants.
10. That the respondents after indulging in unfair trade practice had intentionally grabbed the hard-earned money of the complainants and violated the general principals of the real estate business. Moreover, the respondents had given the highly deficient & inadequate services to the complainants as the respondents had not kept their promises and had also taken the undue advantages by grabbing the hard money of the complainants.
11. That in view of the delay in giving possession to the complainants, they seek

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refund of the entire amount paid to the respondents by the complainants, in respect of the above said unit/plot along with interest @ 24% per annum from the date of deposit till the realization of the amount along with penalty amount and towards mental harassment and agony caused by the respondents i.e., Rs. 25,00,000/-.

12. That the respondents have ignored the request of the complainants to refund their amounts. It is pertinent to mention here that the terms of the agreement are completely one sided and favour only the company and the same has been formulated in a way that they can take undue advantage of their dominant position at the site where the project is being developed and harass the complainants into making payments as and when demanding.
13. That it is a settled law and in catena of judgements, the Hon'ble Courts have opined that the allottee of a real estate property is legally entitled to seek refund of the amount already deposited besides interest and compensation if the builder fails to honour its commitment to complete the project in time. Once the promised date of delivery is exhausted, it is the discretion of the complainant to exercise his choice to either take refund or wait for the delivery. In one of the recent judgements, the Hon'ble National Consumer Dispute Redressal Commission has asked the real estate developer to refund Rs. 3.4 crores to the home buyers and commented that the complainant cannot be asked to wait indefinitely for delivery of possession in the absence of a committed date and the act of the developers in relying on "Force Majeure" clause while enjoying the hard earned money of the complainant for a long period without valid reason, is not only an act of deficiency of service but also amounts to unfair trade practice.
14. That as per section 12 of RERA, the respondents have provided false information on the prospectus/brochure and under the same section the

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complainant are entitled to get the entire amount refunded along with compensation.

15. That the act of the respondents is malafide, arbitrary, illegal, unconstitutional, unjust, unfair, opposed to the public policy, equity and fair play and as is unsustainable in the eyes of the law and is liable to be prosecuted under Section 12 and other relevant sections of the Act 2016.
16. That under the above said provision 18 of RERA, the complainants are entitled to refund of amount paid by them to the respondents and also entitled to interest on the amount from the respondents.

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

17. The complainants have sought the following relief: -
  - i. Direct the respondents to refund the principal amount paid by the complainants i.e., Rs.79,94,327/- along with interest @ 18% per annum from the date of deposit till the realization of the amount and towards mental harassment and agony caused by the respondents, along with litigation charges of Rs. 25,00,000/-.

**D. Reply by the respondents:**

18. The respondents contested the complaint on the following grounds:
  - a. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The agreement to sell was executed between the complainants and the respondent no.1 prior to the enactment of the Act, 2016 and the provisions laid down in the said act cannot be enforced retrospectively. Although the provisions of the Act, 2016 are not applicable to the facts of the present case in hand yet without prejudice and in order to avoid complications later on, the respondent no.1 has registered the project with the Hon'ble Authority. The said project is

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registered under RERA with Registration No. 93 of 2017 dated 28.08.2017. That this Authority has no jurisdiction to adjudicate upon the present complaint.

- b. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 13.2 of the agreement to sell, which is reproduced for the ready reference of this Authority-

*"All or any disputes arising out or touching upon in relation to the terms of this Application/Agreement to Sell/ Conveyance Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1995 or any statutory amendments/ modifications thereof for the time being in force. The arbitration proceedings shall be held at the office of the seller in New Delhi by a sole arbitrator who shall be appointed by mutual consent of the parties. If there is no consensus on appointment of the Arbitrator, the matter will be referred to the concerned court for the same. In case of any proceeding, reference etc. touching upon the arbitrator subject including any award, the territorial jurisdiction of the Courts shall be Gurgaon as well as of Punjab and Haryana High Court at Chandigarh".*

- c. That the respondent no.1 is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent no.1 has developed and delivered several prestigious projects such as 'Raheja Atlantis', 'Raheja Atharva', 'Raheja Shilas' and 'Raheja Vedanta' and in most of these projects large number of families have already shifted after having taken possession and Resident Welfare Associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.
- d. That the complainants, after checking the veracity of the project namely, 'Raheja's Aranya City- Phase 2', Sector 11 and 14, Sohna,

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Gurugram had applied for allotment of a plot vide their booking application form and agreed to be bound by the terms and conditions in it. The complainants were aware from the very inception that the plans as approved by the concerned authorities are tentative in nature and that the respondent no.1 might have to effect suitable and necessary alterations in the layout plans as and when required.

- e. That based on the application for booking, the respondent no.1 allotted the plot no. F-146 to the complainants vide its allotment offer letter dated 30.06.2014. It is submitted that the complainant signed and executed the agreement to sell on 30.06.2014 and the complainants agreed to be bound by the terms contained therein.
- f. That the respondent no.1 raised payment demands from the complainants in accordance with the mutually agreed terms and conditions of allotment as well as of the payment plan and the complainants made the payment of the earnest money and part-amount of the total sale consideration and are bound to pay the remaining amount towards the total sale consideration of the plot along with applicable registration charges, stamp duty, service tax as well as other charges payable at the applicable stage.
- g. That it is pertinent to mention herein that despite the respondent no.1 fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed miserably to provide essential basic infrastructure facilities such as roads, sewerage line, water and electricity supply in the sector where the said project is being developed. The development of roads, sewerage, laying down of water and electricity supply lines has to be undertaken by the concerned governmental authorities and is not within the power and control of the respondent. The respondent no.1 cannot be held liable on account of



non-performance by the concerned governmental authorities. The respondent company has even paid all the requisite amounts including the External Development Charges (EDC) to the concerned authorities. However, yet necessary infrastructure facilities like 60-meter sector roads including 24-meter-wide road connectivity, water and sewage which were supposed to be developed by HUDA parallelly have not been developed.

- h. That the time period for calculating the due date of possession shall start only when the necessary infrastructure facilities will be provided by the governmental authorities and the same was known to the complainants from the very inception. It is submitted that non-availability of the infrastructure facilities is beyond the control of the respondent no.1 and the same also falls within the ambit of the definition of 'Force Majeure' condition as stipulated in agreement to sell.
- i. That the respondent no.1 shall hand over the possession of the same to the complainants subject to the complainants making the payment of the due instalments amount and on availability of infrastructure facilities such as sector road and laying providing basic external infrastructure such as water, sewer, electricity etc. as per terms of the application and agreement to sell. It is submitted that despite the occurrence of such force majeure events, the respondent no.1 has completed the part development of the project and has already been granted part completion certificate on 11.11.2016. Under these circumstances passing any adverse order against the respondents at this stage would amount to complete travesty of justice.
- j. That the Hon'ble Authority in **Abhishek Agarwal & Others vs Cosmos Infra Engineering India Private Limited** complaint No.1834 of 2018 has held that where the physical progress of the complainants unit is

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nearly 50 percent, the refund is allowed then it shall hamper the completion of the project.

- k. That the Hon'ble Authority in **Greenopolis Welfare Association vs Orris Infrastructure Ltd** and others complaint no.225 of 2018 has held that order of refund would be completely prejudicial and detrimental not only to the interest of the vast majority of the allottees which opposes it, but at the same time would end up completely destroying any possibility of implementation and completion of project.
- l. That the Hon'ble Authority in **Ajay Kumar Manocha and Other vs Spaze Towers Pvt Ltd & ors** complaint No.1324 of 2018 has held that refund of the deposited amount will also have adverse effect on the other allottees.
19. 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 as well as the written submission of the complainants.

**E. Jurisdiction of the authority**

20. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.1 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.

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Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

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 complainant at a later stage.

21. 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.*** SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others V/s 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."

22. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of *M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)*, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

**F. Findings on objections raised by the respondents:**

**F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.**

23. The contention of the respondents is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the agreement to sell executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore,

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the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

24. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in



*Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

25. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreement to sell has been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

**F. II Objection regarding complainants are in breach of agreement for non-invocation of arbitration.**

26. The respondents have raised an objection that the complainants have not invoked arbitration proceedings as per the provisions of agreement to sell which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the agreement to sell:

*"Clause 13.2: All or any disputes arising out of touching upon or relating to the terms of this Agreement to Sell/ Conveyance Deed including the interpretation and validity of the terms hereof and the respective rights and obligations of the parties, which cannot be amicably settled, shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at the Office of the Seller in New Delhi by a sole arbitrator who shall be appointed by mutual consent of the parties, if there is no consensus on appointment of the Arbitrator, the matter will be referred to the concerned court for the same. In case of any proceeding, reference etc. touching upon the arbitration subject including any award, the territorial jurisdiction of the courts shall be Gurgaon as well as of Punjab and Haryana High Court at Chandigarh."*

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27. The respondents contended that as per the terms & conditions of the agreement to sell duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the agreement to sell as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builders could not circumscribe the jurisdiction of a consumer.
28. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court has upheld the

aforesaid judgement dated 13.07.2017 of NCDRC in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017* decided on 10.12.2018. The relevant para of the judgement passed by the Supreme Court is reproduced below:

*"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

29. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Act of 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

### **F.III Objection regarding delay due to force majeure**

30. The respondent no. 1-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as strike, lock out, civil commotion or by reason of war, enemy or terrorist action, earthquake, any act of God or is abnormally delayed due to non-availability of necessary infrastructure facilities like 60 meter sector roads including 24

meter wide road connectivity, water, power, sewer lines to be provided by the government for carrying out development activities, environment and pollution clearances and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The agreement to sell was executed between the parties on 30.06.2014 and non-availability of infrastructure facilities like 60 meter roads including 24 meter wide road connectivity etc. do not have any impact on the project being developed by the respondents. Thus, the promoter respondent no. 1 cannot be given any leniency on the basis of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

**G. Findings on relief sought by the complainants:**

**G.I Direct the respondents to refund the amount paid by them along with compound interest @ 18% p.a., from date of payments till its actual payment.**

31. The complainants were allotted a unit in the project of respondent no. 1 "Raheja's Aranya City", in Sector 11& 14, Sohna, Gurugram vide allotment letter dated 30.06.2014 for a total sum of Rs.80,51,289/-. An agreement to sell dated 30.06.2014 was executed between the parties and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.79,94,327/-.
32. The due date of possession as per the possession clause of the agreement to sell is 30.12.2017. There is delay of 4 years 6 months 29 days on the date of filing of the complaint i.e., 28.07.2022. Though part completion certificate of the project was obtained on 11.11.2016 but the completion certificate of the project where the unit is situated has still not been obtained by the respondent no. 1-promoter.
- A 33. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have

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 allottee 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....."*

34. 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 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.*

35. 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 to sell or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottees wish 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.

36. The prescribed rate of interest as per Rule 15 of Rules, 2017 payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.
37. The authority hereby directs the promoter to return the amount received by him i.e., Rs.79,94,327/- with interest at the rate of 10.75% (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 amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G.II Direct the respondents to pay an amount of Rs. 25,00,000/- to the complainants as cost of present litigation.**

38. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

**H. Directions of the Authority:**

39. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) The respondents are directed to refund the amount i.e., **Rs.79,94,327/-** received by him from the complainants along with interest at the rate of 10.75% 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) A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
  - iii) The respondents are further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.
40. Complaint stands disposed of.
41. File be consigned to the registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 28.09.2023