

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

Complaint no.: 829 of 2020
Order pronounced on: 03.07.2024

1. Mr. Raj Kumar Batra
2. Mr. Deepak Batra
Both R/o: - H.No-294, Sector-9,
Panchkula, Haryana.

Complainants

Versus

M/s New Look Builders and Developers Pvt. Ltd.
Registered Office at: - First floor,
The Great Eastern Centre-70, Nehru Place,
Behind IFCI Tower, New Delhi-110019.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Ms. Nachiketa Suri (Advocate)
Sh. Nitesh Harsh Gupta (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	"Avante/Woodwinds VERSALIA", sector-67 A, Gurugram, Haryana.
2.	Nature of project	Residential
3.	Hrera registered	Registered 365 of 2017 Dated-28.08.2017
4.	Unit no.	FF-3215, ground floor (As on page 18 of complaint)
5.	Unit area	1685sq.ft. (As on page 18 of complaint)
6.	Allotment letter	26.11.2014 (As on page 44 of complaint)
7.	Buyer's Agreement executed	26.11.2014 (As on page 14 of complaint)
8.	Possession clause	Clause 5 POSSESSSION OF FLOOR <i>5.1 Subject to Clause 5.2 infra and further subject to all the buyers of the Flats in the Residential Colony</i>

making timely payment, the Company shall endeavour to complete the development of Residential Colony and the Floor as possible **within 36 months with an extended period of (6) six months from date of execution of this Floor buyer agreement** subject to the rec requisite building/revised building plans/other approvals & permissions of the concerned authorities, as well as Force Majeure Conditions as in the Agreement, Certificate & Agreement including but not limited to payments by the Buyer(s), in terms hereof. The Company shall be entitled to extension of time for completion of construction of the Unit equivalent period of delay caused on account of the reasons stated above. No claim by way of damages/compensation shall lie against the Company in case of delay in handing over possession of the Unit on account of the aforesaid reason. However, if the Buyer(s) opts to pay in advance of schedule, a suitable delay may be allowed but the completion schedule shall remain unaffected Buyer(s) agrees and understands that the construction will commence on all necessary approvals are received from the concerned authorities and competent authorities including

		<i>but not limited to Environment & Forest Deptt.</i> [Emphasis supplied] (As on page 25 of complaint)
9.	Due date of possession	26.05.2018 (Calculated 36 months from date of execution of BBA + 6 months grace period)
10.	Basic sales consideration	Rs.1,18,75,000/- (As on page no. 19 of complaint)
11.	Total amount paid by the complainants	Rs.38,25,665/- (As per payment acknowledgment receipt dated 26.11.2014 on page 46 of complaint)
12.	Surrender request via E-mail	30.07.2019 (As on page no. 53 of complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have pleaded the following facts:

1. That the respondent M/s Ansal Phalak Infrastructure Pvt Limited, a company registered under the Companies Act, 1956. That in September 2013, the complainant visited the respondent office for inquiry. The official of the respondent lure the complainant to buy residential unit in its project "Avante/Woodwinds VERSALIA" Sector 67-A, Gurugram. The respondent promised to deliver possession of the unit within three years. Believing the assurances of the



respondent, the complainants booked a unit and made payment Rs.7,50,000/- on 10.09.2013 and Rs.5,00,000/- on 29.09.2013 via cheques as booking amount.

- II. That a Builder buyer agreement was executed between the parties for unit no. FF-3215 on 26.11.2014 and Rs 38,25,665/- was paid by the complainants till 26.11.2014 and the same was acknowledged vide receipt dated 26.11.2014 and an allotment letter was issued on 26.11.2014.
- III. That at the time of booking, the respondent assured to deliver possession within 36 months from the date of booking but the builder buyer's agreement was executed after one year of the booking. As per clause 5.1 of the said buyer's agreement, the respondent had to give possession up to November 2017.
- IV. That the complainants shall be paid back the amount paid Rs.38,25,665/- along with interest @ 18% per annum as complainants does not want to go ahead with the said dwelling because there is already delay of more than two years as respondent had to offer possession till November 2017.
- V. That the respondent has not even started the construction over the project-site till date. The complainants have sent several mails to the respondent regarding the delay in construction but respondent did not pay any attention to the concern of the complainant and at last the complainants sent an e-mail dated 30.07.2019 for the cancellation of the booking and refund of the earnest money but all in vein.
- VI. That the complainants requested the respondent for resolving the matter many times, but the respondent had not paid any heed to the requests and hence decision of not taking the genuine request of the

complainants is arbitrary and the respondent refused to accede any demand of the complainants.

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.
- b. Direct the respondent to pay Rs.2,00,000/- on account of damages, hardships, mental agony pain, suffering and harassment experienced by the complainants.

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 name of the respondent i.e., Ansal Phalak Infrastructure Pvt. Ltd. has been changed to "New Look Builders and Developers Pvt. Ltd." on 23.10.2020. It is therefore submitted that the respondent is now known as "New Look Builders and Developers Pvt. Ltd."
- II. It is humbly submitted that the complainants have prayed for directions of refund under Section 18 (1) Act, 2016 of Rs.38,25,665/- along with interest to the respondent, which were paid by the complainants towards the allotment of unit no. 4162, ground floor in the project. It is pertinent to mention that the complainants have made a total payment of Rs.38,25,658/- till date toward the basic sale consideration of the unit out of total of Rs.1,18,75,000/- excluding EDC, IDC charges plus club members.

- III. That the complainants approached the respondent and submitted an application for allotment of the unit in the project. 'A flat buyer agreement was executed on 20.11.2014 and unit no. 3215 on ground floor in the project was allotted for a basic sale consideration of Rs.1,18,75,000/- excluding EDC, IDC charges plus club members fee plus interest-free maintenance charges plus service charges.
- IV. In terms of the flat buyer agreement, the respondent was obligated to deliver the possession of the unit to the complainants within a period of 42 months from the date of receiving the sanction plan for the project, subject to timely payment of dues by the complainants and force majeure circumstances.
- V. Subsequently, the respondent got the project registered on 28.08.2017, as per the Authority's guidelines and norms, which mandated respondent to complete the development work of the project with a revised timeline of August, 2020.
- VI. That the complainants failed to pay the due instalments as per the agreed payment schedule. It is pertinent to mention here that the payment schedule was never adhered to by the complainants. It is submitted that the non-timely payment by the allottees is a major contribution to the non-timely delivery of the project.
- VII. It is clearly mentioned in the demand letters and the flat buyer agreement that in case of any delay in payment of the instalments would amount to breach of the terms of the flat buyer's agreement and the complainants would be liable to pay interest at 24% p.a. for the period of delayed payment. Further, in the event the complainants sleeps upon his duty to pay the instalments for 3 years, they do not

have the right to claim compensation/ interest on the consideration paid to the respondent.

- VIII. That the construction of the project was dependent upon the amount of money being received from the booking made and money received henceforth, in form of instalments by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the time of launch of the project. That, reduced number of bookings along with the fact that several allottees either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow henceforth, causing a delay in the construction work of the project.
- IX. Furthermore, it is pertinent to state that the project is reasonably delayed because of the 'force majeure' situation which is beyond the control of the respondent. Vide clause 5.2 of the floor buyer agreement, the complainants have agreed and duly acknowledged that in case the development of the unit is delayed for any reasons beyond the control of the company, then no claim whatsoever by way of any compensation shall lie against the respondent. Therefore, the complainants have agreed and undertook to waive all his rights and claims in such a situation.
- X. It is pertinent to state that the project of the respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the respondent. However, despite all odds the respondent is making all efforts to complete the construction work at the project site at full pace and is expecting to hand over the possession very soon,

once the present situation of pandemic 'Covid-19' gets over and situation normalizes. Following important aspects are relevant which are submitted for the kind consideration of the Authority:-

- i. **Non-booking of all apartments seriously affected the construction:** It is submitted during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the time of launch of the project. That, the reduced number of bookings along with the fact that several allottees either defaulted in making payment of the instalment or cancelled booking, resulting in less cash flow to the respondent, henceforth, causing a delay in the construction work of the project.
- ii. **Other various challenges being faced by the respondent:** The following problems which were beyond the control of the respondent seriously affected the construction:
 - a. Lack of adequate sources of finance;
 - b. Shortage of labour;
 - c. Rising manpower and material costs;
 - d. Approvals and procedural difficulties.
- iii. **In addition to the aforesaid challenges the following factors also played a major role in delaying the offer of possession:**
 - a. There was an extreme shortage of water in the region which affected the construction works;
 - b. There was a shortage of bricks due to restrictions imposed by the Ministry of Environment and Forest on bricks kiln;

- c. The unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works in a serious way for many months. Non-availability of cash-in-hand affected the availability of labours;
 - d. Recession in the economy also resulted in the availability of labour and raw materials becoming scarce;
 - e. There was a shortage of labour due to the implementation of social schemes like the National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM);
 - f. Direction by the Hon'ble National Green Tribunal & Environmental authorities to stop the construction activities for some time on regular intervals to reduce air pollution in the NCR region.
- iv. Apart from the above, it is relevant to mention here that due to the increase in pollution in National Capital Region, the Hon'ble Supreme Court of India vide Order dated 04.11.2019 passed in ***Writ Petition (Civil) No. 13029 of 1985*** titled as "***M.C. Mehta-Versus-Union of India & Ors***" ("***Writ Petition***") had put a blanket ban on the construction activities in the National Capital Region. Subsequently vide Order dated 09.12.2019, the Hon'ble Supreme Court of India lifted the ban partially i.e. construction activities were only allowed between 6:00 AM to 6:00 PM. It is pertinent to mention that due to the aforesaid restraining orders passed by the Hon'ble Supreme Court of India all the construction activities in the National Capital Region came to a standstill, resultantly the project got delayed. The said ban is completely lifted by the Hon'ble

Supreme Court only on 14.02.2020. In past also the construction was banned by Hon'ble Courts and Tribunals.

- XI. In view of the above facts and circumstances, the demands of the complainants for a refund of the amount paid cannot be allowed by the Authority since there is already an existing settlement agreement between both the parties. Moreover, the complaint is liable dismissed lack of jurisdiction of adjudicate upon the case as the complainants are no longer allottees in the project.
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 theses 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.I Objection regarding delay in completion of construction of project due to force majeure conditions.

14. The respondent-promoter 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 26.05.2018. 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.

15. 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."

16. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 26.05.2018 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.

17. 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)

18. Clause 5 of the buyer's agreement provides for the handing over of possession and is reproduced below for the reference:

"Clause 5 POSSESSSION OF FLOOR

5.1 Subject to Clause 5.2 infra and further subject to all the buyers of the Flats in the Residential Colony making timely payment, the Company shall endeavour to complete the development of Residential Colony and the Floor as possible **within 36 months with an extended period of (6) six months from date of execution of this Floor buyer agreement** subject to the rec requisite building/revised building plans/other approvals & permissions of the concerned authorities, as well as Force Majeure Conditions as in the Agreement, Certificate & Agreement including but not limited to payments by the Buyer(s), in terms hereof. The Company shall be entitled to extension of time for completion of construction of the Unit equivalent period of delay caused on account of the reasons stated above. No claim by way of damages/compensation shall lie against the Company in case of delay in handing over possession of the Unit on account of the aforesaid reason. However, if the Buyer(s) opts to pay in advance of schedule, a suitable delay may be allowed but the completion schedule shall remain unaffected Buyer(s) agrees and understands that the construction will commence on all necessary approvals are received from the concerned authorities and competent authorities including but not limited to Environment & Forest Deptt.

19. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 36 months with an extended period of (6) six months from the date of execution of the agreement. The due date of possession is calculated from the date of execution of agreement i.e., 26.11.2014. The period of 36 months expired on 26.11.2017. In the present matter the flat buyer's agreement 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 26.05.2018.
20. **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.*
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 ensure uniform practice in all the cases.
22. 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%.

23. 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, the complainants booked a unit with the respondent in its project "Avante/Woodwinds VERSALIA" situated in Sector-67 A, Gurugram, Haryana. The complainants were allotted a unit bearing no. FF-3215 on the ground floor admeasuring 1685 sq.ft. area vide allotment letter dated 26.11.2014. Thereafter, a flat buyer's agreement was executed between the complainants and the respondent on 26.11.2014. Therefore in view of the above, by virtue of clause 5 of the flat buyer's agreement dated 26.11.2014, the possession of the subject unit was to be delivered within a period of 36 months from the date of execution of the flat buyer's agreement. Therefore, the due date of handing over possession is calculated from the date of execution of agreement i.e., 26.11.2014. The period of 36 months expired on 26.11.2017. 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 26.05.2018
24. It is pertinent to mention over here that even after a passage of more than 10 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.

25. 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."

26. 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.

27. 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*.

F.II. Direct the respondent to pay Rs.2,00,000/- on account of damages, hardships, mental agony pain, suffering and harassment experienced by the complainants.

28. The complainants are seeking the above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)* has held that an allottee is entitled to claim compensation and litigation charges 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 and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and



legal expenses. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

29. 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.38,25,665/- 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.

30. Complaint stands disposed of.

31. File be consigned to registry.

Date: 03.07.2024

(Ashok Sangwan)
Member

Haryana Real Estate
Regulatory Authority,
Gurugram