



HARERA
GURUGRAM

Complaint No. 7535 of 2022

**BEFORE THE HARYANA REALESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 7535 of 2022
Date of first hearing: 11.04.2023
Date of decision : 08.02.2024

Complainants

1. Smt. Sunita Saini
 2. Sh. Inder Paul Singh Saini
- Both R/o:** - Rashi Apartment, Flat No.-10,
Plot No.-3, Sector-7, Dwarka Phase-1, New
Delhi-110075.

Versus

Respondent

M/s Neo Developers Private Limited.
Regd. Office at: 32-B, Pusa Road, New
Delhi-110005.
Corporate Office at: 1507, Tower-D,
Global Business Park, Gurugram-122022.

CORAM:

Sh. Vijay Kumar Goyal

Member

APPEARANCE:

Ms. Priyanka Agarwal (Advocate)
Sh. Pankaj Chandola (Advocate)

Complainants
Respondent

ORDER

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

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A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"Neo Square" Sector- 109, Gurugram
2.	Nature of the project	Commercial
3.	Project area	9.0625 acres
4.	DTCP license no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2024 (Inadvertently mentioned as 45 of 2018 on proceedings of the day dated 18.01.2024)
5.	Name of licensee	Shri Maya Buildcon Pvt. Ltd. & others
6.	RERA Registered/ registered	not 109 of 2017 dated 24.08.2017 valid up to 31.10.2022
7.	Unit no.	36, Ground floor and Tower/Block-I (As per page no. 41 of the complaint)
8.	Unit area admeasuring	565 sq. ft. (Super area) (As per page no. 41 of the complaint)
9.	Date of allotment letter	19.08.2013 (As per page no. 22 of the complaint)
10.	Date of execution of buyer's agreement	10.11.2016 (As per page no. 79 of the complaint)
11.	Date of start of construction	15.12.2015 (As per payment request letter dated 01.12.2015 on page no. 69 of the complaint)
12.	Possession clause	5. CONSTRUCTION AND POSSESSION 5.2 That the company shall complete the construction of the said building/complex, within the said space is located within 36 months from the date of execution of this agreement or from the start of construction, whichever is later and apply for grant of completion/Occupancy Certificate. The company on grant of occupancy, completion certificate, shall issue final letters to the allottee(s) who shall within 30 (thirty) days, thereof remit all dues.



		<p>5.3 That the construction completion date shall be deemed to be the date when the application for grant of completion/occupancy certificate is made.</p> <p>5.4 That the allottee hereby also grants an additional period of 6 (six) months after the completion date as grace period to the company after the expiry of the aforesaid period.</p> <p>(As per page no. 88 of the complaint)</p>
13.	Due date of possession	10.05.2020 [Due date of possession to be calculated 36 months from the date of execution of buyer's agreement dated 10.11.2016, being later] (Grace period of 6 months is allowed being unqualified)
14.	Total sale consideration	Rs.66,26,134/- (As per payment schedule on page no. 24 of the complaint)
15.	Amount paid by the complainant	Rs.63,48,338/- (As per page no. 6 of the reply)
16.	Occupation certificate	Applied on 08.09.2023 but not yet obtained (As per page no. 69 of the complaint)
17.	Offer of possession	Not offered
18.	Cancellation letter	16.12.2018 (As per page no. 60 of the reply)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That complainants approached the respondent for booking a commercial shop in the project "Neo Square" in Sector-109, Gurugram Haryana on 20.05.2013 and issued a cheque of Rs.10,16,322/-. After that the respondent issued an allotment letter on 19.08.2013 and allotted the unit no. 36 on ground floor admeasuring 565 sq. ft. After allotment, the respondent kept on raising construction linked demand letters on various dates, which were duly paid by the complainants.



Vide their email dated 28.09.2016 the respondent even sent an email containing 14 photographs showing construction progress.

- II. That the complainants had paid a sum of Rs.31,67,264/- well before signing of the buyer's agreement, which was executed on 10.11.2016. Therefore, the respondent extracted around 48 % of the amount before execution of agreement.
- III. That the respondent to dupe the complainants in their nefarious net, even executed buyer's agreement signed between complainants and respondent on dated 10.11.2016 and just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants.
- IV. That the respondent due to absence of any deterrent legislation, were involved in looting the public including the complainants as there was no authority to control the illegalities of respondent, but after RERA act has been passed the respondent are running here and there to hide their illegalities and defaults and are now awoken from their slumber due to fear of RERA.
- V. That the complainants recently came to know that the respondent changed the building plan and received the revised building plan without taking consent of buyers. It was only during personal discussions with office staff of the respondent that the complainants learnt that the unit no. 36 on ground floor does not exist.
- VI. That the RERA registration certificate of the project was valid till 2021 and the promoter apparently has not received any extension of time and the respondent was liable to hand over the possession of a shop before 09.11.2019 as per buyer's agreement clause no. 5.2.

- VII. That the total cost of the said unit is Rs.66,26,134/- inclusive of taxes as per BBA. Out of that sum of Rs.63,48,338/- from 20.05.2013 to 20.07.2018 had paid by complainants in time bound manner but despite paying such huge amounts project still incomplete and existence of unit still in doubt.
- VIII. The complainants visited the site many times to ascertain the status of the project and find that the project was lying in a raw, desolate state and in a state of utter neglect and abandonment, whereas the respondent/developer had extracted more than 95% amount of total sale consideration from complainants citing milestones of progress and development till 2018.
- IX. The complainants thereafter, exchanged regular emails with CRM of the respondent, in different time but builder did nothing to resolve the query of buyer about possession of property or alternative unit or refund of amount. The respondent maintained a total silence on existence of unit. The respondent changed the building plan without any consent of the complainants and kept them in dark about the progress of the unit.
- X. The complainants wrote repeated emails but respondent never replied in conclusive manner about delayed compensation and refund.
- XI. That due to unfair unreasonable trade practices adopted by the respondent from the very beginning like received more than 57% amount, without execution of agreement, changed the building plan without taking consent of existing allottees, not received RERA registration certificate still not renewed or received the extension for completion of project, development milestones and timelines, as admitted in writing by the respondent himself, illegal demand of instalment without commensurate development of project committed

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in the agreement and the payment plan, excess delay in possession as well as lots of default on the part of the respondent.

XII. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of the Hon'ble Authority as the unit which is the subject matter of the present complaint is within the jurisdiction of the Hon'ble Authority.

C. Relief sought by the complainants:

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

i. Direct the respondent to handover the early possession of allotted unit or alternative unit on ground floor in habitable condition along with interest at the prescribed rate of interest for every month of delay from due date of possession till handing over of possession.

OR

Direct the respondent to refund the paid-up amount of Rs.63,48,338/- by the complainants along with interest at the prescribed rate.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent contested the complaint on the following grounds:-

i. That the present complaint has been preferred by the complainants on frivolous and unsustainable grounds and they have not approached the Hon'ble Authority with clean hands and are trying to suppress material facts relevant for the adjudication of the matter. The complainants are making false, misleading, baseless and unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent. The instant complaint

is not maintainable in the eyes of the law and is devoid of merit, therefore it is fit to be dismissed *in limine*.

ii. **Booking made by the complainants under the Construction Link Plan**

- A. That the complainants with intent to invest in the project approached the respondent to enquire and to know the specific details of the project being developed by the respondent. That after being fully satisfied with the project, the complainants decided to opt for the construction link plan of the said project through application form dated 20.05.2013 and requested the respondent to allot a unit in the project.
- B. That upon receipt of the application form from the complainants, the respondent vide allotment letter dated 19.08.2013, provisionally allotted unit no. 36 on ground floor having super area of approximately 565 sq. ft. subject to the terms and conditions set out in application form.
- C. That after the provisional allotment, a buyer's agreement was sent to the complainants for execution thereof. However, the complainants on one pretext or another delayed the execution of the buyer's agreement, which was finally executed on 10.11.2016 for the shop bearing no. 36 on ground floor in the area designated for retail shop having super area of approximately 565 Sq. ft. for a basic sale consideration of Rs.55,76,550/-.

iii. **Due disclosure by the respondent that the building plans were tentative and no objection certificate/consent letter from the complainants**

- A. That the complainants in clause 5 of the buyer's agreement authorised the respondent to carry out construction as may be

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finalised by the respondent and approval of the complainants would be required for the same. In this paragraph also, it was abundantly clear that the building plans were not yet sanctioned from the competent authority. The relevant clause 5 is reproduced herein below for ready reference:

"5.1 That the Company shall authorised by the allottee to carry out the construction as per design finalised by the management of the company and no approval of the allottee shall be required for the same. The company at its discretion without any prior approval from the allottee may carry out such additions, alterations, deletions and modifications in the layout and building plans including the number of floors as the Company may consider necessary or may be required by any competent authority to be made in them or any of them while sanctioning the building plans or at any time thereafter. The Allottee agrees that no future consent of the Allottee shall be required for this purpose. Alterations may inter-alia involve all or any of the changes in the said complex such as change in position of the space, change in its dimensions, change in its area or change in its number or change in the height of the building, change in number of floors, change in zoning or change of usage...."

B. That the complainants on 10.11.2016 have also provided a No Objection Certificate for change/modification/alteration in the project Neo Square. In the said NOC, the complainants clearly agreed and provided their consent for making any changes in the project. The relevant portion of the NOC is reproduced herein below:

"2. That the undersigned does not have any objection in any case the addressee carries out the alteration to building plans and construct according to new building plans as per design finalized by management of the company. I undersigned give approval for the same and that no further approval of the undersigned shall be required for the same. The addressee at its discretion without any prior approval from the undersigned may carry out such additions, alterations, deletions, and the modifications in the layout and building plans including the number of floors or number of towers as the addressee may consider necessary or if the same may be required by any competent authority.

3. That the undersigned agrees that no future consent of the undersigned shall be required for this purpose. Alterations may inter-alia involve all or any of the changes in the said complex such as change in the position of the said space, change in its dimensions, change in its area or

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change in its numbers or change in its height of the building, change in number of floors, change in zoning or change of usage.

4. That the present NOC shall be construed as the consent of the undersigned to carry out the modification/alterations as mentioned in clause 1 and 2 of the present certificate."

That in view of the above submissions, it is stated that the revised building plans were only sanctioned by the competent authority only on 16.11.2019.

iv. Unit already cancelled, refund of the amounts to be made, as has been sought by the complainants

- a. That it is a matter of fact, time was always an essence in respect to the allottee's obligation for making payment with respect to the allotted unit. That under the said agreement dated 10.11.2016 the complainants were bound to make timely payment of instalments in accordance with the demands raised by the respondent. It is to be noted, that the complainants has only paid Rs.63,48,340./- against the dues of Rs.73,68,749/- including of interest on delayed payment, which is why the respondent was constrained to cancel the unit of the complainants on 16.12.2018 after making repetitive reminders to them and the same can be perused from a plain reading of the statement of account.
- b. That the respondent post cancellation of the unit in the project "Neo Square" requested the complainants to handover the original documents pertaining to the unit to him and collect the refund amount subject to necessary deduction as per the terms and conditions of the agreement dated 10.11.2016. However, the complainants never paid heed to the said request of the respondent and further did not come forward to handover the original documents to the respondent and collect the amount, if any.

v. Determining the due date of handing over of possession

- A. That as per clause 5.2 of the buyer's agreement, the construction of the project was to be completed within 36 months from the date of the execution of the buyer's agreement or from the start of construction, whichever is later and thereafter the application for grant of Occupation Certificate was to be done. That on receipt of the Occupation Certificate, offer of possession was to be given to the allottees. Further, the complainants in clause 5.4 and 5.5 of the buyer's agreement agreed that an additional period of 6 months would be granted as a grace period after the completion date and further force majeure conditions beyond the control of the respondent.
- B. That as per the terms of the agreement the due date of possession was within 36 months from the date of agreement along with grace period of 6 months and hence, as per the said arrangement the due date for handing over of possession was 10.05.2020. However, due to the persistent and continue defaults of the complainants in not clearing the outstanding dues and not following the payment plan as per the agreement forced the respondent to cancel the unit of the complainants on 16.12.2018 prior to the due date of possession i.e., 10.05.2020.
- C. That the cancellation of the unit was done on 16.12.2018 which is much before the due date of handing over of possession i.e., 10.05.2020. Therefore, as per the agreed terms of the agreement, the complainants are liable to pay the earnest money, along with the processing fee, any interest paid, due or payable, any other amount of a non-refundable nature including brokerage paid by the respondent to the broker and get the remaining amount as refund, if any.

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vi. **Project was obstructed due to reason beyond the control of the respondent**

- a. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent. And, in case the construction of the said commercial unit was delayed due to such 'Force Majeure' conditions the respondent was entitled for extension of time period for completion. That the development and implementation of the said project have been hindered on account of several orders/directions passed by Hon'ble National Green Tribunal, Haryana State Pollution Control Board, Panchkula and outbreak of Covid-19.
- b. That from the facts indicated above and documents appended, it is comprehensively established that a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period as has been provided in the agreement. In a similar case where such orders were brought before the Hon'ble Authority in the **complaint no. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022**, the Hon'ble Authority was pleased to allow the grace period and

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hence, the benefit of the above affected 582 days need to be rightly given to the respondent builder.

- c. That since inception the respondent herein was committed to complete the project, however, the development was delayed due to the reasons beyond the control of the respondent. That due to the above reasons the project in question got delayed from its scheduled timeline. However, the respondent is committed to complete the said project in all aspect at the earliest.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.
8. During proceedings of the day dated 18.01.2024 the counsel for the complainants stated the unit allotted to the complainants was G-36 and they were being informed by the respondent that due to revision in the plan, the allotted unit is not in existence while more than 95% (inadvertently mentioned as 93%) of the consideration money has been paid till 2018 and the unit is not yet completed. The counsel for the complainants stated that if the unit is not in existence the complainants are entitled for full refund of the amount along with interest and alternatively for delayed possession interest and possession of the unit if the unit is in the revised building plans which have been revised by the respondent without consent of the complainants-allottees. The counsel for the respondent vide proceedings dated 08.02.2024 confirmed that the unit is not in existence due to revision in the building plans and occupation certificate of the project has been applied but not yet obtained. Thus, the complainants are seeking refund of the paid-up amount.

E. Jurisdiction of the authority:

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9. The authority has complete territorial and 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, 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

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.

10. 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.

11. 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**

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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, 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."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the paid-up amount and interest on that amount.

F. Findings on the objections raised by the respondent:

F.I Objection regarding the project being delayed because of force majeure circumstances.

13. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the Hon'ble National Green Tribunal, Haryana State Pollution Control Board and major spread of Covid-19 across worldwide. However, all the pleas advanced in this regard are devoid of merit. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of 30 months plus grace period of six months

from the date of execution of agreement or from the start of construction, whichever is later. In the present case, the date of execution of agreement is 10.11.2016 and date of start of construction is 15.12.2015 as taken from the documents on record. The due date is calculated from the date of execution of agreement being later, so, the due date of subject unit comes out to be 10.05.2020. **Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.** The authority put reliance judgment of Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020** dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

14. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 10.05.2020 i.e., after 25.03.2020. As per the possession clause of the agreement, the extension of 6 months is already given to the respondent for completion of the project. Consequently, an extension of 6 months is not to be given over on account of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of subject unit remains unaltered i.e., 10.05.2020 and the events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency





on basis of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to refund of paid-up amount of Rs.63,48,338/- along with compound interest at the prescribed rate.

15. The complainants were allotted a unit in the project of respondent "Neo Square", in Sector-109, Gurugram vide allotment letter dated 19.08.2013 for a total sum of Rs.66,26,134/-. A buyer's agreement dated 10.11.2016 was executed between the parties and the due date of handing over of possession as per the possession clause of the agreement is 10.05.2020.
16. The respondent has cancelled the unit vide cancellation letter dated 16.12.2018 before the due date of handing over of possession i.e., 10.05.2020 on account of outstanding dues and not following the payment plan. The complainants have paid a considerable amount of Rs.63,48,338/- i.e., 95% of the sale consideration of Rs.66,26,134/-. The payment plan opted by the complainants is construction linked and as per the payment plan, the last instalment is to be paid on offer of possession i.e., 5% of the sale consideration but the respondent has issued the cancellation letter on 16.12.2018 without raising any demand of outstanding dues or making any offer of possession. Moreover, the respondent has applied for the occupation certificate on 08.09.2023 but the same has not been obtained by the respondent-promoter till date and the unit is not in existence due to the revised building plans which was confirmed by the counsel for the respondent during proceedings of the day dated 08.02.2024. Thus, in view of the aforementioned facts, the cancellation of the unit stands invalid and the complainants are entitled for full refund of the paid-up amount.
17. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit 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....."

18. 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.

19. 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 application form 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 the respondent in respect of the unit with interest at such rate as may be prescribed.

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20. **Admissibility of refund along with prescribed rate of interest:** In the present complaint, the complainants intends to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso reads as under:

“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 of the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

(Emphasis Supplied)

21. The complainants are seeking refund of the amount paid by them with interest at the prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

22. 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.

23. 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., 08.02.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

25. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainants are well within their right for seeking refund under section 18(1)(a) of the Act, 2016.

26. The authority hereby directs the respondent to refund the amount received by him i.e., Rs.63,48,338/- with interest at the rate of 10.85% (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*.

H. Directions of the authority:

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations

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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.63,48,338/- 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 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.
28. Complaint stands disposed of.
29. File be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.02.2024