

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

|                           |   |              |
|---------------------------|---|--------------|
| Complaint no.             | : | 4681 of 2020 |
| Date of filing complaint: |   | 16.12.2020   |
| Date of decision          |   | 20.02.2024   |

|   |                     |
|---|---------------------|
| Suneel Bakshi<br>Sonia Bakshi<br>Both R/O B-802, Plot No - 21, Himachal Apartments,<br>Sector - 5, Dwarka, New Delhi - 110075 | <b>Complainants</b> |
| Versus  |                     |
| M/s Corona Buildcon Private Limited<br>Regd. Office: 102, South EX Plaza 2, Room No. 209,<br>Masjid Moth, Delhi - 110049      | <b>Respondent</b>   |

**CORAM:**

|                          |               |
|--------------------------|---------------|
| Shri Vijay Kumar Goyal   | <b>Member</b> |
| Shri Ashok Sangwan       | <b>Member</b> |
| Shri Sanjeev Kumar Arora | <b>Member</b> |

**APPEARANCE:**

|                                |              |
|--------------------------------|--------------|
| Sh. Sukhbir Yadav (Advocate)   | Complainants |
| Sh. Parmanand Yadav (Advocate) | Respondent   |

**ORDER**

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules

and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

| S. N. | Particulars                            | Details  |
|-------|--|--|
| 1.    | Name of the project                    | "Corona Gracieux", Sector-76, Gurugram   |
| 2.    | Nature of the project                  | Group Housing colony   |
| 3.    | DTCP licence no.                       | 16 of 2010 dated 16.02.2010<br>Renewal of licence dated 16.11.2021 Valid till 15.02.2025   |
| 4.    | Name of licensee                       | M/s Ninex Developers Pvt. Ltd.   |
| 5.    | Registered/not                         | Not registered   |
| 6.    | Unit No.                               | E-120212 <sup>th</sup> floor . Tower E<br>(Annexure P-3-page no. 35 of complaint)  |
| 7.    | Unit admeasuring                       | 2650 sq.ft.<br>(Annexure P-3-page no. 35 of complaint)   |
| 8.    | Allotment Letter                       | 17.01.2015<br>(Annexure P-3-page no. 35 of complaint)  |
| 9.    | Date of execution of buyer's agreement | 19.01.2015   |
| 10.   | Possession clause                      | 23<br>Subject to Force Majeure Circumstances and based upon the present plans and estimates and description the Developer contemplates completing the construction of the said building/apartment by 31.12.2015. Further with a grace period of 6 months subject to timely payment by the allottee of the said price |

|     |                                      |   |
|-----|--------------------------------------|---|
|     |                                      | stamp duty and other charges due and payable according to the Payment Plan applicable to him/her or as demanded by the developer. |
| 11. | Due date of delivery of possession   | 30.06.2016<br>(Calculated from date of completion of construction plus six months grace period is allowed being unqualified)      |
| 12. | Total sale consideration             | 1,29,25,000/-<br>(As alleged by the respondent)   |
| 13. | Total amount paid by the complainant | 1,27,34,292/-<br>(As alleged by the complainants)   |
| 14. | Occupation certificate               | Not Obtained  |
| 15. | Offer for fit out possession         | 30.05.2017<br>(Annexure P-6 Page 68 of the complaint)   |
| 16. | Offer of possession                  | Not offered   |

**B. Facts of the complaint:**

- That the project of the respondent is known as corona gracieux - situated in sector 76 , Gurugram. The complainants received a marketing call from a real estate agent who represented himself as an authorized agent of the respondent and marketed for booking in residential project of "Corona Gracieux", situated at Sector - 76, Gurugram. The complainants visited the sales office of the respondent and consulted with the marketing staff/office bearers of the respondent. The marketing staff of the respondent gave a pre-printed application form and assured that possession of the apartment will be delivered by 31.12.2015.
- That being impressed by the claims/projections made by the respondent, the complainants booked a 4 bhk unit on 09.01.2015 and paid Rs. 15,00,000 /- as booking amount. The respondent allotted a unit

- bearing No. E -1202 on the 12<sup>th</sup> Floor in tower e having a super area of 2650 sq. ft. The apartment was booked for a total sale consideration of Rs. 1,29,25,000/-.
5. That on 17.01.2015, the respondent issued a allotment letter in respect of unit no - E-1202 in tower e in the project Corona Gracieux at sector - 76, Gurugram, admeasuring 2650 Sq. ft. On 19.01.2015, a buyer's agreement was executed between the parties. This agreement has a plethora of clauses and according to clause No. 23, the builder proposes to offer "subject to force majeure circumstances and based upon the preset plans and estimates and description the developer contemplates completing the construction of the said building/apartment by 31.12.2015 further with a grace period of 6 months subject to timely payment by the allottee of the said price"., therefore the due date of possession was on or before 30.06.2016.
  6. That, thereafter, the complainant continued to pay each of the remaining instalments as per the payment schedule of the builder buyer's agreement and have already paid more than 98% amount i.e. Rs. 1,27,34,292/- as per the payment receipts issued by the respondent, along with other allied charges demanded from time to time. The complainants, however, observed that there was no progress in the construction/finishing of the subject unit as per the committed time frame, and accordingly raised their grievance to the respondent. Though the complainants were always ready and willing to pay the remaining instalments provided if there is progress in the construction/finishing of the unit.
  7. That on 30.05.2017, the respondent sent an intimation regarding the availability of flat for interior work/fit-out to the complainants and stated that "this is to inform you that construction work at tower E, in



- which your flat is located, is almost complete hence your flat is now available to initiate the interior work as per your choice and also asked to complete the formalities and secure noc to take possession at the site.
8. That on 03.06.2017, the respondent sent an email to the complainant and stated that "This is reference to your subject unit booked by you under subvention scheme. We wish to inform you that the unit is ready and we already have offered you possession for fit-out vide letter dated 30-05-2017. It is further informed to you that subvention EMI will be discontinued with immediate effect accordingly we will reimburse the 10.06.2017 as the last EMI.
  9. That, thereafter the complainants visited the office of the respondent and asked for possession of the unit with a copy of the occupation certificate. The office-bearers of the respondent assured that they have applied for occupation certificate and will reimburse the interest on paid money within 3 months or at the time of offer of possession, whichever is earlier.
  10. That, thereafter the complainants visited several times to the office of the to get the possession of the apartment and interest on paid money, but every time the office bearers made lame excuses and narrated concocted stories. The complainants sent an email to the respondent on 24.10.2020 and asked to provide the payment details made till date and also alleged that till now respondent has not handed over the possession of the unit. It is pertinent to mention here that the Complainants have availed housing loan of Rs. 1,15,00,000/- from LIC Housing Finance Limited and are paying EMI / pre- EMI on loan.
  11. That the complainants made several phone calls to the office-bearers of the respondent and asked for the status of the project and requested to

refund the money on account of failure to complete the project at a given time.

12. That the main grievance of the complainants in the present complaint is that despite the complainants having paid more than 98% of the purchase price of the unit, in a timely manner, the respondent has miserably failed to deliver the possession of fully constructed and developed apartment as per the specifications shown in the brochure and promised in the buyer's agreement, the builder proposes to offer the possession of the unit by 31.12.2015 "subject to force majeure circumstances and based upon the preset plans and estimates and description the developer contemplates to complete the construction of the said building/apartment by 31.12.2015. Further with a grace period of 6 months subject to timely payment by the allottee of the said price". It is pertinent to mention here that there is an inordinate delay in handing over the possession of the unit. The basic infrastructure promised as part of the project has not been completed. It is highly germane to mention here that the complainants have not just purchased four walls and a roof, but have purchased all the allied amenities and facilities as promised at the time of receiving the payment.
13. That since 2016 complainants are regularly visiting at the office of the respondent party as well as the construction site and making efforts to get possession of the unit but all in vain, despite several visits by the complainants. The complainants will never be able to understand/know the actual state of construction. Though towers seem to be built up, but there was no progress is observed on finishing and landscaping work.
14. That the complainants had purchased the apartment with the intention that after purchase, they would be able to stay in a safe and better

environment. Moreover, it was again promised by the respondent party at the time of receiving payment for the apartment that the possession of the fully constructed apartment would be handed over to the complainants as soon as construction completes on 31.12.2015 as per clause 23 of the agreement.

15. That the work on other amenities, like external, internal mep services) of the project are not yet completed, and even post 5 years of booking, the respondent has failed to complete the construction of all apartments reflecting a disregard, unprofessionalism, and negligence upon their part. Based on the present status of the project, it seems that the project will take at least another two years to be completed in all respects, subject to the willingness and intent of the respondent to complete the project.

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

16. The complainants have sought following relief(s):
- Direct the respondent to refund the paid money along with interest.
  - Direct the respondent to refrain them from giving effect to unfair clauses unilaterally incorporated in the builder buyer agreement.

**D. Reply by respondent:**

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

17. That the respondent undertook the construction and development of the group housing project in the name and style of "Corona Gracieux". Based on the widespread good reputation of the respondent and a fleet of satisfied customers, the complainants approached the respondent and expressed their strong aspiration to own a unit in the subject project. Accordingly, they booked a 4bhk unit bearing no. E-1202 in



tower-e admeasuring 2650 sq. ft. (super area for a total sale price of Rs. 1,29,25,000/- .

18. That pursuant to the abovementioned allotment an apartment buyer's agreement was executed between the respondent and complainants. As per the said agreement and the then plans and estimates the respondent had agreed to complete the constructions of the said building/apartment subject to force majeure circumstances. The promised date of completion of construction was subject to force majeure circumstances as laid down under clause 24 of the agreement is 31.12.2015.
19. That the construction of the project was completed by the respondent in the year 2016, and wrote a letter dated 14.12.2016 to Ninex Developers limited to submit an application for grant of part occupation certificate to DTCP, Haryana, Chandigarh, as Ninex Developers Limited is the Licence-Holder, the application for obtaining occupation certificate /part occupation certificate shall be filed by Ninex Developers Limited. It is noteworthy that the Licence Holder was granted the Licence for development of the Group Housing Colony over an area of 16.819 acres and the respondent entered into an Agreement dated 16.06.2010 with respect to 4 acres of land forming part of the licenced land in lieu of valuable consideration.
20. Thereafter, on another instance i.e. on 02.03.2017, the respondent made another request to Ninex Developers Limited to file the requisite application. Since, no response was received from Ninex Developers Limited the respondent made an application dated 27.04.2017 before DCP, Haryana for grant of part occupation certificate on behalf of Ninex Developers Limited. Subsequently, the respondent made several requests to Ninex Developers Limited to fulfil all its obligations as the



Licence-Holder in consonance with the directions of the competent authority but the same went unanswered.

21. That from the foregoing conduct of the respondent it is clear beyond reasonable doubt that the respondent has always tried to make all the possible best efforts for the successful completion of the project and obtaining of occupation certificate. But the circumstances were such that the same were beyond the control of the respondent and the delay in obtaining the occupation certificate cannot be attributed to the respondent.
22. That the licence holder, Ninex Developers Pvt Ltd undergoing corporate insolvency resolution process vide order dated 25.07.2019. One of the creditors of Ninex Developers Limited, M/s BDR Finvest Private Limited moved an application under Section 7 of the Insolvency & Bankruptcy Code, 2016 before the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi. Vide the Order dated 25.07.2019 NDL was admitted to Corporate Insolvency Resolution Process and Mr. Vekas Kumar Garg was appointed as the Interim Resolution Professional. By virtue of the same the entire control of Ninex Developers Limited and its assets rests with the IRP, further, moratorium within the meaning of Section 14 of IBC, 2016 was declared.
23. That on 25.02.2020 the respondent sent a letter to the RP, Mr. Vekas Kumar Garg requesting to pursue the application for grant of occupation certificate before the Directorate Town Country & Planning, Haryana. It was also brought to the attention of the Ld. RP that due to the failure in obtaining of the occupation certificate many complaints have been preferred against the respondent before this Ld. Authority which is causing great prejudice to the respondent. Thereafter, various reminders/follow up letters were sent by the respondent but the same

went unanswered and no assistance or due consideration was received by the respondent. It is pertinent to note that left with no other option, the respondent has preferred an application under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 bearing I.A. No. 541/2022 in C.P. (IB) 281(ND)/2019 before the National Company Law Tribunal, Principal Bench, New Delhi seeking certain reliefs) from the Tribunal where this Ld. Authority, Haryana Real Estate Regulatory Authority, Gurugram be impleaded through its Registrar in the proceedings before the Hon'ble NCLT in the interest of the subject project and its allottees. It is apposite to mention herein that the abovementioned IA-541/2022 and is pending adjudication and is next listed for hearing on 20.12.2022.

24. That from the submissions made hereinabove it is clear that the complainants are making all efforts to conceal true matrix of the facts which are extremely inevitable for the proper adjudication of the present complaint. The complainants have failed to reveal the proceedings before the Hon'ble NCLT or CIRP proceedings. Despite the awareness the complainants have not revealed that the delay in obtaining the occupation certificate /Part occupation certificate is not attributable to the respondent as it is Ninex Developers Limited who has failed to fulfil various obligations towards DTCP and the respondent is left in lurch as it is not able to pursue any application or submission to be able to obtain the occupancy certificate.
25. The respondent has made all possible efforts in pursuing the requisite applications, following up with competent authorities, persuading the rp for securing the interests of the allottees and safeguarding the future of the project. The relief of refund sought by the complainants is not grantable by any stretch of imagination as the same would be bad in law

in the light of the pending IAs and the on-going CIRP of Ninex Developers Limited.

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

**E. Application for dismissal of complaint by the respondent :-**

28. That the Licence bearing No.16 of 2010 pertaining to land measuring 16.819 acres situated in revenue estate of Kherki Daula, Gurgaon-Manesar Urban Complex, comprised in Sector 76 Gurugram had been granted by the Directorate of Town and Country Planning, Haryana, Chandigarh to M/s Ninex Developers Pvt. Ltd and certain other landowners i.e Mr. Suraj Mal and others.
29. That Ninex developers had entered into agreement dated 16.06. 2010 with i.e Corona Buildcon (hereinafter referred to as "Said Agreement"). The aforesaid Licence had been granted by Directorate of Town and Country Planning, Haryana, Chandigarh for development of a residential group housing project over the Said Land. By virtue of the Said agreement, respondent and M/s Ninex Developers Pvt. Ltd. had entered into transaction in respect of land measuring 4 acres forming part of the licenced land. Actual physical possession of land measuring 4 acres had been delivered by Ninex developers to Corona Buildcon.
30. That by virtue of the said agreement, duly sanctioned FSI against land measuring 4 acres had been purchased by respondent from Ninex Developers Limited after payment of substantial consideration mutually agreed between the parties. In furtherance of said agreement,

irrevocable general power of attorney dated 20.09.2011 had been executed and got registered by M/s Ninex Developers Pvt. Ltd. in favour of respondent, so as to enable respondent to undertake conceptualization, promotion, construction and development of residential group housing project over land measuring 4 acres, subject matter of the said agreement. The said agreement and aforesaid general power of attorney are valid and subsisting till date.

31. That after execution of the said agreement, respondent had undertaken the development, construction and implementation of a residential group housing project over the parcel of land measuring 4 acres purchased by it from Ninex Developers. The present complainant had purchased the apartment from Mr. Vijay Gupta vide agreement to sell dt.20<sup>th</sup> March 2018, who had entered into apartment buyer agreement dated 20.05.2017 with respondent in respect of apartment bearing number B-0102 admeasuring 1325 square feet, comprised in the project known as "Corona Gracieux" Sector 76, Gurugram.
32. That after raising of construction, letter dated 14.12. 2016 had been sent by the respondent to Ninex Developers Limited to submit application for grant of part occupation certificate to Directorate of Town and Country Planning, Haryana, Chandigarh. This letter was addressed to Ninex Developers Limited as the licence had been granted by Directorate of Town and Country Planning, Haryana, Chandigarh in favour of Ninex Developers Limited. Even thereafter request letter dated 02.03.2017 had been sent by respondent to M/s Ninex Developers Limited for submission of application for issuance of part occupation certificate.
33. That application dated 27.04.2017 received on 11.05.2017 was submitted by M/s Ninex Developers Pvt. Ltd on behalf of respondent

with Directorate of Town and Country Planning, Haryana, for grant of part Occupation Certificate in respect of Towers 'A1', 'B1', 'C1', 'D1', and 'E1'. That even thereafter, letters dated 09.09.2017, 24.01.2018, 12.07.2018 and 08.02.2019 were sent by the respondent Ninex Developers Limited calling upon Ninex Developers to fulfill its obligations as a licence holder in terms of the said agreement so that the part occupation certificate so applied could be expeditiously obtained from Directorate of Town and Country Planning, Haryana, Chandigarh.

34. That proceedings titled "BDR Finvest Private Limited Vs. Ninex Developers Limited" under section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the "Code of 2016") were instituted before the National Company Law Tribunal, Principal Bench, New Delhi. Order dated 25.07.2019 was passed by the National Company Law Tribunal, Principal Bench, New Delhi whereby Mr. Vekas Kumar Garg was appointed as Interim Resolution Professional. It was further observed in the aforesaid order that all requirements contemplated under section 7 of the Code of 2016 stood fulfilled.
35. That the National Company Law Tribunal, Principal Bench, New Delhi was pleased to declare moratorium in terms of Section 14 of the Code of 2016. Paragraph number 8 of order dated 25th of July, 2019 reads as under :

*"We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016."*

36. That application under Section 60(5) of the Code of 2016 read with Rule 11 of the National Company Tribunal Rules, 2016 had been submitted by respondent before the National Company Law Tribunal, Principal Bench, New Delhi vide IA-2809/2021 seeking the following relief:

*"In light of above facts and circumstances, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:*

- (1) Direct the Respondent to comply with the terms and conditions of the agreement dated 16.06.2010.*
- (2) Direct the Respondent herein to adhere with the all compliances of the DTCP, Haryana and get Licence No.16/2010 renewed and keep the same alive till the grant of occupation and completion certificates to the extent of the share of the Applicant herein with immediate effect.*
- (3) To Direct the respondent to pay all statutory dues to the appropriate authorities including departments such as electricity department as well as other statutory bodies in relation to licence no.16 of 2010.*
- (4) Direct the Respondent herein to clear the dues, compliances up to date with DTCP, Haryana w.r.t Licence No.122/2012 issued in the name of the corporate debtor.*
- (5) In the interest of justice, grant stay of proceeding in all the cases pending before Real Estate Regulation Authority, Gurugram (Haryana) initiated by the homebuyers/allottees against the applicant herein w.r.t. the project developed in the project land under the Licence No.16/2010.*

- (6) Also grant stay of any proceedings initiated herein against the applicant before any other judicial/ quasi-judicial authority due to default of the Respondent w.r.t. the project developed in the project land under the Licence No.16/2010.*
- (7) Pass any order/direction as this Hon'ble Tribunal deems fit in the interests of justice."*

37. That it had been highlighted by respondent in the aforesaid application that there was no lapse attributable to respondent in so far as non-issuance of occupation certificate by Directorate of Town and Country Planning, Haryana, Chandigarh was concerned. The commencement of proceedings under Section 7 of the Code of 2016, appointment of Interim Resolution Professional and Declaration of Moratorium is proving a stumbling block/hindrane in the endeavor of respondent to obtain occupation certificate. Moreover, Ninex Developers has failed to fulfill various obligations towards Town and Country Planning Department/ State of Haryana on account of which the licence as on date has expired. Also, in light of facts narrated above, respondent is not in a position to initiate any legal action against Ninex Developers Limited on account of declaration of moratorium and appointment of Interim Resolution Professional.
38. That in order to facilitate the process of insolvency resolution, an Insolvency Resolution Professional (hereinafter referred to as "IRP") has also been appointed. According to the provisions of the Code, the erstwhile management of the debtor is divested of its powers and the same is then vested in an IRP. The IRP then continues the business of the corporate body as a going concern until a resolution plan is drawn up, which enables the corporate body to pay back its debts. The IRP is

duty-bound to monitor the assets of the debtor and claims made against it and constitute a committee of creditors. In fact, the control and custody of the assets of the debtor may also be taken over by the IRP.

39. That it is pertinent to mention that the respondent herein had approached the National Company Law Tribunal, New Delhi Bench by filing I.A. No. 541/2022 (Annexure R14) wherein the Haryana Real Estate Regulatory Authority through its Registrar was impleaded as the respondent seeking the following prayer :

PRAYER

*In the light of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:*

- 1. Pass an order declaring that the Licence No. 16/2010 is an asset of the Corporate Debtor on which moratorium applies;*
  - 2. leave to withdraw prayer No. 4 in I.A. No. 2809/2021 in C.P (IB) -281 (PB)/2019 filed by the applicant herein;*
  - 3. Pass any order/direction as this Hon'ble Tribunal deems fit in the interests of Justice*
40. That the Ld. NCLT, New Delhi was pleased to issue notice to Haryana Real Estate Regulatory Authority through its Registrar on 2.2.2022 and the same was served to Haryana Real Estate Regulatory Authority through its Registrar on 8.2.2022 (Annexure 15). The case set up by the respondent has found favour with the Ld. NCLT, New Delhi and licence bearing no.16 of 2010 has been treated as asset of the corporate debtor on which the moratorium granted applies. 17. That in light of the same, the continuation of any kind of proceeding in this Hon'ble Authority against the respondent will be in contempt of the moratorium declared under Section 14 of the Code. Moreover, the erstwhile authorised representatives of the respondent company and even the present employees have been stripped of their powers to act on behalf of the



company till the period of moratorium does not expire and will not be able to come forward and provide any help in their official capacity to this Hon'ble Authority.

**F. Jurisdiction of the authority:**

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

**F. I Territorial jurisdiction**

42. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**F. II Subject matter jurisdiction**

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

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the*



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

44. 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.
45. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under :

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating*

*officer under Section 71 and that would be against the mandate of the Act 2016."*

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

**G. Relief sought by the complainants:**

**G.I Direct the respondent to refund the paid money along with interest.**

47. The complainants were allotted a unit in the project of the respondent vide letter dated 17.01.2015. Thereafter, the buyer's agreement was executed between the parties on 19.01.2015 and as per clause 23 of the said buyer's agreement, the respondent was to offer possession by 31.12.2015 with a grace period of six months. Therefore, the due date comes out to be 30.06.2016. However, an offer of fit out was made by the respondent on 30.05.2017. The M/s Ninex Developers Ltd. on behalf of the respondent has applied for occupation certificate before the competent authority vide application dated 27.04.2017 received on 11.05.2017. However, till date no occupation certificate has been obtained by the respondent and no possession was handed over to the complainants. In view of the aforesaid facts, the complainant has approached the authority for seeking refund of the amount paid along with interest.
48. The authority observes that in the present case in hand the licence bearing no. 16 of 2010 dated 16.02.2010 was granted by Directorate of Town and Country Planning, Haryana, Chandigarh to M/s Ninex Developers Limited. The respondent i.e., M/s Corona Buildcon Pvt. Ltd.

and M/s Ninex Developers Ltd. had entered into an agreement on 19.07.2010 M/s Ninex Developers Ltd. has agreed to transfer all its rights, entitlement and interests in the construction and development of permissible FAR corresponding to 4 acres being part of the total licenced land in favour of the respondent i.e., M/s Corona Buildcon Pvt. Ltd. At present, M/s Ninex Developers Ltd. is the subject of litigation before the NCLT, Principal Bench, New Delhi in case titled as BDR Finest Private Limited Vs. M/s Ninex Developers Ltd. Vide orders dated 25.07.2019 passed by the NCLT, the Resolution Professional had been appointed for M/s Ninex Developers Ltd. by the NCLT and a moratorium had been declared in accordance with the provisions of section 14 of IBC, 2016 and also stated that since the Corporate Debtor is undergoing CIRP, the IRP is taking effective steps for revival of licence no.16 of 2010. The IRP is duty bound to monitor the assets of the debtor and claims made against it and constitute a committee of creditors.

49. The respondent has moved an application for dismissal of the complaint on the basis that it had applied for the occupation certificate on 27.04.2017 but is not being granted due to non-compliance by the licensee company i.e. M/s Ninex Developers Limited which is under moratorium. The authority is of the view that merely by executing the development agreement, the respondent cannot escape its responsibility and obligations to the allottees of the project being developer of the project. As per clause (i) section 2(zk) of the Act, a person who constructs or causes to be constructed a building for the purpose of selling all or some of the apartments to other persons, falls in the definition of "Promoter". Similarly, as per clause (v) of section 2(zk) of the Act, if a person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims



to be acting as a holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale, will also fall in the definition of the "Promoter". The aforesaid definition of promoter will cover both the M/s Ninex Developers Limited and M/s Corona Buildcon Pvt. Ltd. So, they will be jointly and severally liable for the completion of the project.

50. In the present case, the complainants intend to withdraw from the project and are seeking refund of the paid-up amount as the respondent has failed to handover possession in terms of the buyer's agreement in terms of section 18 of the Act.
51. The Authority further observes that the language of section 18 is very clear and it states that if the promoter fails to complete or is unable to give the possession of the subject unit to the allottee in accordance with the terms of the agreement for sale then he shall be liable on demand of the allottee, 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 the subject unit along with interest at prescribed rate and the present matter is immensely covered under section 18 (1) of the Act which is reproduced below for the ready reference:

***"Section 18: - Return of amount and compensation***

***18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.***

***(a). in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***

***(b). due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,***

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount***

*received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

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

52. Keeping in view the fact that the complainant allottee wishes to withdraw from the project and is seeking return of the amount received by the promoter along with interest on failure of the promoter to complete or inability to give the possession of the subject unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. This Authority is of the view that it is evidently clear from the conduct of the respondent that they had wilfully ignored the legitimate contractual right of the complainant and the complainant has become entitled to his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit along with interest at the prescribed rate.
53. **Admissibility of refund along with prescribed rate of interest:** The complainant allottee is seeking refund of the amount paid by him along with interest as he intends to withdraw from the subject project. Accordingly, proviso to section 18 provides that where an allottee intends to withdraw from the project, he shall be returned the complete amount paid by him to the promoter along with interest at such rate as may be prescribed, and it has been prescribed 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.*

54. 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.
55. 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., 20.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.
56. 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 complainant-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 along with interest at such rate as may be prescribed. This is without prejudice to any other remedy available to the allottee including compensation for which he may file an application for adjudging

compensation with the adjudicating officer under section 71 read with section 31(1) of the Act of 2016.

57. The authority observes that the present respondent had already applied for the occupation certificate through M/s Ninex Developers Limited vide application dated 27.04.2017 received on 11.05.2017 before the concerned competent authority but is not being granted due to non-compliance by the licensee company i.e. M/s Ninex Developers Limited which is under moratorium. It is pertinent to mention here that the respondent herein had applied for occupation certificate well before the initiation of CIRP proceedings against the licensee. The authority observes that the moratorium is proving a stumbling block/hindrance in the endeavour of the present respondent to obtain the occupation certificate. The respondent did act as per their duty, however M/s Ninex Developers Ltd. being under CIRP proceedings is the reason because of which occupation certificate could not be obtained. Moreover, as per recital C of the buyer's agreement dated 19.01.2015 duly signed by the complainants with the respondent herein, the complainants were very well aware that the licence bearing no. 16 of 2010 was granted in favour of M/s Ninex Developers Ltd. by DTCP, Haryana. Therefore, it is presumed that the complainants were well aware of the fact that the M/s Ninex Developers Ltd. is the licensee in respect of the said project. Furthermore, all the payments were made by the complainant to the respondent herein.
58. 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 him along with interest at the rate of 10.85% per annum from the date of each payment till 25.07.2019 i.e., the date of





moratorium in respect of M/s Ninex Developers Ltd. being licensee holder company which is under obligation to obtain the occupation certificate as the respondent company i.e., M/s Corona Builcon Pvt. Ltd. has already applied for grant of occupation certificate on 27.04.2017 but not being granted due to non-compliance by licensee company which is under moratorium. The amount if any, already refunded or credited to the complainants-allottee shall be adjusted in the refundable amount.

**G.II Direct the respondent to refrain them from giving effect to unfair clauses unilaterally incorporated in the builder buyer agreement.**

59. In view of the findings detailed above in findings no. G.I, the above said relief become redundant as the complainants are already seeking refund of the paid up amount.


**H. Directions of the Authority:**


60. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent /promoter is directed to refund the amount received from the complainant i.e., Rs. 1,27,34,292/- along with interest at the rate of 10.85% p.a from the date of each payment till the date of moratorium on licence company i.e M/s Ninex Developers Pvt. Ltd. i.e., 25.07.2019.
- ii) The amount, if any, refunded or credited to the complainants-allottee shall be adjusted in the refundable amount.

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

61. Complaint stands disposed of.
62. File be consigned to the registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 20.02.2024**

**HARERA**  
**GURUGRAM**