

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

Date of decision: 31.05.2024

NAME OF THE BUILDER		M/s BESTECH INDIA PVT. LTD.	
PROJECT NAME		PARK VIEW SANSKRUTI	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4706/2022	Rajeev Mehta V/s M/s Bestech India Pvt. Ltd.	Shri. Gaurav Rawat Shri. Ishaan Dang
2.	CR/4708/2022	Rajeev Mehta V/s M/s Bestech India Pvt. Ltd.	Shri. Gaurav Rawat Shri. Ishaan Dang

CORAM:

Shri Sanjeev Kumar Arora

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects,

namely, 'PARK VIEW SANSKRUTI' being developed by the same respondent promoters i.e., M/s Bestech India Pvt. Ltd.

3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	M/s BESTECH INDIA PVT. LTD. " PARK VIEW SANSKRUTI" Sector-92, Gurugram.	
Possession Clause	<p>3. POSSESSION a). Offer of possession <i>That subject to terms of this clause and subject to the APARTMENT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the Developer, the Developer proposes to offer the possession of the APARTMENT within a period of Thirty Six (36) months from the date of signing of this Agreement or from the date of approval of Building Plans by Town and Country Planning Department, whichever is later. It is clearly understood and agreed by the APARTMENT ALLOTTEE(S) that the Developer shall be entitled for grace period (beyond a period of 36 months) of Six (6) months. It is however understood between the parties that the possession of various Towers comprised in the Complex as also the various common facilities planned therein shall be ready & completed in phases and will be handed over to the APARTMENT ALLOTTEE(S) of different Towers as and when completed and in a phased manner.</i></p>	
Occupation certificate	19.06.2018	
Approval of building plans	04.05.2013	
Relief Sought	1. Direct the respondent to refund the amount paid by the complainant.	
Complaint no	CR/4706/2022	CR/4708/2022
Unit no.	1703, 16th floor, Tower/block- B	301, 3rd floor, Tower/block- H

	(Page no. 55 of the reply)	(Page no. 49 of the reply)
Date of BBA	11.01.2014 (Page no. 52 of the reply)	11.01.2014 (Page no. 47 of the reply)
Due date of possession	11.07.2017 (Note: - 36 months from date of agreement (11.01.2014) or the date of building plans (04.05.2013) whichever is later + 6 months grace period)	11.07.2017 (Note: - 36 months from date of agreement (11.01.2014) or the date of building plans (04.05.2013) whichever is later + 6 months grace period)
Basic sale price	₹1,10,96,190/-	₹1,36,00,125/-
Total sale consideration (TC)	₹1,29,99,670/-	₹1,60,61,275/-
Amount paid (AP)	₹36,33,014/-	₹35,64,129/-
Offer of possession	Not offered	Not offered
Date of cancellation letter	12.06.2017 (Annexure C4, at page no. 105 of the complaint)	09.05.2015 (Annexure C4 at page no. 78 of the complaint)
Refund request made by the complainant vide email dated	14.05.2015 (Page no. 96 of the complaint)	04.05.2015 (Page no. 67 of the complaint)
Offer of possession	15.02.2019 (Page no. 106 of the complaint)	19.02.2019 (Page no. 79 of the complaint)
Legal notice for refund	17.03.2021 (Page no. 108 of the complaint)	17.03.2021 (Page no. 80 of the complaint)
Third party rights	19.11.2020 Allotment letter in favor of Prabha Kumari and Sudhir Kumar (Present allottee)	08.11.2019 Allotment letter in favor of Shashank and Shaila Rani (Present allottee)

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the

promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.

5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/4706/2022 titled as Rajeev Mehta V/s M/s Bestech India Pvt. Ltd.** are being taken into consideration for determining the rights of the allottees qua refund of the paid up amount.

A. Unit and project related details

6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

**CR/4706/2022 titled as Rajeev Mehta V/s
M/s Bestech India Pvt. Ltd.**

S. N.	Particulars	Details
1.	Name of the project	"Park View Sanskruti", Sector- 92, Gurugram.
2.	Project area	12.7875 acres
3.	Nature of the project	Residential group housing
4.	DTCP license no. and validity status	i. 13 of 2009 dated 21.05.2009 valid up to 20.05.2024 ii. 43 of 2011 dated 13.05.2011 valid up to 12.05.2024
5.	Name of licensee	Spring Water Properties Pvt. Ltd. and others
6.	RERA Registered/ not registered	Not Registered

7.	Unit no.	1703, 16 th floor, Tower/block- B (Page no. 55 of the reply)
8.	Unit area admeasuring	1995 sq. ft. (Super area) (Page no. 55 of the reply)
9.	Allotment letter	10.05.2013 (Page no. 45 of the reply)
10.	Date of execution of agreement to sell	11.01.2014 (Page no. 52 of the reply)
11.	Possession clause	<p>3. POSSESSION</p> <p>a). Offer of possession</p> <p>That subject to terms of this clause and subject to the APARTMENT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the Developer, the Developer proposes to offer the possession of the APARTMENT within a period of <i>Thirty Six (36) months from the date of signing of this Agreement or from the date of approval of Building Plans by Town and Country Planning Department, whichever is later.</i> It is clearly</p>

		<p>understood and agreed by the APARTMENT ALLOTTEE(S) that the Developer shall be entitled for grace period (beyond a period of 36 months) of Six (6) months. It is however understood between the parties that the possession of various Towers comprised in the Complex as also the various common facilities planned therein shall be ready & completed in phases and will be handed over to the APARTMENT ALLOTTEE(S) of different Towers as and when completed and in a phased manner.</p> <p>(Page no. 60 of the reply)</p>
12.	Grace period	Grace period of 6 months allowed being unqualified.
13.	Approval of building plans	04.05.2013 [Page no. 164 of the reply]
14.	Due date of possession	11.07.2017 (Note: - 36 months from date of agreement (11.01.2014) or the date of building plans (04.05.2013) whichever is later + 6 months grace period)
15.	Basic sale consideration at page no. 46 of the complaint	Rs.1,10,96,190/-
16.	Total sale consideration	Rs. 1,29,99,670/-
17.	Amount paid by the complainant as per averment	Rs.36,33,014/-

	complainant, at page 18 of the complaint	
18.	Occupation certificate /Completion certificate	19.06.2018 (page 181 of reply)
19.	Offer of possession	Not offered
20.	Reminder letters	03.07.2013, 16.08.2013, 07.09.2013, 09.10.2013, 19.08.2014, 06.10.2014, 20.10.2014, 18.10.2014, 16.12.2014, 04.02.2015, 19.02.2015, 19.02.2015, 07.05.2015, 21.05.2015, 21.05.2015, 17.06.2015, 03.08.2015, 17.08.2015, 19.09.2015, 04.11.2015, 19.11.2015, 04.12.2015, 03.02.2016, 17.03.2016, 02.04.2016, 20.04.2016, 04.06.2016, 10.06.2016, 04.07.2016, 10.11.2016, 30.12.2016, 14.01.2017, 28.01.2017, 20.02.2017, 10.04.2017, 12.05.2017
21.	Date of cancellation letter	12.06.2017 (Annexure C4, at page no. 105 of the complaint)
22.	Refund request made by the complainant vide email dated	14.05.2015 (Page no. 96 of the complaint)
23.	Legal notice for refund	17.03.2021 (Page no. 106 of the complaint)
24.	Allotment letter in favor of Prabha Kumari and Sudhir Kumar (Present allottee)	19.11.2020 (page no. 151 of reply)

B. Facts of the complaint

7. The complainant has submitted as under:

- a. That in the year 2012 the complainant was desirous of purchasing a property in a gated society in Gurugram and was looking for two adjacent apartments to accommodate his family.
- b. That the complainant was approached by the respondent through the respondent's sales representative regarding the launch of the respondent's new project "PARK VIEW SANSKRUTI" on land admeasuring 12.7875 acres located in Sector 92, Gurugram, Haryana.
- c. That the complainant after various options agreed to book an apartment in the above-mentioned project and paid a sum of Rs.10,00,000/- lakhs towards the earnest money/registration charges and after receipt of the above said amount on 27.12.2012 and a ledger confirmation was provided by the respondent through their executive Ms. Jagdeep Kaur confirming the receipt of the above-said amount.
- d. That at the time of booking of the above-said apartments, the respondent assured the complainant that the said project has already been launched in the month of December 2012 whereas later on the complainant came to know that the said project was, launched only in July 2013. That much before the launch of the project, the complainant was made to pay another sum of Rs. 5 lakh towards the consideration amount of the said apartment which was paid on 12.04.2013.
- e. That on 10.05.2013, flat no. B 1703 admeasuring 1995 sq. ft. On the 16th floor comprising of 3 bedrooms were allotted to the

- complainant. That, a total sum of Rs.36,33,014/- was paid by the complainant to the respondent against property no. B 1703
- f. That as per the agreement between the parties, the payments of the apartment were to be made by the complainant according to the construction linked plan and the possession of the apartment was to be handed over by the respondent within 36 months and the grace period of six months.
- g. As per clause 3 (a) of the apartment buyer's agreement dated 23.10.2013, the possession was to be handed over within a period of 36 months plus grace period of 6 months, from the date of signing of agreement or from the date of approval of building plan by Town and Country Planning department, whichever is later. Therefore, the due date comes out to be 23.04.2017.
- h. That since the beginning of the project the respondent has been delaying the construction on one ground or the other and the complainant has approached the respondent on numerous occasions for a refund of the money. However, the respondent has been threatening the complainant of unilaterally cancelling the booking of the complainant and forfeiting the entire amount.
- i. That the respondent had been raising demands on the complainants without the corresponding construction on the site during the period June 2013 to August 2015. That the respondent has also been charging the delayed payment charges @ 18% per annum compounded quarterly as per clause 1.2 (k) of the agreement, which is absolutely illegal, unwarranted more so when there was no corresponding construction on the site.

- j. That according to the email dated 06.11.2014, the complainant since last four months, requested the Respondent to consolidate the two apartments into one and the entire amount paid by the complainant be adjusted towards the single apartment after consolidation. However, despite repeated requests for consolidation, no reply was given by the Respondent.
- k. That the complainant on 04.05.2015 requested the respondent through email to cancel the booking and refund the entire amount paid by the complainant along with 18% interest. That on one hand cancellation letter was being issued illegally as stated above and on the other hand, various demand letters were issued by the respondent, after the illegal cancellation, in order to avoid the liability of the respondent towards the complainant.
- l. That the respondent issued a letter dated 12.06.2017 whereby the allotment of the apartment was stated to have been cancelled by the respondent and it was again specified in the said cancellation letters that the amount towards the sale consideration has been forfeited.
- m. That the complainant was again surprised to receive a letter dated 15.02.2019 from the respondent wherein it was stated the allotment of the apartment which was cancelled on 09.05.2015 has been reinstated/revived.
- n. In view of the fact that the complainant, based on the actual progress on the site, when the demands were being raised without the corresponding development, the respondent on 04.05.2015 had requested for a refund of the entire amount of Rs 36, 33,014.00, the amount paid to the respondent, together with the interest thereon

from that day till date. The said amount has been admitted by the Respondent in their reply dated 16.04.2021.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
 - a. Direct the respondent to refund the paid up amount by the complaint along with the interest at prescribed rate.
9. On the date of hearing, the authority explained to the respondents/promoters 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.

10. The respondent has contested the complaint on the following grounds:
 - a. That the complainant was provided with the application form containing the terms and conditions of provisional allotment and the complainant were given the opportunity to familiarize themselves with the same. Clause 11 of the terms and conditions of booking was specifically brought to the complainant notice which provided that timely payment of instalments/balance sale consideration/security deposits/charges, shall be the essence of the contract. It was specifically emphasized by the officials of the respondent that interest @ 18% per annum, compounded annually shall be levied on delayed payments and that in the event of delay in payment of outstanding amount along with interest, the allotment was liable to be cancelled and earnest money interest accrued and brokerage was liable to be forfeited.

- b. That the attention of the complainant was also drawn to clause 12 of the terms and conditions of booking that specifically provides that possession of the apartment was proposed to be offered by the respondent, within 42 months (including grace period of 6 months) from the date of approval of building plans or date of execution of the buyer's agreement, whichever is later, subject to timely payment of the sale price and other charges as per the payment plan. The terms and conditions as set out in the application form were accepted by the complainant and the complainants agreed and undertook to scrupulously comply with the same.
- c. That after fully satisfying himself with regard to all aspects of the project including but not confined to the capacity/capability of the respondent to successfully undertake the construction, promotion, implementation of the residential project, the complainant had proceeded to book the property in question.
- d. That since the complainant was intending to book two residential apartments, discount of ₹133/- per sq. ft. was offered to the complainant in respect of the present apartment and other apartment (H-301) also booked by the complainant and which is subject matter of complaint no 4708 of 2022 filed by the complainant which is pending before this Hon'ble Authority.
- e. That the respondent specifically informed the complainant that as per the terms and conditions of booking, an amount of ₹19,28,492/- plus taxes was required to be deposited by the complainant at the time of booking towards booking amount.

- f. That it was categorically conveyed to the complainant by the respondent that the formal letter of allotment would only be issued in his favour once the complainant made payment of booking amount and submitted the formal application/booking form containing the terms and conditions of allotment.
- g. That the respondent had provisionally allotted apartment bearing no 1703, admeasuring 1995 sq. ft. of super area (approx.), situated on the 16th floor in tower B in Park View Sanskruti, Sector 92, Gurgaon on 10.05.2013 on receipt of the booking amount and on submission of the application form.
- h. That the complainants had opted for a payment plan that was partly construction linked and had agreed and undertaken to pay the instalments as and when demanded by the respondent. The complainants duly understood and accepted the terms and conditions of booking which were incorporated in the application form and undertook to be bound by the same.
- i. That allotment letter was issued in favour of the complainant on 10.5.2013 whereby apartment bearing no 1703, admeasuring 1995 sq. ft. of super area (approx.), situated on the 16th floor in tower B was provisionally allotted to the complainant. The payment plan was appended along with the allotment letter reflecting the total sale consideration payable by the complainants to be ₹1,29,99,670/- (exclusive of applicable taxes and other charges payable at the time of possession).
- j. That buyer's agreement in respect of apartment bearing no. B- 1703 was dispatched to the complainant for execution under cover of

letter dated 04.09.2013. However, the complainant delayed execution of the buyer's agreement for reasons best known to himself. Eventually, the buyer's agreement was executed by the complainant on 11.01.2014.

- k. That right from the very beginning, the complainant was extremely irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc., calling upon the complainant to make payment of outstanding amounts payable by the complainant under the payment plan opted by the complainant. The complainant has been served with various reminder letters dated 16.08.2013, 07.09.2013, 09.10.2013, 19.08.2014, 06.10.2014, 20.10.2014, 04.11.2014, 04.02.2015, 19.02.2015, 09.03.2015, 07.05.2015, 21.05.2015, 05.06.2015, 17.06.2015, 03.08.2015, 17.08.2015, 01.09.2015, 19.09.2015, 04.11.2015, 19.11.2015, 04.12.2015, 03.02.2015, 17.03.2016, 02.04.2016, 16.04.2016, 20.04.2016, 04.06.2016, 18.06.2016, 04.07.2016, 10.11.2016, 30.12.2016, 14.01.2017, 28.01.2017, 20.02.2017, 10.04.2017, 26.04.2017 and 12.05.2017.
- l. That it is pertinent to mention herein that the complainant was specifically informed to make complete payment of outstanding dues and that part payment would attract delayed payment interest on the unpaid amount. However, the complainant ignored the reminders issued by the respondent. Thus, on account of the wilful and persistent defaults by the complainant in refusing to make the payment as per the applicable payment plan. The allotment in favour of the complainant was cancelled on 12.06.2017. The complainant

was informed that the amounts paid by the complainant stood forfeited in accordance with the terms and conditions of booking. The complainant was informed that the complainants were not left with any right, title or interest in the apartment in question.

- m. That on 10th of June 2017 the respondent had received an email from the complainant requesting for refund of amounts paid by the complainant on baseless and unfounded ground. The false and frivolous claim put forth by the complainant vide email dated 10th of June 2017 which were contrary to the terms and conditions of the buyer's agreement, was replied to by the respondent vide email dated 24th of June 2017, hereto. It was clearly conveyed to the complainant that the allotment in respect of the apartment referred to above had been cancelled by the respondent. It was further brought to the complainant's attention that repeated letters had been sent to the complainant by the respondent calling upon the complainant to make payment of consideration in respect of the apartment in question, but on the complainant's failure to do so, the allotment had been cancelled. It was further highlighted that the respondent had called the complainant several times to discuss the problem pertaining to non-payment of consideration, but the complainant had failed to even visit the office of the respondent. Thereafter there was no communication from the complainant's side.
- n. That although under no legal obligation to do, nevertheless as a gesture of goodwill, the respondent sent a letter dated 15.02.2019 informing the complainant that the project had received the occupation certificate from Directorate of Town and Country

Planning, Haryana, Chandigarh and that the complainant could obtain possession of the unit in question on payment of balance consideration. Thus, the complainant was given yet another opportunity to reinstate the allotment of unit subject to balance payment to be made by the complainant but the complainant failed to make any payment and in fact did not even bother to contact the respondent.

- o. That after keeping silent for about two years, the complainant sent a false and frivolous legal notice dated 17th March 2021 wherein absolutely false, frivolous and fabricated allegations were levelled against the respondent. Now, after a period of almost five years from the date of cancellation the present false and frivolous complaint has been filed by the complainant.
- p. That in the meanwhile, the respondent was compelled to sell the unit in question at a substantial loss. The unit was further resold for sale consideration of Rs.72,87,985/- whereas at the time of the booking by the complainant the unit had been sold at the price of Rs.1,29,99,670/-. The respondent reserves its rights to seek damages and compensation for the losses suffered by it including but not limited to loss of Rs.57,11,685/- in terms of sale price, by filing a complaint before the Hon'ble Adjudicating Officer.
- q. That from the averments made hereinabove it is evident that the respondent has made every effort to accommodate the complainant by repeatedly granting the complainant extension of time in making payment of instalments which was required to be paid by the

complainant. There is no breach or default whatsoever that can be legitimately imputed to the respondent.

- r. That despite the cooperation extended to the complainant by the respondent, the complainant has failed to discharge his contractual obligations in accordance with the terms and conditions of the buyer's agreement. The respondent has acted strictly in accordance with the terms and conditions of the buyer's agreement which were/are binding upon the complainant with full force and effect.
- s. That thus the allegations levelled by the complainant against the respondent are totally baseless and do not merit any consideration by the Hon'ble Authority. The complainant has failed to make the payments as per the agreed payment plan. The complainant has admittedly till only made payment of Rs.36,33,014/- against the consideration amount of Rs.1,29,99,670/-(excluding taxes) and other charges at the time of possession . It is ridiculous on the part of the complainant to claim failure in delivery of possession of the said apartment in question by paying approximately less than 30 % of the sale consideration.
- t. That it is submitted that the project in question has been completed on time and there has been no delay on the part of the respondent in offering possession to the other allottees of the project who have paid all the dues. On the contrary, the respondent had completed construction of the project and applied for the occupation certificate in respect of the same from the competent authority on 30.6.2017 itself. Occupation Certificate has also been granted by the competent authority. Actually, the complainant never had sufficient funds to

make payment of the sale consideration and has proceeded to make false and baseless allegations against the respondent so as to try and cover up its own lapses and wilful defaults.

11. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction सत्यमेव जयते

13. 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

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

Section 11(4) (a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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) *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.*

15. 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.
16. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on 11.11.2021 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."

17. Furthermore, the said view has been reiterated by the division bench of Hon'ble Punjab and Haryana High Court in **Ramprastha Promoter and Developers Pvt. Ltd. Vs Union of India and others** dated 13.01.2022 in CWP bearing no. 6688 of 2021. The relevant paras of the above said judgment reads as under:

"23) The supreme court has already decided on the issue pertaining to the competence/power of the authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017. सत्यमेव जयते 121

24) The substantive provision of the Act having been interpreted by the Supreme Court; the Rules have to be in tandem with the substantive Act. 21/11/2021

25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."

18. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra.)**, and the division bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Vs Union of India and others. (supra.)**, the

authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee along with interest at the prescribed rate.

F. Findings on the relief sought by the complainant.

F.I. Direct the respondent to refund the paid up amount by the complaint along with the interest at prescribed rate.

19. The complainant was allotted a unit bearing no. 1703,16th floor, tower /block- B, vide allotment letter dated 10.05.2013. Thereafter, an agreement to sell was executed between the parties on 11.01.2014. The complainant has paid an amount of Rs.36,33,014/- against the sale consideration of Rs.1,29,99,670/-. As per clause 3 of the agreement, the respondent was required to hand over possession of the unit within a period of 36 months from the date of execution of this agreement or from the date of approval of building plans by DTCP whichever is later with a grace period of 6 months ("Committed date") over and above the committed period. Therefore, the due date of possession comes out to be 11.01.2017. (Calculated from date of execution of this agreement i.e., 11.01.2014) being later. As far as grace period of 6 months is concerned the same is allowed being unqualified. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. However, the complainant has placed an email dated 14.05.2015 on page no. 96 of the complaint and sought refund of the paid-up amount with interest before the due date of possession which the respondent denies in his reply to the legal notice issued by the complainants for refund of the amount paid that the no such mail or letter was ever received by the respondent. Although the said unit has been cancelled by the respondent on 12.06.2017 but the

respondent vide its letter dated 15.02.2019 revived the cancelled unit and specifically mentioned that this letter be treated as the offer of possession of the subject unit. Therefore, the cancellation made by the respondent on face of it has by its own act has set aside the said cancellation letter dated 12.06.2017 accordingly, there is no point opining upon the validity of the said cancellation. Thereafter the complainant issued another surrender request vide legal notice dated 17.03.2021 for refund of the paid amount along with interest.

20. Clause 3 of the buyer's agreement executed between the parties talks about the completion of the project:

"That subject to terms of this clause and subject to the APARTMENT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the Developer, the Developer proposes to offer the possession of the APARTMENT within a period of Thirty Six (36) months from the date of signing of this Agreement or from the date of approval of Building Plans by Town and Country Planning Department, whichever is later. It is clearly understood and agreed by the APARTMENT ALLOTTEE(S) that the Developer shall be entitled for grace period (beyond a period of 36 months) of Six (6) months. It is however understood between the parties that the possession of various Towers comprised in the Complex as also the various common facilities planned therein shall be ready & completed in phases and will be handed over to the APARTMENT ALLOTTEE(S) of different Towers as and when completed and in a phased manner."

21. So, in such a situation, the complainant withdrew from the project subsequent to issuance of valid offer of possession after obtaining occupation certificate from the competent authority. So, the complainant is not entitled to refund of the complete amount but only after certain deductions as prescribed under the Haryana Real Estate Regulatory

Authority Gurugram (Forfeiture of earnest money by the builder)
Regulations, 11(5) of 2018, which provides as under: -

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

22. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs. 36,33,014/- after deducting 10% of the basic sale consideration of Rs.1,10,96,190/- being earnest money along with non-refundable statutory charges as per settled law of the land along with an interest @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 17.03.2021 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the authority:

23. 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):

- a. The respondent is directed to refund the paid-up amount of Rs.36,33,014/- after deducting 10% of the basic sale consideration of Rs.1,10,96,190/- being earnest money along with non-refundable statutory charges as per settled law of the land along with an interest @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 17.03.2021 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
- b. 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.
24. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
25. True certified copies of this order be placed on the case file of each matter.
26. Files be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.05.2024