

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

Complaint no. : 2607 of 2023
Date of first hearing: 09.11.2023
Date of decision : 18.04.2024

Sh. Jaswant Rai Gandhi
R/o: - G5-27, Sector-11, Rohini, Delhi-
110085.

Complainant

Versus

M/s Revital Reality Private Limited.
Regd. Office at: 1114, 11th floor,
Hemkunt Chamber, 89, Nehru Place, New
Delhi-110019.

Respondent

CORAM:

Sh. Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Jagdeep Kumar (Advocate)
Sh. Bhrigu Dhami (Advocate)

Complainant
Respondent

ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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*.

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. No.	Particulars	Details	
1.	Name of the project	"Supertech Basera" sector- 79&79B, Gurugram	
2.	Project area	12.10 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.	DTCP 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.	Date of approval of building plans	19.12.2014 [As per page no. 26 of the complaint]	
10.	Date of grant of environment clearance	22.01.2016 (As per page no. 23 of the reply)	
11.	Unit no.	0403, 4 th floor, tower/block- 13, (As per page no. 27 of the complaint)	
12.	Unit measuring	473 sq. ft.(Carpet area) & 73 sq. ft. (Balcony area) (As per page no. 27 of the complaint)	
13.	Allotment letter	08.04.2016 (As per page no. 24 of the complaint)	
14.	Date of execution of flat buyer's agreement	30.04.2016 (As per page no. 26 of the complaint)	
15.	Possession clause	3.1 Possession <i>Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and</i>	



		<p>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 "Commencement Date") , whichever is later. The Developer also agrees to compensate the Allottee/Buyer @ Rs.5.00/- (Five rupees only) per sq. ft. of the area of the flat per month for any delay in handing over possession of the Flat beyond the given promised period plus the grace period of 6 months and upto offer letter of possession or actual physical possession whichever is earlier.</p> <p>(As per page no. 30 of the complaint).</p>
16.	Grace period	<p>Not allowed</p> <p>The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (19.12.2014) or grant of environment clearance, (22.01.2016) (hereinafter referred to as the "Commencement Date"), whichever is later and has sought further extension of a period of 6 months (after the expiry of the said time period of 4 year) but there is no provision in relation to grace period in Affordable Group Housing Policy,</p>

A

		2013. As such in absence of any provision related to grace period, the said grace period of six months as sought by the respondent promoter is disallowed in the present case.
17.	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.]
18.	Total sale consideration	Rs.19,28,500/- (As per payment plan page no. 26 of the complaint)
19.	Total amount paid by the complainant	Rs.20,15,283/- (As alleged by the complainant at page no. 16 of the complaint) (Inadvertently mentioned as Rs.21,17,880/- in proceedings of the day dated 18.04.2024) Rs.19,94,093/- (As per receipt information on page no. 44-52 of the complaint)
20.	Occupation certificate	Not obtained
21.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That somewhere in the month of March 2016, the respondent through its business development associate approached the complainant with an offer to invest and buy a leftover flat in respondent's project namely "BASERA" in the Sector-79 & 79B, Gurugram. On 20.03.2016 the complainant had a meeting with respondent at the respondent's branch office where the respondent explain the project "BASERA" and highlighted that allotment of apartments under the project shall be done through draw of lots as

per procedure defined under Affordable Housing Policy 2013 notification dated 19.08.2013, the respondent represented to the complainant that the respondent is a very ethical business house in the field of construction of residential and commercial projects and in case the complainant would invest in the project of respondent then they would deliver the possession of proposed flat on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainant that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specifications. The complainant while relying upon those assurances and believing them to be true, the complainant submit application with the respondent for 2 BHK flat admeasuring 473 sq. ft. under draw of lots in the aforesaid project of the developer and made payment of application amount of Rs.1,01,425/- vide cheque dated 20 March 2016.

- II. That in the said application form, the price of the said flat was agreed at the rate of Rs.4,000/- per sq. ft. mentioned in the said application form. At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by the respondent in the said application form or agreed otherwise.
- III. That on 08.04.2016 the respondent issued an offer of allotment through letter dated 08.04.2016 in the name of complainant, the respondent offered a residential unit no. 0403, Tower -13

A

admeasuring 546 sq. ft. in the project for a sale consideration of Rs.19,28,500/-. The said offer of respondent was accepted by the complainant and made the requisite payment of Rs.3,98,177/- to the respondent through cheque dated 15.04.2016. The building plan for the said project was approved by the office of DGTCP on 19.12.2014 and environment clearance by respective office on 22.01.2016.

- IV. That on 30.04.2016 the respondent issued a flat buyer's agreement which consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature because every clause of drafted agreement is one-sided and a single breach of unilateral terms of flat buyer's agreement by the complainant, will cost him forfeiting of earnest money and the delay payment charges of 15% is standard rule of company and company will also compensate at the rate of Rs.5/- per sq. ft. per month in case of delay in possession of flat by company. The complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of flat buyer's agreement but the complainant sign the flat buyer's agreement as there is no other option left with complainant because if he stops the further payment of instalments then in that case the respondent forfeit earnest money from the total amount paid by complainant. The complainant repeatedly requested the respondent to prepare buyer's agreement as per the terms and conditions mention under the Haryana Affordable Policy 2013 but the respondent did not pay any heed to repeated requests of complainant.
- V. That in the said flat buyer's agreement dated 30.04.2016, the respondent formulate a possession clause 3.1 contrary to the clause

5(III)(B) of Haryana Affordable Housing Policy 2013, where the respondent had agreed and promise to complete the construction of the said flat and deliver its possession within a period of 4 years with a 6 months of grace period thereon from the date of approval of building plans or grant of environment clearance, whichever is later. However the respondent has breached the terms of said clause and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame. The proposed possession date as per Haryana Affordable Housing Policy 2013 was 22.01.2020.

- VI. That from the date of submitting application for allotment i.e., 20.03.2016 and till 21.04.2022, the respondent had raised various demands for the payment of instalments on complainant towards the sale consideration of said flat and the complainant have duly paid and satisfied all those demands as per the Affordable Housing Policy 2013 without any default or delay on his part and has also fulfilled otherwise also his part of obligations as narrated in the flat buyer's agreement. The complainant is always ready and willing to fulfill his part of agreement, if any pending.
- VII. That as per clause 2 (consideration and payment obligations) of buyer's agreement the sale consideration for said flat was Rs.1928500/- exclusive of Service Tax and GST.
- VIII. That the complainant has paid the total sale consideration along with applicable taxes to the respondent for the said flat. As per the statement dated 21.04.2022, issued by the respondent , the complainant has already paid Rs.20,15,283/- towards total sale consideration and applicable taxes as on today to the respondent as demanded time to time.

Handwritten signature

- IX. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the Haryana Affordable Housing Policy 2013 is 22.01.2020, the complainant had approached the respondent and its officers for inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer to the complainant about the completion and delivery said flat. The complainant thereafter kept running from pillar to post asking for the delivery of his flat but could not succeed in getting any reliable answer.
- X. That on 20.01.2023 the respondent has sent an email through which the respondent attached a letter dated 21.04.2022 offering an intimation regarding pre-possession formalities letter without obtaining occupation certificate from appropriate authority, the said pre- possession formalities comprises various unilateral, illegal and arbitrary demands which are contrary to the guidelines and terms and conditions of Affordable Policy 2013. The respondent raised a demand of delay payment charges at the rate of 15% and also demanded unilateral charges for electricity connection Rs.59,000/-, power backup Rs.59,000/- , usage charges for operational cost of utility services Rs.23,194/-, water connection charges Rs.41,300/-, interest free security Rs.15,000/- and above all respondent also demanded for covered car parking charges Rs.5,90,000/- which is illegal and clear violation of Affordable Policy 2013. The respondent did not earmark the specific parking space for two-wheeler, which is a gross violation of Affordable Housing Policy 2013. The complainant opposed the charges and unfair trade practice of the respondent through email dated 17.02.2023.

- XI. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said flat situated at the project. The respondent has also criminally misappropriated the money paid by the complainant as sale consideration of said flat by not delivering the unit on agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy the said flat on basis of its false and frivolous promises and representations about the delivery timelines aforesaid housing project.
- XII. That the cause of action accrued in favour of the complainant and against the respondent on 20.03.2016 when the complainant had submit application for the said flat and it further arose when respondent failed /neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.
- XIII. That the complainant being an aggrieved person filing the present complaint under section 31 with the Authority for violation/contravention of provisions of the Act of 2016 as mentioned in the preceding paragraph. The present complaint is within the prescribed period of limitation.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to refund the paid-up amount of Rs.20,15,283/- by the complainant along with interest at the prescribed rate.
 - Direct the respondent to pay Rs.55,000/- as cost of litigation.
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 complainant was allotted an apartment bearing no. 0403, 4th floor, Tower-13, having a carpet area of 473 sq. ft. and balcony area of 73 sq. ft. for a total consideration of Rs.19,28,500/-. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the flat buyer's agreement dated 30.04.2016.
 - ii. That as per clause 2.3 of the flat buyer's agreement, it was agreed that an amount of Rs.25,000/- shall be treated as earnest money which shall be liable to be forfeited in the event of withdrawal of allotment by the allottee/ buyer and/or cancellation of allotment on account of default/ breach of the terms and conditions of allotment/transfer contained herein, including non-payment of instalments. In the eventuality of withdrawal/cancellation, the earnest money will stand forfeited and the balance amount paid, if any, will be refunded to the allottee/buyer, without any interest and such refund shall be made only when the said flat is re-allotted/sold to any other person(s) and a consideration exceeding the refund amount is received from the new allottee/ buyer. Further, vide clause 3.5 of the agreement it was agreed that the developer shall endeavor to handover possession of the said flat within a period of four years from the commencement date, subject to timely payment by the allottee/buyer towards the basic sale price and other charges, as demanded in terms of this agreement. The time frame for possession provided hereinabove is

- tentative and shall be subject to force majeure and timely and prompt payment of all instalments and completion of formalities required.
- iii. That it is submitted that the project "Basera" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 108 of 2017 dated 24.08.2017. The Authority had issued the said certificate which is valid for a period commencing from 24.08.2017 to 31.01.2020 and the respondent has already applied for due extension.
- iv. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not close any cause of action in favour of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
- v. That the possession of the said premises was proposed to be delivered by 21.01.2020. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. However, the project got delayed due to force majeure circumstances which were beyond the control of the respondent. Further, due to orders passed by the Environment Pollution (Prevention & Control) Authority, the construction was/has been stopped for a considerable period due to high rise in pollution in Delhi-NCR. Furthermore, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. Moreover, shortage of labour, water and other raw materials and various stay orders issued by various courts, authorities, implementation of NREGA and JNNURM schemes etc.

caused delay in completion of the project. Unfortunately, circumstances have worsened for the respondent in the pandemic of Covid-19.

- vi. That the project is an ongoing project and orders of refund at a time when the real-estate sector is at its lowest point, would severally prejudice the development and the interest of the other allottees of the project.
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.

E. Jurisdiction of the authority:

8. 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-

na

(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.

9. 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.
10. 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***, 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."

A

11. 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 amount and interest on the refund amount.

F. Findings on the objections raised by the respondent:

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

12. 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 NGT as well as competent authorities, High Court and Supreme Court orders, shortage in supply of raw material and major spread of Covid-19 across worldwide. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 22.01.2020. Hence, 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 complainant:

G.I Direct the respondent to refund of paid-up amount of Rs.20,15,283/- by the complainant along with interest at the prescribed rate.

13. The complainant was allotted a unit in the project of respondent "Supertech Basera", in Sector-79 B, Gurugram vide allotment letter dated 08.04.2016 for a total sum of Rs.19,28,500/-. A flat buyer's agreement dated 30.04.2016 was executed between the parties and the



complainant started paying the amount due against the allotted unit and paid a total sum of Rs.19,94,093/.

14. The due date of possession as per the possession clause of the flat buyer's agreement is 22.01.2020. There is delay of more than 3 years on the date of filing of the complaint i.e., 28.06.2023. The occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoter.
15. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit 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 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....."

16. 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.

17. 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 him in respect of the unit with interest at such rate as may be prescribed.

18. **Admissibility of refund along with prescribed rate of interest:** In the present complaint, the complainant intend to withdraw from the project and is 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)

19. The complainant is seeking refund of the amount paid by him with interest at the prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

A

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.

20. 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.
21. 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., 18.04.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
22. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(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;"*
23. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainants are

12

well within their right for seeking refund under section 18(1)(a) of the Act, 2016.

24. The counsel for the respondent vide proceedings of the day dated 18.04.2024 brought to the notice of the authority that the actual amount paid by the complainant is Rs.19,94,093/- instead of Rs.20,15,283/- only as the remaining amount of Rs.21,190/- (inadvertently mentioned as Rs.21,19,000/-) claimed by the complainant is only on special scheme and was credited in the account by the respondent and requested the remaining amount not to be included in the refundable amount . As per receipt information annexed by the complainant on page no. 44-52 of the complaint, the total amount paid by the complainant is Rs.19,94,093/-. Thus, the total amount paid by the complainant is Rs.19,94,093/-.
25. The authority hereby directs the promoter to return the amount received by him i.e., Rs.19,94,093/- 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*.

G.II Direct the respondent to pay an amount of Rs.55,000/- to the complainants as cost of present litigation.

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

12

factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

H. Directions of the authority:

27. 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.19,94,093/-** 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.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

28. Complaint stands disposed of.

29. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.04.2024