

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

Complaint no.: 6195 of 2022
Order pronounced on: 28.03.2024

1. Mrs. Syed Masrat Gilani
2. Mr. Mushtaq Ahmad Shah
Both RR/O: House No. 3, Shahdab Avenue Gulberg
Colony, Hyderpora, Srinagar, J&K- 190014

Complainants

Versus

M/s Chirag Builtech Private Limited
Registered Office at: - M-18, 3rd Floor, Greater
Kailash- II, (Market), New Delhi- 110084
Also at: - Building No. 80, 1st Floor, Sector- 44,
Gurugram - 122003

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Hasnain Khawja (Advocate)

Complainants

Shri Garvit Gupta (Advocate)

Respondent

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 29 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.

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A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.no	Particulars	Details
1.	Name of the project	"ROF Ananda" Sector- 95 Gurugram
2.	Nature of project	Affordable Group Housing Complex
3.	RERA Registered/ not registered	184 of 2017 dated 14.09.2017 Valid up to 13.09.2021
4.	DTPC License no.	17 of 2016 dated 25.10.2016
	Validity status	28.02.2022
	Licensed area	5.04 acres
	Name of licensee	Naryan Singh S/o Jhuthar Singh, Rajesh S/o Jhuthar Singh, Smt. Bimla Wd/o Satbir, Kavita, Babita, Pooja Ds/o Satbir and others.
5.	Date of approval of buildings plan	07.12.2016
6.	Date of approval of environment clearance	09.10.2017 (Page no. 21 of the reply)
7.	Allotment letter	30.03.2019 (Page no. 83 of the complaint)
8.	Unit no.	D-708, 7 th floor, Tower- D (As per schedules of payment at page no. 59 of the complaint)
9.	Area admeasuring	644.12 sq. ft.
10.	Date of agreement for sale	22.03.2019 (Page no. 54 of the complaint)
11.	Possession clause	7. Possession of the said unit: 7.1 Within 3-months from the date of issuance of Occupancy Certificate, the Promoter shall offer the possession of the Said Flat to the Allotee. Subject to Force Majeure circumstances, receipt of

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		Occupancy Certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by the Promoter in terms of this Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Promoter shall offer possession of the Said Flat to the Allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later ("Commitment Period").
12.	Due date of possession	09.04.2022 [Note: - Calculated from date of approval of environment clearance being later i.e., 09.10.2017 as per policy, of 2013, which comes out to be 18.05.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]
13.	Total sale consideration	Rs.26,26,480/- (As per schedules of payment at page no. 59 of the complaint)
14.	Amount paid by the complainant	Rs.28,01,720/- (As per annexure R-23at page no. 94 of reply)
15.	Occupation certificate	22.02.2022 (Downloaded from the website of the tcpharyana.gov.in)
16.	Offer of possession	23.02.2022 (As per annexure R-22 at page no. 92 of reply)
17.	Legal notice for possession	14.06.2022 (As per annexure p-24 & 25 at page no. 112 to 117 of complaint)

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18.	Cancellation letter	10.10.2022 (As per annexure R-24 at page no. 96 of reply)
19.	Termination letter cum full and final SOA	18.01.2023 (As per annexure R-25 at page no. 98 of reply)

B. Facts of the complaint:

3. The complainants made the following submissions in the complaint.

- I. That in May 2018, allured by the promotions & advertisements and personal meetings with property agents of respondent, the complainants booked flat in the said project of the respondent under the **Affordable Housing Scheme**. It is also necessary to mention here that the complainants have arranged the huge sum of amounts by liquidating complainants fixed deposits for the purpose of booking the flat.
- II. That the complainants applied to the project of the respondent for the allotment of apartment on 11.05.2018, the complainants for booking the apartment made a payment of Rs.1,31,200/- to the respondent/promoter.
- III. That in order to acquire allotment in favor of complainants as soon as possible, promoter's agent insisted complainants to make an advance payment of Rs.5,67,320/- to the respondent/promoter. The payment was acknowledged by the respondent and it was settled that this payment will be adjusted in the total price of the flat.
- IV. That on 22.03.2019 the apartment buyer's agreement was signed for an apartment bearing no. D-708, having carpet area of 644.12 sq. ft. and balcony area of 100 sq. ft. located on 7th floor in Tower D and for allotment of two-wheeler parking space of one. That the

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cost of the said apartment was 644.12 sq. ft. @ BSP rate Rs.4,000/- per sq. ft., amounting to Rs.25,76,480/- together with one two-wheeler parking site and balcony area of 100 sq. ft. @ BSP rate of Rs.500 per sq. ft., amounting to Rs.50,000/- resulting in the total price of the said flat to Rs.26,26,480/-. Further, as per mutual agreement agreed between the parties, respondent had promised to deliver the possession of flat by March 2021 and they had made the payments accordingly. However, the respondent failed to give possession of the flat by March 2021, thus, delaying the possession of the flat by 1 year and 5 months. That the respondent was supposed to complete the construction of the said apartment within 4 years from the date of approval plans i.e., 07.12.2016 or grant of environmental clearance for the said project i.e., 09.10.2017, which means that the expected completion date was 09.10.2021 but till date the respondent has not been able to give complete possession of the said apartment.

- V. That the complainants paid the whole amount within 31 months from the date of allotment and that the same is also evident from the payment schedule from where it is evident that the complainants made the payment well within time, for the reference of this Authority the complainants are preparing the chart as under:-

Installment Name	Installment Due Date	Installment made on	Installment amount Paid
At the time of submission of application for allotment	11.05.2018	11.05.2018	1,31,200/-
Within 15 (fifteen) days from the date of issuance of	14.04.2019	06.10.2018	Rs.5,67,320/- (Installment)

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allotment letter			
Within 6 (Six) months from the date of issuance of allotment letter	30.09.2019	21.05.2019	Rs.3,28,310/- (Installment)
Within 12 (Twelve) months from the date of issuance of allotment letter	30.03.2020	21.09.2019	Rs.3,28,310/- (Installment)
Within 18 (Eighteen) months from the date of issuance of allotment letter	30.09.2020	06.11.2019	Rs.3,28,310/- (Installment)
Within 24 (Twenty Four) months from the date of issuance of allotment letter	30.03.2021	05.03.2020	Rs.3,28,310/- (Installment)
Within 30 (Thirty) months from the date of issuance of allotment letter	30.09.2021	20.01.2021	Rs.3,28,310/- (Installment)
Within 36 (Thirty Six) months from the date of issuance of allotment letter	30.03.2022	19.05.2021	Rs.2,54,160/- (Installment)
Total			Rs.25,94,230/-
GST		31.10.2021	Rs.2,07,490/-
Grand Total			Rs.28,01,720/-

- VI. That the complainants made all the payments within the stipulated time as stated in the payment plan. That the complainants paid every payment including GST payment by 31.10.2021, though, as per the payment plan the time period was till 30.03.2022.
- VII. That despite the complainants making timely payment respondent issued demand letters showing interest amount due on installments. On 11.06.2019, respondent issued demand letter against the complainants demanding to clear outstanding dues. It

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is pertinent to mention here that the dates on the demand letter did not match with the actual dates of payment made. The respondents have wrongfully calculated the due dates for payment of installments from 11.05.2018. The apartment buyer agreement explicitly declares in clause 1.4 that the payments are to be made according to the payment plan and that the period of payment for installments will start from the date the allotment letter is issued.

- VIII. That the complainants brought to the notice of the respondent the error in dates in the demand letter and inquired about the interest amount due on installments. That only after sending some emails consistently the respondent gave a response. However, the response was vague and did not address complainants queries. The respondent could not provide reasons for demand of outstanding interest amount due on installments. On 07.07.2019, over a telephonic conversation between the parties, it was mutually decided between the parties that the respondent will hand over the unit to the complainants by March 2021 and the complainants will clear all payments by March 2021 irrespective of the payment plan laid down in the apartment buyer agreement.
- IX. Then later in that evening, the respondent sent a mail stating they would waive off the interest amount due till the installment "within 18 months of allotment" if the complainants clear all the dues by the date of possession irrespective of the dates mentioned in the payment plan. That the demand for interest amount due on installments was itself baseless, misconstrued and vague.
- X. That the complainants in order to keep their commitment, made the payments as soon as possible without any delay. That



consequently, complainants by 20.01.2021 had made a total payment of Rs.23,40,070/-. That on inquiring about update on the project, respondent conveyed that due to Covid-19 there was some delay of construction due to which they will not be able to provide possession of the flat by March 2021. Thereafter, they made the remaining payment at ease. However, even at ease the complainants completed the entire payment of Rs.28,01,719.60/- including GST within the time period stipulated in payment plan.

XI. That accordingly after completion of payment on 31.10.2021, the complainants on various occasions attempted to contact the respondent through emails and calls to inquire about the issuance of possession certificate. However, respondent did not attempt to address, reply or answer the queries of complainants. Even after completing the entire payment by them, to the respondent on 01.06.2022 issued a new demand letter against the complainants wherein an amount of Rs.3,84,610.99/- including interest of Rs.3,22,370/- was demanded to be paid by the complainants to the respondent.

XII. That therefore as the respondent has failed to issue possession certificate, deliver and is not giving possession of the said flat in accordance with the terms of the apartment buyer's agreement in such a case the complainant i.e., the allottee wants the respondent shall handover the said flat to the complainants in habitable condition.

C. Relief sought by the complainants:

4. The complainants have filed the present compliant for seeking following reliefs:

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- i. Direct the respondent be directed to refund an amount of Rs.28,01,719.60/- along with interest of 15% till the realization of the amount. (An application for amendment of relief sought seeking refund of the entire paid amount along with interest instead of possession along with delayed possession charges at the prescribed rate of 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 respondent:

6. The respondent has contested the present complaint on the following grounds:
 - i. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. They are estopped from filing the present complaint on account of their own acts, omissions, admissions, delays, laches and acquiescence.
 - ii. That the complaint is not maintainable for the reason that the agreement contains a dispute resolution clause which refers to the mechanism to be adopted by the parties in the event of any dispute i.e., clause 38 of the buyer's agreement.
 - iii. That the complainants have not approached this authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by them maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:

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- That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered prestigious projects and in most of these projects large numbers of families have already shifted after having taken possession.
- That the complainants are real estate investors who had booked the unit in question with a view to earn quick profit in a short span of time. However, it appears that their calculations have gone wrong on account of severe slump in the real estate market and the complainants now want to somehow illegally extract benefits from the respondent. Such malafide tactics of the complainants cannot be allowed to succeed.
- That the respondent is the sole, absolute and lawful owner of the land parcel situated in the revenue estate of Village Dhorka, Sector 95, Tehsil and District Gurugram, Haryana. The respondent had obtained the approval/sanction to develop a project known as 'ROF Ananda' from the Director Town and Country Planning, Haryana, Chandigarh vide approval bearing license no. 17 of 2016 dated 25.10.2016 under the Haryana Development and Regulation of Urban Areas Act, 1975 and the Haryana Development and Regulation of Urban Areas Rules, 1976 read with the Affordable Group Housing Policy, 2013 issued by the Government of Haryana vide the Town and Country Planning Department notification dated 19.08.2013 as amended from time to time.
- That the respondent had obtained the approval on the building plans from DTCP vide letter bearing Memo no. ZP-1133/SD(BS)/2016/26738 dated 07.12.2016 and the environment clearance bearing no. SEIAA/HR/2017/659 dated 09.10.2017 from the State Environment Assessment Authority, Haryana for the project in question. Moreover, the respondent in compliance of all laws including the Act, 2016 has registered the project in question with this authority and this authority after scrutiny of all the relevant documents and completing its

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own due diligence has issued a registration certificate bearing no. 184 of 2017.

- That the complainants, after checking the veracity of the said project had applied for allotment of an apartment vide their booking application form on 11.05.2018. The complainants agreed to be bound by the terms and conditions of booking application form. They were aware and had admitted and accepted vide the said booking application form that they by the way of said application form had applied in the said project under the Affordable Group Housing Colony being developed by the respondent under the Affordable Scheme Policy and had understood all the limitations and obligations after being provided with all the information and clarifications. The complainants were aware that all the payment demands towards the total sale consideration were to be demanded by the respondent strictly as per the said policy and only after being completely satisfied about the same, had made the booking with the respondent. Moreover, the complainants had also perused and signed Annexure A of the Application form which contained the payment plan which specifically stated the stage of payments.
- That the payment plan of the unit applied for was strictly as per clause i.e., 5 (iii) (b) of the Affordable Group Housing Policy, 2013. The complainants at the time of submitting the booking application form had made the payment towards 5% amount of the total cost of the unit as per the Policy, 2013. That the first draw was conducted on 23.08.2017 and the unit was allotted to the complainants via intimation letter dated 11.05.2018 from the left over units and as per clause 5(iii)(k) of the policy.
- That the respondent vide the said intimation letter which was equivalent to an allotment letter being issued demanded the next 25% payment demand with an additional demand of 12.5% the total cost of the flat strictly as per clause 5(iii) (b) and clause 5(iii) (k) of the said policy.
- That the respondent strictly as per the terms of the allotment and policy, on 16.07.2018 sent a demand letter to the

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complainants wherein a net payable amount of Rs.12,87,110/- were to be paid by the complainants till 23.08.2018. The complainants accordingly deposited a cheque of part-payment of Rs.5,67,320/- on 18.09.2018 and the remaining payment was accumulated as arrears. Further, vide payment demand letter dated 21.01.2019, the respondent had sent demand letter for the net outstanding amount of Rs.10,74,668/- However, the complainants in continuation of their defaults failed to remit the said demand.

- That on the basis of the application, an agreement was sent by the respondent to the complainants. They signed the agreement only after being fully aware of all the limitations and obligations and after being completely satisfied with the terms and conditions of the said agreement. Thus, the agreement for sale was executed between the parties on 22.03.2019. Subsequently, an allotment letter was issued in favor of complainants, against the intimation letter on 30.03.2019. The said issuance of another letter was a formality which had to be complied with as the essence of the allotment being the unit number and size had already been intimated to the complainants vide the Intimation letter. That prior to the issuance of the said allotment letter, all the payment demands were being demanded and paid by the complainants to the respondent as per the policy in question and no objection whatsoever were raised by them.
- That on account of non-payment of the demand dated 21.01.2019, the respondent was constrained to re-send the demand letters on 30.03.2019 and 02.04.2019. Since, the complainants had failed to remit the amount on time, the interest was accumulated and the total due amount till 11.04.2019 became Rs.12,00,659/- and the same was informed to the complainants by the respondent vide its letter dated 11.04.2019.
- That the respondent vide payment demand dated 19.01.2021 demanded net payable amount of Rs.7,89,959/-. As per the said demand letter, they were informed that the due date to make



the payment was 23.02.2021. However, the complainants yet again only made part-payment and the remaining amount was adjusted in the next installment demand as arrears. The respondent issued receipts dated 20.01.2021 and 26.05.2021 against the part-payment made.

- That vide demand dated 07.07.2021, the respondent demanded Rs.5,17,894/-. However, despite reminder dated 07.07.2021, the complainants have made part-payment of Rs.2,07,489.60/- and the remaining amount is yet to be paid by them. The respondent completed the construction of the tower in which the unit allotted to the complainants was located and offered the possession to the respondent vide offer of possession dated 23.02.2022. They were required as per the said offer of possession to make complete payment towards the due amount as well as to complete the documentation formalities.
- That the complainants failed to remit the due amount and take the possession of the unit and the respondent was once again constrained to issue a demand letter dated 16.08.2022, to the complainants demanding the due amount.
- The complainants were aware that as per clause 1.3 of the booking application form and clauses 1.4 and 2.2 and 5.1 of the agreement, timely payment of the installment amount was the essence of the allotment. It was understood vide clauses 11.7 of the booking application form and 1.13 of the agreement and as per clause 5(iii)(i) of the Policy, 2013, that if the allottee fails to make the payment towards the demanded amount, then the respondent would be entitled to terminate the allotment by issuing the cancellation letter. On account of defaults committed by the complainants, the respondent was left with no other choice but to terminate the allotment of the complainants by issuing the cancellation letter dated 10.10.2022 and finally terminated via termination letter dated 18.01.2023 with the full and final settlement of the account against the unit no. D-708, with a copy of cheque amounting to Rs.21,91,039 /-. Therefore, the complainants are now left with no right, title or lien in the unit after the said cancellation. The



said cancellation has been done by the respondent strictly as per the agreement and the said policy and the same is valid in the eyes of law. That at time of terminating the unit there was an outstanding of Rs.3,30,196/- with other ancillary charges.

➤ That although, moreover, the respondent has throughout acted strictly as per the terms of the allotment, rules, regulations, law and the directions issued by the concerned authorities.

7. Copies of all the relevant documents have been filed and placed on 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.

8. During proceeding dated 11.01.2024, the counsel for the complainants requested that they want refund of the entire paid up amount and wish to file an application for amendment of relief sought from delayed possession charges to refund of the entire paid up amount. The said request of the complainants was allowed by this authority vide order dated 11.01.2024. Thereafter, the complainants have filed an application dated 11.01.2024 with regard to refund the entire amount along with interest to which the counsel for the respondent submitted that he has no objection in this regard. Hence, in view of the same, the application for amendment of relief sought (delayed possession charges to refund) was allowed vide order dated 19.01.2024.

E. Written submission made by the complainant as well as respondent

9. The complainant and respondent have filed the written submissions on 29.01.2024 and 30.01.2024 respectively which are taken on record. The additional facts apart from the complaint or reply have been stated by the parties in written submissions are mentioned below.

E.I Written submission of the complainant

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10. The complainant has filed the written submission on 29.01.2024, and made the following submissions.

- That initially respondent issued two frivolous demand letters dated 11.04.2019 & 11.06.2019 to the complainants whereby the respondent had been directed to clear certain amount accrued on account of "Interest Due" and after receiving the said demand letters, the complainants took up the matter with respondent vide letter dated 14.06.2019 and 04.07.2019.
- That after the receipt of the above letters of the complainants, the respondent addressed an e-mail dated 07.07.2019, whereby the respondent waived-off interest component levied upon the complainant till the instalment "within 18 months of allotment". It is stated as detailed above, rest of the payments have been paid before the due dates, and hence there is no question of imposing any interest on delayed payment.
- The demand letter issued by the respondent are ambiguous and do not specify the reason for charging any interest from the complainants. Clear the things out the complainant had visited the offices of the respondent and try to amicably settle the issue with the respondent, however the respondent failed to answer the queries of the complainant and also failed to satisfy as to how and from where the interest is being levied upon the complainants.
- Order dated 25.05.2023 this Authority was pleased to impose a cost of Rs.5,000/- on the respondent/builder for failing to furnish the reply of the complaint. That the reply was to be taken on record only when the said cost was to be paid to the complainants. However, the said cost has not been paid to the complainants and neither the respondent has filed any condonation of the delay application before this authority.

E.II Written submission of the respondent

11. The respondent has filed the written submission on 07.12.2023, and made the following submissions: -

- That the said information as attached herewith is very relevant, necessary and important for adjudication of the present complaint. The necessity to file the information has arisen because of the false stand taken by the complainants in the complaint filed by them and

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to expose their illegal acts. The said information would enable this Authority to decide the controversy in a much better and effective manner and the same are necessary for a just and proper decision of the case. It is the intention and spirit of law that all such documents should be allowed to be produced. The said information is relevant and substantiate and support the actual facts and circumstances.

S. No.	Stage of demands	Demand Date	Due Date	Demand Amount in Rs.	Payment Made	Payment received date
1.	At the time of application		11.05.2018		1,31,200/-	11.05.18
2.	At the time of allotment	22.05.2018/ 13.06.2018/ 16.07.2018	11.05.2018	9,32,532/- 9,45,561/- 12,87,110/-	5,67,320/- (Bounce)	28.09.18
3.	Within 6 months of allotment	22.05.2018/ 13.06.2018/ 16.07.2018	11.05.2018	9,32,532/- 9,45,561/- 12,87,110/-	5,67,320/-	06.10.18
4.	Within 12 months of allotment	16.07.2018	23.08.2018	12,87,110/-	3,28,310/-	21.05.19
5.	Within 18 months of allotment	21.01.2019/ 02.04.2019/ 30.03.2019	23.02.2019	10,74,668/- 10,74,668/- 10,74,668/-	3,28,310/-	21.09.19
6.	Within 24 months of allotment	19.01.2021	23.08.2019	7,89,959/-	3,28,310/-	07.11.19
7.	Within 30 months of allotment	19.01.2021	23.02.2020	7,89,959/-	3,28,310/-	22.02.20
8.	Within 36 months of allotment	19.01.2021/ 07.07.2021	23.02.2021	7,89,959/- 5,17,894/-	3,28,310/-	12.03.20
					3,28,310/-	20.01.21
					2,54,160/-	26.05.21
					2,07,490/-	31.10.21
	Offer of possession	23.02.2022				
	Demand letter towards unpaid amount	16.08.2022		3,86,555/-	Not paid	Not paid

F. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

13. 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.

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14. 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. 2021-2022 (1) RCR (Civil), 357*** 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."

15. 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 complainant is in breach of agreement for non-invocation of arbitration.

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16. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.
17. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

F.II Objection regarding maintainability of complaint on account of complainant being investor.

18. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates

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any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer's, and they have paid total price of Rs.28,01,720/- to the promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

19. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant.

G.I. Direct the respondent be directed to refund an amount of Rs.28,01,719.60/- along with interest of 15% till the realization of the amount.

20. The complainants were allotted a unit in the project of respondent "**ROF Ananda**", in Sector 95, Gurugram vide allotment letter dated 30.03.2019 for the allotment of the unit bearing no. D-708, 7th floor in Tower- D, for the sale consideration of Rs.26,26,480/-. Thereafter, a

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buyer's agreement was executed between the parties on 22.03.2019. As per clause 7.1 of the buyer's agreement, the possession of the unit to be offered within 4 years from approval of building plans (07.12.2016) or the date of environment clearance (09.10.2017) whichever is later. The due date of possession is calculated from the date of environment clearance being later i.e., 09.10.2017 which comes out to be 09.10.2021. The respondent has obtained the occupation certificate from the competent Authority in respect of the said project on 22.02.2022 and subsequently, the possession was offered to the complainants on 23.02.2022. The complainants after receipt of the said letter sent a legal notice dated 14.06.2022 to the respondent requesting to hand over the physical possession of the allotted unit.

21. Thereafter, the respondent vide demand letter dated 16.08.2022 requested the complainants to pay the outstanding dues. However, as per record, the due date of payment of the outstanding dues was not mentioned by the respondent in the said letter dated 16.08.2022. On 10.10.2022, the respondent/builder cancelled the allotment of the unit due to non-payment of the outstanding dues by the complainants. On 18.01.2023, the respondent issued a termination letter cum full and final statement of account vide which an amount of Rs.6,10,681/- was forfeited by the respondent.
22. The authority observes that the complainants have paid an amount of Rs.28,01,720/- against the sale consideration of Rs.26,26,480/-. It is evident that the complainants have paid more than the sale consideration. During proceeding dated 27.04.2023, the respondent was directed not to create any third party rights till next date of hearing as the allottee has paid the consideration amount and only

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some minor amounts towards taxes or stamp duty charges remains to be paid which doesn't justify cancellation of the unit. Further, on 25.05.2023, the Authority ordered that in the meantime the interim relief already granted shall continue till further orders. Thereafter, on 12.10.2023, the counsel for the respondent stated that the Authority during proceeding on 25.05.2023, has continued the stay against creation of third party rights in respect of the allotted unit of the complainants, while the third party rights were already created on 11.04.2023 i.e., prior to the directions of the authority for non-creation of the third party rights. The Authority is not in concurrence with the contention of the respondent that the third party rights were created prior to the direction of the Authority for non-creation of third party rights as the respondent should have disclosed the creation of third party rights during proceeding on 27.04.2023 itself. Moreover, the respondent also had also opportunity to disclose the same during subsequent proceeding on 25.05.2023, however, the respondent failed to make such disclosure. It was only on 12.10.2023, i.e., approx. 6 months after the order dated 27.04.2023 restraining creation of third party rights, that the respondent has created third party rights.

23. In line with the aforesaid facts, the written submission filed by the parties and documents placed on record, the main question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is valid or not in the eyes of law?"
24. The authority observes that clause 5(i) of the Affordable Group Housing Policy, 2013 deals with the cancellation and the relevant clause is reproduced below: -

*"If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, **a reminder may be issued to him for depositing the due installments within a period of 15 days***



from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs.25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list”.

25. The respondent company has published a list of defaulters in making timely payments in the daily English newspaper & Hindi newspaper on 18.03.2023 and 28.03.2023 respectively and has thereafter cancelled the unit vide termination letter dated 10.10.2022. Though the respondent followed proper procedure of cancellation in accordance with the policy of 2013, but it is to be seen whether the demand so raised by the respondent was as per the agreed payment plan?
26. *Firstly*, it is observed that the respondent has issued allotment letter in favour of the complainants on 30.03.2019 and the complainants have paid an amount of Rs.13,55,140/- by 23.02.2019. However, as per clause 5(iii)(b) of the Policy 2013, the complainants were only liable to pay Rs.6,56,620/- i.e., 25% of the sale consideration at the time of allotment. It is of grave importance to mention here that the respondent has collected more than 50% of the sale consideration prior to the issuance of allotment which is in violation of the Policy of 2013 and the Act of 2016. As per the then terms of the policy, 5% of sale consideration is payable at the time of application form, second installment of 20% of the sale consideration is payable at the time of allotment of the unit and rest 75% of amount is payable in 6 equated (12.5% of sale consideration) six monthly installments spread over 3 years period, with no interest following due before the due date of payment. However, the respondent has demanded all the installment in violation of the payment plan as per the policy as is evident from the table given by the respondent along with written submission filed on

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30.01.2024 and as reproduced in para no. 11 of this order. *Secondly*, the complainants were liable to pay Rs.26,26,480/- by the due date i.e., 09.10.2021. However, the complainants had paid Rs.28,01,720/- by 31.10.2021 i.e., an excess amount of Rs.1,75,240/- was paid by the complainants in October 2021 before obtaining the occupation certificate. *Thirdly*, the respondent after offering the possession on 23.02.2022 has raised an demand of Rs.3,86,555/- vide demand letter dated 16.08.2022 i.e., after a gap of almost six months from the intimation of possession. It is pertinent to note that the vide the demand letter dated 16.08.2022, the respondent has raised a demand of Rs.3,24,314/- towards interest due till date. It is beyond the imagination of the Authority as to how the respondent has raised interest on delayed payments when the complainants have already made payments in excess of the demanded amount. Thus, the Authority is of the view that the respondent has arbitrarily raised demands in violation of the payment plan as per the policy. The demand raised vide letter dated 16.08.2022 was not payable by the complainants and consequently, the cancellation vide letter dated 10.10.2022 and the same is not valid in the eyes of the law for the reasons quoted above. But since cancellation is not valid hence, deduction of said Rs.25,000/- is not admissible. However, now the complainants are seeking refund of the amount deposited along with interest and hence, the cancellation is not being set aside. The respondent is under obligation to refund the amount received by it, after cancellation as per provisions of the policy of 2013 but has failed to make refund of requisite amount as per the said policy. It is not



justified on the part of the respondent /promoter as to why it has been withholding the said amount after cancellation.

27. In light of the afore said circumstances, the authority hereby directs the respondent to refund the entire paid-up amount i.e., Rs.28,01,720/- received by it from the complainants along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Rules, 2017 from the date of cancellation i.e., 10.10.2022, till the actual realization of the amount.

G. Directions of the Authority:

28. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act.
- The respondent/promoter is directed to refund the entire paid-up amount i.e., Rs.28,01,720/- received by it from the complainants along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Rules, 2017 from the date of cancellation i.e., 10.10.2022 till the actual realization of the amount.
 - 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.
29. Complaint stands disposed of.
30. File be consigned to the registry.

Dated: 28.03.2024


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram