BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**456 of 2021**
Date of filing complaint	:	**22.01.2021**
Date of decision	:	**09.04.2024**

1. 2.	Gajendra Singh Neelam Singh **R/O: -** Flat NO. 705, Block-C, NCC Meadows , Phase-1, Doddabalapur Road, Yelhanka New Town, Banglore-560064.	**Complainants**
	Versus	
1. 2. 3.	M/s Hometown Properties Private Limited **Regd. Office at: -** 294/1. Vishwakarma Colony, Opp. Lal Kuan, New Delhi M/s Mascot Buildcon Pvt. Ltd. **Regd. Office at**: 294/1, Vishwakarma Colony, Opposite ICD, MB Road, Lal Kuan, New Delhi-110044. Dharam Singh **R/o:** H. No. 2/E, Village Lakhnola, Tehsil & District Gurugram, Haryana-122004.	**Respondents**

CORAM:	
Shri Arun Kumar	**Chairman**
Shri Vijay Kumar Goyal	**Member**
Shri Ashok Sangwan	**Member**
APPEARANCE:	
Sh. Gajendra Singh	Complainant in person
Sh. Gulshan Sharma	Advocate 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 and location of the project	"Oadles Skywalk", Sector 83, Gurugram.
2.	Nature of the project	Commercial shop space
3.	Project area	1.326 acres
4.	DTCP license no.	8 of 2013 dated 05.03.2013 valid upto 04.03.2017
5.	Name of licensee	Dharam Singh
6.	RERA Registered/ not registered	294 of 2017 dated 13.10.2017 valid upto 31.12.2019
7.	Unit no.	F-192, First floor (As per BBA on page 47 of complaint)
8.	Unit area admeasuring (super area)	370.5 sq.ft. (As per BBA on page 48 of complaint)
9.	Date of execution of buyer agreement between the	28.04.2016

	complainant and respondent no. 2	(As per BBA on page 45 of complaint)
10.	Possession clause	**Clause 38** *The "Company" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months (refer d.37 above) of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction.*
11.	Date of starting of construction	26.03.2014 (taken from the same project is being developed by the same promoter/respondent the complaint no.1528 of 2021)
12.	Due date of possession	28.04.2019 (calculated as 36 months from date of execution of BBA i.e.,28.04.2016 as the same is later)
13.	Total sale consideration	**Rs.34,25,272/-** (as per the cancellation letter dated 16.06.2021)
14.	Amount paid by the complainant	**Rs.22,24,156/-** (as per cancellation letter dated 16.06.2021)
15.	Occupation certificate	26.10.2023
16.	Offer of possession	Not offered
17.	Notice of refund by the complainant	23.10.2020 (page 82 of the complaint)
18.	Cancellation letter	16.06.2021

B. Facts of the complaint

3. The complainants booked a shop admeasuring 370.50 sq.ft. in the project "Oodles Skywalk" Sector 83, Gurugram, Haryana by depositing the booking amount of Rs. 6,90,000/- on dated 30.05.2013, which is 20% of the total cost

of the unit. The booking was without agreement, without approval of building plan and against the RERA norms.

4. That thereafter, complainants repeatedly requested for execution of the agreement to confirm and secure their booking & payments but the respondents did not pay any heed to the request of the complainants. The space buyer agreement was executed after the long delay period of approx 3 years on dated 28.04.2016. The space buyer agreement was executed by the respondent no.2 on 28-04-2016 which was after the improper and intentional delay of 3 years from the booking date of 30.5.2013 and also in subsequent to realizations of more than 55% payments from the complainants. The date of the agreement ought to be considered from the above said date of 30.05.2013 and not as per buyer agreement which was executed after 3 years from acceptance of the first payment. The respondents in order to hide their wrongful doings, cleverly mentioned date in the pre-formatted space buyer agreement.

5. That the respondents gave false commitments and projections of the project Oodles Skywalk in the brochure provided to the complainant in which it was shown and mentioned that the said colony would comprise of two tall towers on six acres of the land and further it also mentioned that the said towers would be connected to each other through sky bridges. Later on, after many years complainants became aware of the fact that truth was totally different to the commitments of the brochure and rather there were two separate projects (83 Avenue & Oodles Skywalk), towers, land parcels and even licenses were two. Resultantly, respondents claimed falsely in their brochure provided to the complainant at the time booking up of the said shop, in order to boost up the commercial value of the project and to represent bigger projections.

6. That the complainants have specific objection regarding size of the shop in question as the actual size is totally different and highly variable to the allotted size. The complainants after visiting the site and measurement found major deviations in dimensions of the shop. After that the complainant sought clarification from the respondents but they refused to accept this very fact. That till today, this fact is not looked upon and kept hidden by the respondent's builder as the structure is ready enough for size measurement of the shop with 100% accuracy. So, in these circumstances stated above the complainants had a specific objection regarding size of the shop.

7. That as per clause 33 of the agreement, in case of any major alteration/modification resulting in more than 10% change in the super area of the said unit of material change in the specification of the unit any time prior to and upon the grant of occupation/ completion certificate then the company shall intimate the allottee and in response to the same the allottee shall give his consent or objections to the changes within 15 days. In case the allottee gives his objection to the said modifications, then the allotment shall be deemed to the cancelled and the company shall refund the entire money received from the allottee with simple interest @ 12% p.a.

8. That the complainants also issued one notice/ email dated 23.10.2020 to the respondent for refund of the amount paid till date along with interest @ 24% p.a., within 10 days, but to no avail. As such, the complainant is left with no other alternative or efficacious remedy available except to file this present complaint.

9. That the complainants had objected to the unlawful demands raised by the respondent no. 2 post the implementation of GST tax law, as demands were charged wrongfully with GST at the rate of 12% by the company and even till date this act of unlawful taxing is continued. Due to the wrongful and

adamant stand of the respondents, the complaint is pending against them before the National Anti-Profiteering Authority.

10. That the respondent no.2 failed in delivering the possession of the subject unit F-192 within 36 months from the booking date of 30.5.2013, as the period of 36 months for the purpose of handing over possession cannot be calculated on the basis of one sided, illegal clause no. 38 of pre-formatted booklet SBA and the same is liable to be applicable from the date when the shop was booked, booking amount was paid and received. Hence, the respondent no. I is under obligation to refund the total amount paid till date along with interest and compensation due to violation of section 18 of the RERA Act, 2016.

C. Relief sought by the complainants:

The complainants have sought the following relief:

a). Direct the respondents to refund the entire payment made to it.

D. Reply by the respondent no. 1 & 2.

The respondents by way of written reply made the following submissions.

11. That the respondent no. 1 & 2 have filed the present reply to the complaint filed by the complainants *[hereinafter to be referred as "answering respondents"].* The *alleged* frail allegations levelled under the guise of present complaint, are totally false, incorrect, baseless, absurd and misconceived. Therefore, the *alleged* contentions / averments raised in the complaint, until and unless being admitted specifically hereinafter by the respondents, same may kindly be treated as "denied" in its totality. The *alleged* contentions put forth in the complaint, clearly spell and show the nefarious purpose of the complainants to anyhow tarnish the image of the respondents without any alleged defaults, asserted in the present complaint by the complainants, which asserted contentions, if perused and analyzed in

its entirety, it would become crystal clear that the complainants have filed the present complaint just to harass the respondents and to gain the unjust enrichment anyhow from them. The complainants, despite repeated notices for payment of due installments, has not deposited the same thereby deliberately putting obstructions to the fast progressing project. In order to avoid penal action against the complainant for defaulting on payment of due installments, the complainants, with the sole intent to harass and gain unjust enrichment, has filed the complaint.

12. That the respondents was developing a commercial project named and styled as "Oodles Skywalk" at Sector 83, Gurugram. The project is being developed in a land approximately of 3.0326 acres in the revenue Estate of Village Sihi, Tehsil Manesar, District Gurugram. The land is being developed in collaboration with the original owners vide agreement dated 29.9.2010 and addendum dated 18.2.2013. Accordingly, on 5.3.2013, the Director General Town and Country Planning Department, Chandigarh had issued a license bearing no. 08 of 2013 vide Memo No. LC-2532-JE (VA)- 2012/18755. Therefore, all the necessary permissions, permits etc. are available with the company for the development of the project.

13. That the complainants herein has projected wrong facts before the Authority as the approval / sanctions, whatever have been granted, the same is related with land approximately of 3.0326 acres in the revenue estate of village Sihi, Tehsil Manesar, District Gurugram, wherein the answering respondents has been developing its project by the name "Oodles Skywalk". In this regard, it is stated that respondent no. 1, being the principal builder, has assigned/allocated different-different works related with the project to different-different sub-contractor/companies for the purpose of urgent smooth expeditious working of the project and in this regard had also executed the agreements with the vendors and sub- vendors and original

bhumidars (from whom land had been purchased), who would according to the terms and conditions of their executed documents/agreements, complete the construction work related with the project. Moreover, all the requisite and necessary permissions related with the project and have already been taken/obtained by the respondents.

14. That it is only after seeing the commercial viability in the upcoming project "Oodles Skywalk" in near future and after discussing the project details with the Sub- Vendors and with the respondent no. 1 company's representatives, the complainant deposited the advance amount of Rs. 6,90,000/- for a shop, to be constructed/developed at the project, namely, Oodles Skywalk" situated at Sector-83, Gurugram, Haryana. It is important to mention here that the complainant of its own wish and Will had deposited the aforesaid amount in advance, for the upcoming project, before its launch actually by the respondent no. 1, so that the complainant can get the discounted price, seeing the commercial viability and profits in the said project. Since the complainant had paid the said amount "as an advance token money" for the purpose of booking a shop in the said upcoming project, question of entering into any kind of agreement does not arise at all as respondent no. 1 has never adopted the policy of "prelaunch" and accepting the money prior to launching of the project. Moreover, it is denied that the said project is without approval of building plans and against the RERA norms as at that relevant time, it is informed that the RERA Act was not in force, thus question of violating any norms under RERA, and also does not arise at all.

15. That the buyer agreement was executed only after launching the project and after successful getting the approvals and permissions from the various Govt. Departments and after commencement of the construction of the project in question, thus, there existed no delay in execution of SBA. That since the complainants were not residing at india at that relevant time, they through

their mails sent the request for sending the allotment letter and raised other queries, which were satisfactorily answered by the DMC of respondents and accordingly, allotment letter and application form were sent to the complainants to abroad through mail and revised papers also, which were duly received and confirmed by the respondents.

16. That, thereafter, the main complainants Mrs. Sulochana Devi, who is the first applicant, requested the respondents to put on hold the issuance of allotment letter in her name as due to some personal reasons, she wanted to change her name i.e. from Sulochana Devi to Neelam Singh. The respondent and Mrs. Sulochana Devi has taken two years' time and hold on the issuance of Allotment Letter due to her change of name. In this regard, she has only sent the letter to the appellants on 20.12.2015, requesting to change of her name and attached the gazette notification copy of Tamil Nadu Government. Thus, the contentions of the complainants, taking the plea (which is contrary to the record) that the respondents had intentionally delayed and took three (3) years' time from the booking date to issue the allotment letter and space buyer agreement, is absolutely wrong and baseless. The delay occurred due to request of Neelam Singh, who wanted to put on hold the Allotment Letter in lieu of change of her name. From the record, it is clear that she had only sent the letter on 20.12.2015 to the respondents with gazette notification and according to which, the respondents has changed her name and issued allotment letter dated 28.4.2016, which was finally sent to her for signatures, which was admittedly, without any complaint, was signed/executed by both the respondents.

17. That the details of the unit were already mentioned in the allotment letter. The complainants, only after reading and understanding the terms and conditions of the allotment letter, had executed the said allotment letter and thereafter, they have also read and understood the terms of the space buyer

agreement and executed the said space buyer agreement dated 28.4.2016 with the respondent company.

18. That, the complainants only paid Rs. 22,24,156/- and had failed to pay the remaining outstanding amount out of total sale consideration price of Rs. 34,25,272/- (as per allotment letter), excluding other charges, to be levied on the said shop. The respondents despite receiving notices, reminders and various request letters dated 27.7.2017, 5.9.2017, 21.10.2017, 9.11.2017, 20.12.2017, 12.1.2018, 29.3.2018, 5.5.2018, 25.5.2018, 30.6.2018, 4.9.2018, 22.10.2018, 15.1.2019 and 20.12.2019, failed to pay the requisite installments on time to the respondents and became the "defaulter".

19. That since the complainants are defaulter and not paying the outstanding amount to the appellants/respondents and is a persistent defaulter and not paying the due installment amounts from the last three years, finally after waiting for five years, exercising its rights under space buyer agreement, vide its cancellation, refund and forfeiture letter dated 16.6.2021, has cancelled the unit and after due deduction (as per terms and conditions of SBA), has refunded / deposited the amount of Rs. 18,27,517/- in the bank account of the complainants and has already been re-allotted the same unit to the other prospective purchaser.

20. That the complainants themselves are confusing with the parameters of the shop in question as super area and the actual carpet area of the shop in question always vary as it is a normal parlance that after adjustment of common areas in question, the actual carpet area differs in size as in every commercial unit there is a loading of 30% to 50%, depending on the construction, size and location of the shop. Infact, the actual size and super area are also mentioned in the papers submitted before RERA Authority, after getting registration of the project in question. It is further submitted that the project in question is a registered project under RERA and as per the

RERA Norms, every builder is bound to disclose the super area and carpet area of the concerned shop or shop in question and the details of the same have to be furnished before RERA as the same are related with "compliance" matter, which was duly submitted by the answering respondents in the present case. Thus in a normal nomenclature, it is a matter of record that when complainants asked for the variation in sizes and query / enquired about the same, the answering respondents through its officials concerned have duly apprised this fact to the complainant, whereby it was apprised to the complainant that the ratio of super area to built up area / carpet area is approximately 40-45% depending on the floor, with further clarification that the actual ratio of super area will be clarified at the time of possession when the actual construction of units completed. Moreover, in common real estate market prevalence also the ratio varies from 40-50%. Moreover, it was clearly stated to the complainant that the super area and carpet area are not same and no such promise relating to illusionary carpet area was given by the answering respondents as under normal market prevalence in the real estate market, super area includes all the common areas and other areasas mentioned in detail in the heading of Super Area in the SBA. Thus, the objection raised by the complainants are not contrary to clause 33 of the buyers agreement, executed between the parties.

21. That the respondents have collected approx. 45% of the total sale price of the commercial project comprising of an area of 600 sq. ft. and the project is lying incomplete. In fact, the total sale price of the unit booked by the complainants is Rs.71,25,000/- inclusive of basic sale price of Rs.65,55,000/-, PLC of Rs.3,00,000/-, EDC/IDC of Rs.2,40,000/- and EEC of Rs.30,000/-. service tax / GST and other taxes, levies, charges as applicable from to time as per applicable laws. The complainants had deposited Rs.19,66,500/- which

comes to 26.80% of the total sale price and made a false statement before this Authority that they have paid approx. 45% of the total sale price.

22. That the complainants defaulted in making payment of the outstanding amount as per agreed construction linked payment plan since December 2013 as is evident from the various demand letters annexed by the complainants as Annexure 3 to the complaint. The respondent sent demand letter dated 10.12.2013 to the complainants to make payment of the then outstanding amount of Rs.8,50,444/- as became due on start of excavation. Since, the complainants had not made any payment after receipt of the said demand letter, the respondent sent reminder letters dated 18.01.2014 and 25.4.2014 to them to make payment of outstanding installment of Rs.8,50,444/- as per payment plan opted by them. But they failed to make any payment.

23. Since the complainants had again failed to make any payment or send any response to the said letters, the respondent had sent final reminder letter dated 07.07.2019 to them giving them last and final opportunity to make payment of the aforesaid outstanding amount of Rs.29,82,844/- within a period of 15 days from the receipt of the said letter falling which it was informed that the respondent shall be constrained to take consequential action in terms of application / provisional allotment letter. Since, the complainants continued with the default and again failed to make payment of the aforesaid outstanding amount of Rs.29,82,844/- even after receipt of final reminder letter dated, the respondents were constrained to cancel the booking of the said unit made by them and remit the cheque of the refundable amount after deduction of earnest money and the service tax vide cancellation notice dated 02.08.2019.

24. The question of any refund and / or payment of delayed penalty as sought by the complainants does not arise since the complainants themself are

defaulters and also not entitled to any relief in view of the provisions of section 51 of the Indian Contract Act. It is clear that since the complainants are unable to continue with the allotment of the said unit and want to evade making payment towards the said unit, they have filed the present complaint. Therefore, this Authority ought to dismiss the present complaint on this ground alone.

25. All other averments made in the complaint were denied in toto.

26. Copies of all the relevant do 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

27. 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

28. 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

29. 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) 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.

30. 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.

F. Findings on the relief sought by the complainants.

F. I Direct the respondent to refund the entire amount along with prescribed rate of interest.

31. The complainants were allotted a unit no F-192, first floor in the project "Oadles Skywalk" by the respondent-builder for a total consideration of Rs. **34,25,272/-** and he paid a sum of Rs. **22,24,156/-** which is approx.. 65% of the basic sale consideration.

32. The complainants state that in the month of October 2017, the complainants visited the site to check the work progress, was shocked to see the adjoined project/tower named as 83 Avenue in abandoned condition as being left after completion of foundation works since then. The complainants further states that they have objection regarding size of the shop as the actual/ real size is totally different and highly variable to the allotted size. They also sent a notice/email dated 23.10.2020 to the respondent for refund of the entire amount paid by him.

33. On the contrary respondent-builders states that it had sent reminder letter dated 27.07.2017, 05.09.2017. 21.10.2017, 09.11.2017, 20.12.2017,

12.01.2018, 29.03.2018, 05.05.2018, 25.05.2018, 30.06.2018, 04.09.2018, 22.10.2018, 15.01.2019 and 20.12.2019 to clear the outstanding dues. The complainants statedly continued with their default and again failed to make payment even after receipt of final reminder letter. Due to which the respondent no. 2 cancelled the allotted unit on 16.06.2021 and refunded an amount of Rs. 18,27,517/- in the bank account of the complainant after deduction of earnest money. The subject unit has already been re-allotted the same unit to other purchaser.

34. On considering the documents available on record as well as submissions made by both the parties, the authority observes that on 16.06.2021, the respondent builder has cancelled the allotted unit on account of non-payment, but the complainants have been asking for refund since 23.10.2020, since then they have not withdrawn their request for refund and the same was duly acknowledged by the respondent in his reply dated 03.10.2023.

35. **Admissibility of refund along with prescribed rate of interest:** the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established as the due date of possession comes out to be 28.04.2019 and the respondent-builder obtained the occupation certificate on 26.10.2023. But the allottee has earlier opted/wished to withdraw from the project after the due date of possession was over. As such, the complainant who wishes to withdraw from the project is entitled to refund of the entire amount paid by him at the prescribed rate of interest from the date each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

36. The prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

37. 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.

38. 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., 09.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

39. 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;"

40. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the 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.

41. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is received after filing of application by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate.

42. 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. it was observed

> 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*

43. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

44. The authority hereby directs the respondent no. 2 to return the amount received by them i.e., Rs. **22,24,156**/- received by it from the complainant along 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. The amount of Rs. 18,27,517/- already refunded by the respondent shall be deducted from the amount so assessed.

G. Directions of the Authority:

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

i) The respondent no. 2 is directed to refund the entire paid-up amount i.e., Rs. **22,24,156/-** received by it from the complainant along with an interest @10.85% p.a. as prescribed under rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till its realization. The amount of Rs. 18,27,517/- already refunded by the respondent shall be deducted from the amount so assessed.

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.

46. Complaint stands disposed off.

47. File be consigned to the Registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.04.2024