



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

**Complaint no. : 4183 of 2021**  
**First date of hearing: 13.12.2021**  
**Date of decision : 09.02.2024**

Manju Devi Singhania

R/o: - C-201, Red Avenue Maple Country-2,  
Next to Shilaj Railway Crossing, Thaltej,  
Ahemdabad, Gujarat-380058, India

**Complainant**

Versus

M/s Revital Reality Private Limited.

**Regd. Office at:** 1114, 11<sup>th</sup> Floor, Hemkunj Chamber, 89,  
Nehru Place, New Delhi- 110019.

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Ms. Surbhi Garg (Advocate)  
Sh. Bhrigu Dhami (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint dated 26.10.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions 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 unit details, sale consideration, the amount paid by the complainant, 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	Basera" sector- 79&79B, Gurugram	
2.	Project area	12.11 area	
3.	Nature of project	Affordable Group Housing Project	
4.	RERA registered/not registered	Registered vide no. 108 of 2017 dated 24.08.2017	
5.	RERA registration valid upto	31.01.2020	
6.	RERA extension no.	14 of 2020 dated 22.06.2020	
7.	RERA extension valid upto	31.01.2021	
8.	DTPC License no.	163 of 2014 dated 12.09.2014	164 of 2014 dated 12.09.2014
	Validity status	11.09.2019	11.09.2019
	Name of licensee	Revital reality private limited and others	
9.	Unit no.	1307, 13 <sup>th</sup> floor, tower/block- 14, (Page no. 18 of the complaint)	
10.	Unit measuring	473 sq. ft	



		[carpet area] 73 sq. ft. [balcony area]
11.	Date of execution of flat buyer's agreement	22.12.2015 (Page no. 17 of the complaint)
12.	Offer of allotment letter	19.09.2015 (Page no. 15 of the complaint)
13.	Possession clause	<b>3.1 Possession</b> Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of instalments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the " <b>Commencement Date</b> "), whichever is later. (Page no. 21 of the complaint).
14.	Due date of possession	22.01.2020 [Note: - the due date of possession can be calculated by the 4 years from approval of building plans (19.12.2014) or from the date of environment clearance (22.01.2016) whichever is later.]



15.	Date of approval of building plans	19.12.2014 [As per information obtained by the planning branch]
16.	Date of grant of environment clearance	22.01.2016 [As per information obtained by the planning branch]
17.	Total sale consideration	Rs.19,28,500/- (As per payment plan page 20 of the complaint)
18.	Total amount paid by the complainant	Rs.7,40,063/- (As per outstanding statement dated 05.01.2018 page 34 of the complaint)
19.	Occupation certificate	Not obtained
20.	Cancellation letter	26.03.2019 (Page 57 of the complaint)

**B. Facts of the complaint**

3. That believing the representations of the respondent the complainant chose to book a residential flat in the said project and accordingly, vide application bearing no. 1011 dated 29.12.2014, applied for booking of a residential flat by paying an amount of Rs. 96,425/- (5% of total cost of unit).
4. That thereafter, a draw of lots was conducted by the respondent on 04.09.2015 and a successful allotment was drawn in favour of the complainant. Accordingly, vide allotment letter dated 19.09.2015, allotted the residential unit bearing r.o. 1307, on 13th floor, located in tower-14, admeasuring carpet area of 473 sq. ft. and balcony area of 73 sq. ft. for a total sale consideration of Rs. 19,28,500/-.



5. That thereafter, a flat buyer's agreement was executed between the complainant and the respondent on 22.12.2015 for the unit in question wherein under clause 3.1, the Respondent undertook to complete construction and handover possession within 4 years from the date of approval of building plans or grant of environment clearance, whichever later. It was only on 12.07.2016 the environment clearance was obtained by the respondent. The respondent had been guilty of misconduct right from inception of the sale transaction. Accordingly, the due date must be calculated from the date of execution of agreement.
6. That thereafter, the complainant kept making payment in accordance with the demand raised by the respondent, thereby totaling to a payment of Rs.7,40,063/- i.e. almost 40% of the total sale consideration within few months of the allotment.
7. That thereafter, somewhere around mid-2016, the complainant visited the project site only to be taken aback by the construction status. To the utter shock of the complainant, the project was still in inception stage and not even excavation was done despite lapse of more than 2 years from the date of booking and the project launch.
8. That the complainant again visited the project site as well as respondent's office in order to convey that the construction work should resume soon, but to no avail as the respondent threatened cancellation of booking if more payment was not released by the complainant. Accordingly, the complainant lodged a grievance/complaint vide letter dated 15.06.2016 to Sh. Raghavendra Rao, Additional Chief Secretary to Government of Haryana, Town and Country Planning and Urban Estates Department, thereby expressing her concern about loss of money and potential fraud by the respondent as the construction at the project site had not started by them and threatening to cancel the unit.



9. That thereafter, vide letter dated 08.10.2016, in response to the above said complaint, the District Town Planner, Gurugram (Planning) asked the Managing Director of the respondent to resolve the matter and send action taken report within 7 days, thereby warning the respondent that a failure to comply with said direction would invite necessary action against the said respondent, but to no avail as the respondent simply chose to sit over said letter and did nothing to resolve the grievance raised by the complainant.
10. That when no response was received from the respondent, vide email dated 15.11.2016, the complainant again forwarded her grievance/complaint to the responder reiterating that she is willing to pay provided construction progresses. To this, vide email dated 07.12.2016, the respondent intimated that excavation work was completed and foundation work had been started.
11. That the said respondent had taken 40% of the total amount only on the basis of time linked installments with no construction work going at the project site and the project being in a state of complete standstill.
12. That vide email dated 10.05.2019, the respondent represented that the excepted possession date was in January 2020. Further, to the utter shock of the complainant, vide cancellation letter dated 26.03.2019 they cancelled her booking.
13. That the complaint approached the respondent seeking an explanation over the cancellation as the complainant was liable to make payments only when the respondent abided by their obligation of constructing the project, but all in vain. The complainant highlighted that the respondent had been demanding Rs. 10,12,481/- despite zero construction progress at the project site.



14. That not only the respondent failed to construct the project in question, but also in refunding back her paid amount. Since mid-2020, the complainant has been requesting the respondent to refund back her money with interest, but to no avail. The complainant also sent letters to the respondent through speed post dated 28.01.2020 and 09.01.2020 seeking refund of their paid amount but the respondent refused to take delivery of said letters, thereby highlighting the respondent's malafide intention of duping the complainant of her hard earned money. Thereafter, vide email dated 27.09.2021, the complainant again requested the respondent to refund her money, but all in vain.
15. That the present complaint has been filed under Section 31 read with Section 18 in order to seek refund of the principle amount of Rs. 7,40,063/- paid by the complainant along with interest at the rate prescribed as per RERA, 2016 and HFERA Rules, 2017 from the date of receipt of payment till the date of refund along with compensation for the mental stress and torture as well as financial and physical loss suffered by the complainant due to the fraudulent acts of the respondent company.

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

16. The complainant has sought following relief(s).
- i. Direct the respondent to refund an amount of Rs. 7,40,063/- paid along with interest at the prescribed rate from the date of receipt of each instalment of payment till the refund. .**
  - ii. Direct the respondent to give Rs. 4,00,000/- as compensation on account of loss as well as mental agony suffered by complainant.**
  - iii. Direct the respondent to pay litigation charges of Rs. 50,000/-**
17. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed



in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

18. That one of its marquee projects is the "Basera", located in Sector 79 and 79B of Gurugram Manesar Urban Complex, Gurugram Haryana. The complainant approached the respondent, making enquiries about the project, and after thorough due diligence and complete information being provided to her, sought to book an apartment in the said project.
19. That vide allotment letter she was allotted unit being number no. 1307, tower 14, for a total consideration of Rs.19,28,500/-. 7. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the flat buyers agreement dated 19.09.2015. The said agreement is in consonance with the Affordable Group Housing Policy, 2013 passed by the Haryana Govt.
20. That the possession is to be handed over within 4 from the date of approval of building plans or grant of environmental clearance (EC). However, the same were subject to force majeure conditions which would hamper the development of the project. Further, in terms of clause 3.5 of the agreement the timely possession was subject to timely payments of sale consideration and the other charges. Further, it was mutually agreed that the time frame for possession was tentative and would depend upon force majeure conditions, timely payments and completion of all required formalities. Clause "15" of the agreement details out the conditions which were agreed between the parties would constitute as "Force Majeure".
21. That the EC for the said project was received on 22.01.2016. Thus, the possession strictly as per the agreement was to be handed over by





- 21.01.2020 plus 6 months grace period, i.e. July, 2021. That the said time period fell within the govt. imposed Covid -19 lockdown and thus the respondent is entitled to appropriate extension of time.
22. In the interregnum, the pandemic of Covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorised the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant.
23. That the construction of the project is in full swing, and the delay if at all, has been due to the government imposed lockdowns which stalled any sort of construction activity. Till date, there are several embargos qua construction at full operational level.
24. The period of lockdown owing to the Covid -19 first and second wave may be waived for the calculation of the DPC, if applicable, to be paid by the respondent as no construction despite numerous efforts could be continued during the lockdown period.
25. That apart from the defaults on the part of the allottee, like the complainant herein, the delay in completion of project was on account of the following reasons/ circumstances which were above and beyond the control of the respondent: -
- Shortage of labour/ workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/ State Government under NREGA and JNNURM Schemes;
  - that such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent



and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex. The respondent cannot be held solely responsible for things that are not in control of the respondent.

26. That there are several requirements that must be met in order for the force majeure clause to take effect in a construction contract which are reproduced herein under:

- i. The event must be beyond the control of the parties;
- ii. The event either precludes or postpones performance under the contract;
- iii. The triggering event makes performance under the contract more problematic or more expensive;
- iv. The claiming party wasn't at fault or negligent;
- v. The party wanting to trigger the force majeure clause has acted diligently to try to mitigate the event from occurring.

27. The respondent has further submitted that the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. It is no more *res integra* that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the *negligence or malfeasance* of a party, which have a materially adverse affect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, in light of the aforementioned, it is most respectfully submitted that the delay in construction, if any, is attributable to reasons beyond the control of the



respondent and as such it may be granted reasonable extension in terms of the allotment letter.

28. That the enactment of Real Estate (Regulation and Development) Act, 2016 is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate market sector. The main intention of the respondent is just to complete the project within stipulated time submitted before this authority. According to the terms of the builder buyer agreement also, it is mentioned that all the amount of delay possession will be completely paid/adjusted to the complainant at the time final settlement on offer of possession.
29. That the respondent further submitted that the Central Government has also decided to help bonafide builders to complete the stalled projects which were not constructed due to scarcity of funds. The Central Government announced Rs.25,000 Crore to help the bonafide builders for completing the stalled/ unconstructed projects and deliver the homes to the homebuyers. It is submitted that the respondent/ promoter, being a bonafide builder, has also applied for realty stress funds for its Gurgaon based projects.
30. That compounding all these extraneous considerations, the **Hon'ble Supreme Court vide order dated 04.11.2019**, imposed a blanket stay on all construction activities in the Delhi- NCR region. It would be apposite to note that the 'Basera' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay orders have been passed during winter period in the preceding years as well, i.e., 2017-2018 and 2018-2019. Further, a complete ban on construction activities at site invariably results in long-term halt. As with a complete



ban, the concerned labor was let off and they travelled to their native villages or look for work in other states, the resumption of work at site became a slow process and a steady pace of construction as realized after long period of time.

31. The respondent has further submitted that graded response action plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.
32. That the pandemic of covid-19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July 2020. In fact, the entire labour force employed by the respondent was forced to return to their hometowns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such, the respondent has not been able to employ the requisite labour necessary for completion of its projects. The Hon'ble Supreme Court in the seminal case of *Gajendra Sharma v. UOI & Ors, as well Credai MCHI & Anr. V. UOI & Ors* has taken cognizance of the devastating conditions of the real estate sector and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. According to notification no. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020, passed by this authority, registration certificate upto 6 months has been extended by invoking



clause of force majeure due to spread of corona virus pandemic in the Nation, which beyond the control of respondent.

33. This authority vide, its order dated 26.05.2020 had acknowledged the Covid-19 as a force majeure event and had granted extension of six months period to ongoing projects. Furthermore, it is of utmost importance to point out that vide notification dated 28.05.2020, the Ministry of Housing and Urban Affairs has allowed an extension of 9 months vis-a-vis all licenses, approvals, end completion dates of housing projects under construction which were expiring post 25.03.2020 in light of the force majeure nature of the Covid pandemic that has severely disrupted the workings of the real estate industry. The pandemic is clearly a 'force majeure' event, which automatically extended the timeline for handing over possession of the apartment.

34. 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 submissions made by the parties.

**E. Jurisdiction of the authority**

35. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

36. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

37. 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.*

38. 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.
39. 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. 2021-2022(1) RCR (Civil), 357*** 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*** and 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."*

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

**F. Findings on the objections raised by the respondent**

**F.1 Objection regarding the project being delayed because of force majeure circumstances and contending to invoke the force majeure clause.**

41. From the bare reading of the possession clause of the application for allotment, it becomes very clear that the possession of the apartment was to be delivered by **22.01.2020**. The respondent in its reply pleaded the force majeure clause on the ground of Covid- 19. The High Court of Delhi in case no. **O.M.P (I) (COMM.) No. 88/2020 & I.As. 3696-3697/2020 title as M/S HALLIBURTON OFFSHORE SERVICES INC VS VEDANTA LIMITED & ANR. 29.05.2020** held that the past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which



the deadlines were much before the outbreak itself. Thus, this means that the respondent/promoter has to complete the construction of the apartment/building by 22.01.2020. It is clearly mentioned by the respondent/promoter for the same project, in complaint no. 4341 of 2021 (on page no. 73 of the reply) that only 42% of the physical progress has been completed in the project. The respondent/promoter has not given any reasonable explanation as to why the construction of the project is being delayed and why the possession has not been offered to the complainants/allottees by the promised/committed time. The lockdown due to pandemic in the country began on 25.03.2020. So, the contention of the respondent/ promoter to invoke the force majeure clause is to be rejected as it is a well settled law that ***"No one can take benefit of his own wrong"***. Moreover, there is nothing on the record to show that the project is near completion, or the developer applied for obtaining occupation certificate. Thus, in such a situation, the plea with regard to force majeure on ground of Covid- 19 is not sustainable.

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

**G. I Direct the respondent to refund an amount of Rs. 7,40,063/- paid along with interest at the prescribed rate from the date of receipt of each instalment of payment till the refund.**

42. The complainant booked a unit no. 1307, 13<sup>th</sup> floor, tower 14 in the affordable group housing project of respondent namely 'Basera' situated at sector-79& 79B, Gurugram. The allotment letter for the said unit was provided on 19.09.2015 and thereafter BBA was executed between the parties on 22.12.2015. The unit was allotted for a total sale consideration of Rs. 19,28,500/-out of which the complainant has paid an amount of Rs. 7,40,063/- . The respondent on 25.03.2019 arbitrarily cancelled the said unit without raising any demands and sending reminder letters to the complainant.



43. In line with the aforesaid facts, and documents placed on record, the main question which arises before the authority for the purpose of adjudication is that “whether the said cancellation is valid in the eyes of law?”
44. Clause 5(i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below: -

*“If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, **a reminder may be issued to him for depositing the due instalments within a period of 15 days from the date of issue of such notice.** If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within **15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/-** may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list”.*

45. Since the present matter relates to affordable group housing therefore the allotment as well as the cancellation is to be in accordance with the affordable housing policy, 2013 only. The authority while going by the facts of the case and the documents placed on record finds that the respondent company neither issued reminder letters nor published a list of defaulters of payments in the daily Hindi newspaper before issuing the cancellation letter. Accordingly, any cancellation letter issued not complying by the proper terms and procedure of the policy, 2013 cannot be said to be valid.
46. Moreover, the complainant is hereby requesting the refund of the total amount paid by her. Keeping in view the fact that the allottee/complainant wish to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the plot in accordance with the terms of agreement for sale

or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

47. The due date of possession as per agreement for sale as mentioned in the table above is **22.01.2020**. The authority has further, observes that 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 allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottee intends to withdraw from the project and is well within the right to do the same in view of section 18(1) of the Act, 2016.

48. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent /promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

*".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

49. 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."*

50. 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.

51. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire



amount paid by her 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 amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G. II Direct the respondent to give Rs. 4,00,000/- as compensation on account of loss as well as mental agony suffered by complainant.**

**G. III Direct the respondent to pay litigation charges of Rs. 50,000/-.**

52. 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.**

53. 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 amount i.e., Rs.7,40,063/- received by it from the complainant along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of



**HARERA**  
**GURUGRAM**

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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.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

54. Complaint stands disposed of.

55. File be consigned to registry.



*Sanjeev Arora*  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.02.2024

**HARERA**  
**GURUGRAM**