

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

**Complaint no.:** 505 of 2023  
**Date of filing:** 01.02.2023  
**Date of decision:** 16.04.2024

1. JEET Infra Estate Private Limited
2. Dr. Parvinder Singh
3. Dr. Neena Singh

**R/O:** - House No. 12, New Friends Colony, Mohila  
Hundal Khail, Shahjahanpur, U.P.

**Complainants**

Versus

1. M/s Ireo Pvt. Ltd.
2. Pankaj Dugar (CEO)

**Regd. Office at:** - A-11, 1<sup>st</sup> floor, Neeti Bagh, New Delhi-  
110049.

**Respondents**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Deepak Verma  
Shri M.K. Dang

Counsel for the Complainants  
Counsel for the Respondents

**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 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 allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"IREO City Central ", Sector 59, Gurugram
2.	Nature of the project	Commercial
3.	Project area	3.9375 acres
4.	DTCP license no. and validity status	56 of 2010 dated 31.07.2010 valid up to 30.07.2020
5.	RERA Registered/ not registered	Registered 107 of 2017 dated 24.08.2017
6.	Date of allotment	26.09.2012 (page no. 42 of complaint)
7.	Date of building plan	05.09.2013 (page no. 81 of reply)
8.	Date of environment clearance	12.12.2013 (page no. 87 of reply)
9.	Date of execution of Apartment Buyer's Agreement	16.10.2013 (as per page no. 64 of complaint)
10.	Unit no. and area	R0603, 6 <sup>th</sup> floor admeasuring 908.33 sq. ft. (super area) (As per BBA at page 69 of complaint)
11.	Possession clause	<i>Clause 13.4: subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges</i>

		<p>including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Rental Pool Serviced <b>Apartment to the Allottee within a period of 42 months from the date of approval of the Building Plans and/or fulfillment of the preconditions imposed there under ("Commitment Period")</b>. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 days ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company.</p>
12.	Due date of possession	05.03.2017 (calculated as 42 months from the date of approval of building plan i.e. 05.09.2013 as held by the Authority in various cases)
13.	Basic sale consideration	Rs. 80,39,139/- (As per BBA on page 76 of complaint)
14.	Amount paid by the complainant	Rs. 66,84,630/- (As alleged by the complainant)
15.	Occupation certificate /Completion certificate	Not obtained
16.	Offer of possession	Not offered

### B. Facts of the complaint

3. The complainants have made the following submissions: -

- a) That the complainants applied for booking of managed service apartment under rental pool (MSA-Rental Pool) in the said project vide application dated 12-02-2012. The respondents/promoters allotted commercial msa-

rental pool serviced apartment no. ICC-MSA- R0603, studio type on 06<sup>th</sup> Floor, in Tower R in the Project in favour of complainants, having super area 908.33 sq. ft. (hereinafter referred to as the "said Unit") vide allotment letter dated 26.09.2012. The total sale consideration as agreed price of said unit was Rs. 89,58,797/- against which the complainants paid an amount of Rs 66,84,630/-.

- b) That the complainants and respondents executed buyer agreement for said unit on 16.10.2013. As per the agreement the respondents were to deliver the possession of the said commercial unit to the complainants within a period of 42 months from the date of approval of the building plans. The respondents were also entitled to further grace period of 180 days in addition to above time for handing over the possession.
- c) That it was well within knowledge of respondent that there is delay in handing over possession of the allotted unit. Since there is delay beyond the reasonable and explainable time, the complainants have a legal right cancel said allotment Unit no. ICC-MSA-R0603 and seek refund of his entire deposited amount of Rs. 66,84,630/- along with interest from the respondents as per the provision of RERA Act, 2016 and under its Rules as framed by the Hon'ble Authority.
- d) That complainants have visited the respondent's office and requested for refund of the entire amount along with interest. The complainants are old age citizens, who are retired and need the amount for their personal use after retirement and old age ailments. Despite all the complainants' requests to the concerned staff of the respondents and senior management personnel to address their complaint, all efforts have been in vain.
- e) That the respondents had no right to unilaterally hold the hard earned money of the complainants for much delay in handing over the project.

Additionally, the respondents failed to complete the structure even after more than five years of delay in delivering possession of the unit.

- f) That despite paying all the payments as raised by the respondents, the respondents failed to deliver the possession of the said unit within the agreed time period. The inordinate delay in handing over possession of the unit clearly amounts to deficiency of service on account of the respondents and the complainants have rightly claimed to withdraw from the project and claim total refund of amount along with other interest and compensation as per section 18 of Real Estate (Regulation and Development) Act, 2016.

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

4. The complainants have sought following relief:
- Direct the respondents to refund the total amount paid i.e., Rs. 66,84,630/- by the complainants along with the prescribed rate of interest.
  - To pay litigation charges of Rs. 1,00,000/- to the complainant.

**D. Reply by the respondents.**

5. The respondents contested the complaint on the following grounds:-
- That the complainants after checking the veracity of the project namely "Managed Service Apartment-Rental Pool" at 'Ireo City Central, Sector 59, Gurugram had applied for an allotment of a commercial unit vide booking application form dated 12.02.2012
  - That based on the said application, respondent no. 1 vide its allotment offer letter dated 26.09.2012 allotted to complainant no. 1 apartment no. R0603 having tentative super area of 908.33 sq. ft. for a sale consideration of Rs. 89,58,797/-. This consideration was exclusive of the registration charges, stamp duty, service tax and other charges which are payable by



the said allottee. Accordingly, the buyer's agreement was executed between complainant no. 1 and respondent no. 1 on 16.10.2013 only after reminder dated 25.09.2013.

- c) That the respondent no. 1 had raised payment demands from complainant no 1 in accordance with agreed terms and conditions of the allotment letter as well as payment plan. It is submitted that vide payment demand dated 26.09.2013, respondent no. 1 had sent the first instalment demand for the net payable amount of Rs. 6,38,351/-. However, complainant no. 1 remitted the due amount only after reminder dated 22.10.2012 was sent by respondent No. 1 to complainant no. 1.
- d) That vide payment demand dated 05.03.2014, respondent No. 1 had sent third instalment demand for the net payable amount of Rs. 8,27,298/- However, complainant no. 1 remitted the due amount only after reminders dated 31.03.2014 and 21.04.2014 and final notice dated 13.05.2014 were sent by respondent No. 1 to complainant no. 1.
- e) That vide payment demand dated 15.04.2015, respondent No. 1 had sent the fourth instalment demand for net payable amount of Rs. 8,25,161.03/-. However, the said amount was remitted by complainant no. 1 only after reminders dated 13.05.2015 and 08.06.2015 and final notice dated 03.07.2015 were sent by respondent No. 1 to complainant no. 1.
- f) That vide payment demand dated 08.10.2015, respondent No. 1 had sent the fifth instalment demand for the net payable amount of Rs. 10,89,571.65/-. However, complainant no. 1 remitted the due amount only After reminders dated 09.11.2015 and 02.12.2015 were sent by respondent No. 1 to complainant no. 1.
- g) That vide payment demand dated 28.12.2015, respondent No. 1 had sent the sixth instalment demand for the net payable amount of Rs. 19,19,840.14/-. However, complainant no. 1 failed to remit the said

amount despite reminders dated 25.01.2016 and 18.02.2016 being sent by respondent No. 1 to complainant no. 1 and the said amount was accordingly adjusted in the next instalment demand as arrears.

- h) That vide letter dated 09.04.2016, respondent no. 1 made a payment demand from complainant no. 1 for an amount of Rs. 1,42,460/- which had been accrued towards delayed interest on account of non-payment of the instalment raised by respondent No. 1 on 31.01.2016.
- i) That vide payment demand dated 24.08.2016, respondent No. 1 had sent the seventh instalment demand for the net payable amount of Rs. 8,31,466.45/-. However, complainant no. 1 remitted the due amount only after reminders dated 19.09.2016 and 13.10.2016 were sent by respondent No. 1 to complainant no. 1.
- j) That prior to the completion of the project, various force majeure events (such as construction bans, Covid-19 pandemic, various lockdowns etc) affected the regular development of the real estate project. The deadly and contagious Covid-19 pandemic had struck which resulted in unavoidable delay in delivery of physical possession of the apartment. In fact, Covid 19 pandemic was an admitted force majeure event, which was beyond the power and control of the respondents.
- k) That the outbreak of Covid-19 has been declared as a pandemic by the World Health Organization. Advisories/ directions including lockdown/ restrictions have been issued by the Govt. of India and also by the State Govt. The said pandemic has had serious consequences and was deadly and contagious that complete lockdown was imposed several times not only in Haryana but in India and rest of the world also. Despite the lifting of the lockdown, several restrictions persisted.
- l) That it is also matter of record that Gurugram falls within the area of NCR and different competent authorities such as the Hon'ble Supreme Court,

National Green Tribunal (NGT), Municipal Corporation Gurugram (MCG) etc. had directed ban on construction activities in Delhi NCR due to rise in pollution level mainly in festive season/ winter season for various periods thereby severely affecting the regular development of the real estate projects.

6. All other averments made in the complaint were denied in toto.
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 submission made by the parties.

**E. Jurisdiction of the authority**

8. 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**

9. 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**

10. 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.*

11. 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.
12. 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."*

13. 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)***, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

## **F. Finding on objections raised by the respondents**

### **F.I. Objection regarding force majeure.**

14. The respondents promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). But all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondents should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developers proposes to handover the possession of the allotted unit by March, 2017. In the present case, the due date comes out to be 05.03.2017. ***That as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The respondents were liable to complete the construction of the project and the possession of the said unit was to be handed over by 05.03.2017 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

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

**G.I Direct the respondents to refund the total amount paid by the complainants along with the prescribed rate of interest.**

15. The complainants have booked a commercial unit in the project of the respondents on 12.12.2013. BBA was executed on 16.10.2013 and as per BBA, the possession of the unit was to be handed over within 42 months from the date of approval of building plans with grace period of 180 days. The Building plans were approved on 5.9.2013 and date of environment clearance is 12.12.2013. But the respondents failed to deliver the possession which was due on 15.03.2017 as no occupation certificate has been obtained by the respondents till date.
16. In the present complaint, the complainants intend to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1)(b) of the Act. Sec. 18(1)(b) of the Act is reproduced below for 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."***

**(Emphasis**

**supplied)**

17. Clause 13.4 of the BBA dated 16.09.2013 provides for the handing over of possession and is reproduced below for the reference:

*“subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Rental Pool Serviced Apartment to the Allottee within a period of 42 months from the date of approval of the Building Plans and/or fulfillment of the preconditions imposed there under ("Commitment Period"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 days ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company..”*

18. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer's agreement by the promoter are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just

to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

**19. Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 42 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed there under ("commitment period"). The due date of possession is calculated from the date of building plan i.e. 05.09.2013. The period of 42 months expired on 05.03.2017. The respondent-promoters have sought further extension for a period of 180 days after the expiry of 36 months for unforeseen delays in respect of the said project. The respondents raised the contention that the finishing work of the project was delayed due to *force majeure* conditions including ban on construction activities by the Hon'ble Supreme Court of India vide order dated 04.11.2019 and Environment Pollution (Prevention and Control) Authority vide order dated 01.11.2019. 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 05.03.2017. Hence, events alleged by the respondents do not have any impact on the project being developed by the respondents. Also, no substantial evidence/document has been placed on record to corroborate that any such event, circumstances, condition has occurred which may have hampered the construction work. Therefore, the respondents cannot take benefit of his own wrong. Accordingly, the grace period of 180 days is disallowed and the due date of handing over possession comes out to be 05.03.2017.

**20. Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject



unit with interest at prescribed rate as provided under rule 15 of the rules.

Rule 15 has been reproduced as under:

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

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

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

21. 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 ease uniform practice in all the cases.
22. Consequently, as per the 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., 16.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2% i.e., 10.85%.
23. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

*Explanation. —For the purpose of this clause—*

- i. *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the*



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

24. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 13.4 of the agreement executed between the parties on 16.10.2013, the due date of possession is calculated from the date of building plan i.e., 05.09.2013. The period of 42 months expired on 05.03.2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 05.03.2017.

25. It is pertinent to mention over here that even after a passage of more than 7 years (i.e., from the date of BBA till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoters. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondents have applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

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

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

27. Further, 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."*

28. 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 allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is 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 he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

29. 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 respondents are established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*

**G.II Compensation:**

30. The complainants in the aforesaid relief is seeking relief w.r.t compensation. 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.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has 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 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

31. 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/promoters are directed to refund the amount i.e., Rs.66,84,630/- received by it from the complainants 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 respondents 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 the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants

32. Complaint stands disposed of.

33. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 16.04.2024