

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

Complaint no.: 781 of 2023
Order pronounced on: 03.07.2024

1. Mrs. Archana Chandra
2. Mr. Sushil Chandra
Both R/o: - G-29A, GF, South City-2,
Sohna Road, Gurugram.

Complainants

Versus

Ansal Housing Ltd.
Registered Office at: - 606, 6th floor, Indra Prakash 21,
Barakhamba Road, New Delhi - 110001

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Sanjeev Kumar Bhardwaj (Advocate)

Sh. Amandeep Kadyan (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/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 as provided 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| Sr. No. | Particulars | Details |
|---------|--|---|
| 1. | Name of the project | "Ansal Heights 86",Sector-86, Gurugram, Haryana. |
| 2. | Nature of project | Residential |
| 3. | DTCP License no. | Licence No. 48 of 2011 Dated 29.05.2011 |
| 4. | RERA registered | Not registered |
| 5. | Unit no. | A-1202 (As per payment receipt on page 41 of complaint) |
| 6. | Allotment letter | 03.03.2014 |
| 7. | Date of execution of buyer's agreement | Not available |
| 8. | Possession clause | Clause 34 The Company shall offer possession of the Unit any time, within a period of 42 months from the date of execution of Agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by |

| | | |
|-----|--------------------------------------|--|
| | | Applicant/Buyer and subject to force-majeure circumstances as described in clause 35. Further, there shall be a grace period of 6 months allowed to the Developer over and above the period of 42 months as above in offering the possession of the Unit. (As on page 34 of complaint) |
| 11. | Date of commencement of construction | 01.10.2013 |
| 12. | Due date of possession | 01.10.2017 [Calculated 42 months from date of commencement of construction] |
| 13. | Total sales consideration | Rs.1,51,29,898.63 /- (As per customer ledger dated 04.02.2023 on page 68 of complaint) |
| 14. | Amount paid by the complainant | Rs.96,28,262/- (As per customer ledger dated 04.02.2023 on page 68 of complaint) |
| 15. | Offer of possession | Not offered |
| 16. | Occupation certificate | Not received |

B. Facts of the complaint

3. The complainants have pleaded the following facts:

1. That the complainants booked a flat in the project viz. "Ansal Heights 86' at Gurgaon, Haryana on 03.03.2014 under construction linked

- plan. At the time of booking the flat, the complainants paid an amount of Rs.7,00,000/- vide cheques no. 570646 dated 07.03.2014.
- II. On 03.03.2014, the complainants were allotted unit no. A-1202 admeasuring 2786 sq. ft. for total consideration of Rs.1,42,61,300/- That the sale consideration of the flat was Rs.1,42,61,300/-. However, subsequently consideration for the flat was arbitrarily increased on account of addition of other charges which included labor cess etc. The same was accepted by the complainants under protest. The complainants have till date made a total payment of Rs.97,78,262/- to the respondent.
- III. That the complainants have duly honoured the demands raised by the respondent. The construction at the site of the project has not progressed since the last demand was raised by the respondent and consequently the responden failed to offer the possession of the flat till date.
- IV. That as per the application, the respondent was required to handover the possession of the flat to the complainant within 42 months from the date of execution of the Agreement with a further grace period of 6 months. Accordingly, after considering grace period also, physical possession of the flat must have been handed over on or before 03.03.2018. However, the project has not been constructed so far and also no occupancy certificate is received.
- V. That the respondent has failed to abide by the terms stipulated in the Application/Agreement. The cause of action to file the present complaint is continuing as the respondent has not delivered the possession of the flat for occupancy till date. The complainant has diligently discharged all his obligations as per the Application/

Agreement, whereas, the respondent has failed to perform its obligations.

- VI. That the respondent failed to abide by the rules and regulations of the Authority. The respondent has not even applied for registration in the Authority so far. That the application/agreement stipulates for 24% interest p.a. compounded quarterly for the delay in payment/installments and therefore, in terms of section 2(za) of the Real Estate (Regulation & Development) Act, 2016, the complainants are also entitled to the same rate of interest for delay period in handing over of physical possession of the flat. In case the respondent is unable to develop the project within the agreed period of 48 months, it is liable to pay a nominal compensation of Rs.5/- per sq. ft. per month for the delayed period. The aforesaid condition is unilateral and arbitrary. The respondent has charged Rs.1,50,000/- from the complainants as interest on account of delay in payment of installments.
- VII. That the complainants have visited office of the respondent many times to complain about delay in the project, however no plausible reply has ever been received. Since the respondent is unable to develop the project and handover physical possession of the flat for occupancy, the complainants are entitled to refund the entire amount paid along with interest as applicable in RERA Act and Regulation from the date of respective payments.
- VIII. That the complainants are facing financial hardship due to delay in possession of the flat as heavy amount is stuck with the respondent.

C. Relief sought by the complainants:

4. The complainants have sought following reliefs:

- a. Direct the respondent to refund the entire amount paid by the complainants along with interest.
5. On the date of hearing, the authority explained to the respondent /promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:
 - I. That the complainants approached the respondent for booking a flat no. A-0503 in the project Ansal Heights, Sector 86, Gurugram. Upon satisfaction of the complainants an agreement to sell was executed between the parties on 13.05.2014.
 - II. That the current dispute cannot be governed by the Act, 2016 because of the fact that the application form signed between the complainants and the respondent was in 2013. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that the operation of a statute is not retrospective in effect.
 - III. That the complainants specifically admitted not paying the necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage of their own wrong.
 - IV. That even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainants belatedly. The complainants have admittedly filed the complaint in the year 2023 and the cause of action accrued on 03.03.2017 as per the complaint itself. Therefore, it is

submitted that the complaint cannot be filed before the Authority as the same is barred by limitation.

- V. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2013 without coercion or any duress cannot be called in question today. It is submitted that the agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 37 of the said agreement provides for Rs.5 sq.ft. per month on super area for any delay in offering possession of the unit as mentioned in Clause 31 of the agreement. Therefore, the complainants will be entitled to invoke the said clause and is barred from approaching the Authority in order to alter the penalty clause by virtue of this complaint after more than 9 years as agreed upon by both parties.
- VI. That the complaint itself discloses that the project does not have a RERA approval and is not registered. It is submitted that if the said averment in the complaint is taken to be true, the Authority does not have the jurisdiction to decide the complaint.
- VII. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondent has in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainants.

- VIII. That the respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the respondent. It is further submitted that the builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in **CWP No. 20032 of 2008**, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.
- IX. That the respondent and the complainants admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted that clause 32 of the builder buyer agreement is clear that there is no compensation to be sought by the complainants/prospective owners in the event of delay in possession.
- X. That admittedly, the complainants have signed and agreed on the Agreement dated 03.03.2013. That perusal of the said agreement would show that it is a *Tripartite Agreement* wherein M/s Samyak Projects Pvt. Ltd is also a party. That, while filing the present complaint, the complainants have not arrayed M/s Samyak Project Pvt. Ltd. having its Registered Office at 153, Okhla Industrial Estate, Phase-III, New Delhi - 110020 as a party to the complaint. That M/s Samyak

Projects Pvt. Ltd is a necessary and proper party to be arrayed to the complaint for proper, fair and transparent disposal of the case.

- XI. The said M/s Samyak Project Pvt. Ltd. in terms of its arrangement with the respondent could not develop the project well within time as was agreed and given to the respondent, the delay, if any, is on the part of M/s Samyak Project Pvt. Ltd. not on the part of respondent, because the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd.
7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

8. The Authority observed 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

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) The promoter shall-

(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. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others** SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

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

adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

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

F. Findings on the objections raised by the respondent:

F.1 Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.

14. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be out rightly dismissed as the buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively. The Authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can it be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in

the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017** which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

15. Also, in appeal no. 173 of 2019 titled **as Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed -

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

16. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the Authority is of the view that the charges payable under

various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments /competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F. II Objection regarding maintainability of complaint.

17. The counsel for the respondent has raised an objection that the complaint is barred by limitation as the complainants have admittedly filed the complaint in the year 2023 and the cause of action accrue on 03.03.2017 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
18. On consideration of the documents available on record and submissions made by the party, the Authority observes that the allotment letter w.r.t. the unit was issued on 03.03.2017. (Note: - date mentioned in the buyer's agreement annexed with the complaint is not executed inter-se). As per clause 34 of the buyer's agreement, the possession of the subject plot was to be offered with in a period of 42 months from the date of execution of buyer's agreement or from the date of obtaining all the required sanctions and approval necessary for commencement of constructions whichever is later. The due date of possession can be calculated from the date of commencement of construction being later i.e., 01.10.2013, and also the grace period of 6 months is allowed to the respondent thus, the due date comes out to be 01.10.2017.
19. However, the said project of the allotted unit is an ongoing project, and the respondent/promoter has failed to apply and obtaining the O.C till



date. As per proviso to section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 for which completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act

20. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. Since no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project.
21. Moreover, it is observed that despite passing a benchmark of due date on 01.10.2017, till date it has failed to handover the possession of the allotted unit to the complainants and thus, the cause of action is continuing till date and recurring in nature. The authority relied upon the section 22 of the Limitation Act, 1963, continuing breaches and torts and the relevant portion are reproduced as under for ready reference: -

22. Continuing breaches and torts-

In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

22. Keeping in view the aforesaid facts and legal position, the objection with regard to the complaint being barred by limitation is hereby rejected.

F.III Objection regarding delay in completion of construction of project due to force majeure conditions.

23. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19 pandemic among others, but all the pleas advanced in this regard are devoid of merit. As per terms and conditions of the said buyer's agreement the due date of handing over of possession comes out to be 01.10.2017. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no further grace period can be allowed to the respondent/builder on account of force-majeure. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be granted any leniency for aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.
24. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and IAs 3696-3697/2020* dated 29.05.2020 has observed that:



69. *The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The 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.*

25. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 01.10.2017 and the respondent 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 complainant.

G.I. Direct the respondent to refund the entire amount along with interest.

26. In the present complaint, the complainants intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest. Sec. 18(1) 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)

27. Clause 34 of the buyer's agreement provides for the handing over of possession and is reproduced below for the reference:

"31. The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."

28. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 42 months from date of agreement or from the date of approvals required for the commencement of construction, whichever is later. The due date of possession is calculated from the date of commencement of construction i.e., 01.10.2013 being later. The period of 42 months expired on 01.04.2017. In the present matter the BBA incorporates unqualified grace period /extended period of 6 months in the possession clause. Accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be 01.10.2017.

29. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest 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.

30. 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.
31. 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., 03.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%.
32. 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 respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. In the present case, both the parties have stated that the terms and conditions mentioned in the unexecuted buyer's agreement are binding upon them and the same may be treated as an executed documents. Therefore in view of the above, by virtue of clause 34 of the buyer's agreement (copy annexed but not executed but the same is admitted by both the parties), the possession of the subject unit was to be delivered within a period of 42 months from the date of execution of buyer's agreement or within 42 months from the date of



obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. Therefore, the due date of handing over possession is calculated from the date of commencement of construction i.e., 01.10.2013 being later. The period of 42 months expired on 01.04.2017. 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 01.10.2017.

33. It is pertinent to mention over here that even after a passage of more than 11 years neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoter. The Authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have 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 respondent has 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.
34. 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."

35. 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 pay the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received in respect of the unit with interest at such rate as may be prescribed.
36. 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., @ 10.95% 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*.

H. Directions of the authority

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

- i. The respondent/promoter is directed to refund the amount of Rs.96,28,262/- paid by the complainants along with prescribed rate of interest @ 10.95% p.a. as prescribed under rule 15 of the rules from the date of each payment till the 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 authority observes that the project is not registered hence, the planning branch of the authority is directed to take necessary action under the provision of the Act of 2016 for violation of proviso to Section 3(1) of the Act.

38. Complaint stands disposed of.

39. File be consigned to registry

Date: 03.07.2024



(Ashok Sangwan)
Member

Haryana Real Estate
Regulatory Authority,
Gurugram