

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

Complaint no.: 3911 of 2021
Date of decision 19.04.2024

Mahavir Singh

R/o: - Village Bhangrola, Gurugram, Haryana - 122001

Complainant

Versus

1. M/s VSR Infratech Private Limited

2. M/s KS Propmart Private Limited.

Both having regd. office at: - Plot No. 14, Ground Floor,
Sector- 44, Institutional Area, Gurugram- 122003 Haryana

Respondents

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri Arun Kumar Yadav

None

Shri Jagdeep Yadav

Complainant in person
Counsel for respondent no. 1
Counsel for respondent no. 2

ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee 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:

S. N.	Particulars	Details
1.	Name and location of the project	Earlier 85 th avenue now "Park Street" at Sector 85, Gurugram
2.	Project area	2.85 acres
3.	DTCP license no.	100 of 2013 dated 02.12.2013 valid upto 01.12.2019
4.	Name of licensee	M/s KS Propmart Pvt. Ltd.
5.	RERA Registered/ not registered	Registered vide no. 41 of 2019 issued on 30.07.2019 up to 31.12.2021 Validity status 30.06.2022 (Additional 6 months grace period as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020) Extended up to 30.06.2023
6.	Unit no.	SF19, Second Floor (as per MOU on page no. 38 of complaint)
7.	Unit area admeasuring	302.68 sq. ft. (as per MOU on page no. 38 of complaint)
8.	Date of application	21.02.2014 (page no. 35 of complaint)
9.	Date of execution of MOU	27.02.2014 (page no. 36 of complaint - with VSR)



10.	Possession Clause	Not Mentioned
11.	Due date of delivery of possession calculated as per <i>Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>	21.02.2017
12.	Assured return clause	2. Assured Return 2.1 Till the time less than 47.50% amount is due as per instalment payment plan, the Developer shall pay to the Allottee an Assured Return at the rate of RS. 39.75 per sq. ft. of super area of the premises per month. The Assured return shall be subject to tax deduction at source which shall be payable on or before 26 th day of every English Calendar month on due basis.
13.	Total sale consideration	Rs. 23,60,904/- (as per MOU page no. 39 of complaint)
14.	Amount paid by the complainant	Rs. 12,24,223/- (as per MOU page no. 39 of complaint)
15.	Amount paid by respondent no. 2 as assured return	Rs. 4,76,476/- (May 2016 to July 2016 October 2016 to February 2020) (Page 52 of reply)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That in February 2014, complainant received a marketing call from a real estate agent who represented himself as authorized agent of the respondent No.1 and marketed a commercial project "**85 Avenue**", Sector 85, Gurugram. He visited the Gurugram office and project site of the respondents/ builders. There he met with marketing staff of builder and got information about the project "85 Avenue".
- II. That believing on representation and assurance of respondent, he booked unit bearing No.18 second floor measuring 302.68 sq. ft. approx. at the basic sale price of Rs.7800 per sq. ft. and paid a booking amount of Rs.12,24,223 /- vide cheque No. 103909. The details of the said unit were duly mentioned at the time of making application with the respondents.
- III. That soon after the respondents entered into a memorandum of understanding with the complainant within all the terms and conditions as mentioned in the application were again reiterated and the said memorandum of understanding dated 27.02.2014 was duly executed and signed by both the parties. A bare perusal of the land mentioned in clause B of the MOU is shown to be reflected to be owned by M/s K.S. Propmart Pvt. Ltd. i.e. defendant No.2. The MOU was entered by M/s V.S.R. Infratech Pvt. Ltd. respondent No.1. the licence of the respondent No.2 was obtained on 02.12.2013 bearing No.100 of 2013 for setting up of commercial colony. The respondent no.1 in clause No.D had specifically mentioned that respondent No.1 had entered into an agreement with respondent No.2 to exclusively develop construct and built commercial building etc.
- IV. That as per article 2 the allottee was to pay only 47.50% of the amount initially on which the developer will pay assured return. On completion of assured return the developer will call upon to pay the balance consideration

and to hand over possession of the unit in concerned. No time framed was fixed for payment of the assured return.

- V. That on 01.03.2021 the respondent No.2 sent a letter to the complainant demanding IDC/IDC dues from the complainant. On receipt of the said letter dated 01.03.2021, the area was changed from 302.68 sq. feet to 315.39 sq. feet and even the name of the project was changed from 85 Avenue to Park Street when this fact came to the notice and knowledge of the complainant, the complainant immediately approached the respondent and enquired about the application/ MOU/allotment issued to the complainant in the year 2014. No satisfactory answer was given by the respondent and when the complainant enquired about the project 85 Avenue the complainant was shocked to learn that no such project has ever come into existence and entire set up had been paper transaction and infact the land detailed in clause B of MOU has been registered by respondent No.2 in the office of Hon'ble Authority at serial No.41 of 2019 in the project named Park Street. The complainant was never given any notice nor any permission was taken from the complainant in respect of the change of project or location and area of the unit. The complainant felt cheated at the hand of the respondent. That now the complainant has no faith upon the respondent who had slept on the MOU for five years and then suddenly changed the project without informing the complainant. The complainant has no option but to withdraw from the project and as the respondents have cheated the complainant by not informing and by changing the unit area/ building plan and project of the unit allotted to the complainant, even otherwise there is no unit of 302.68 Sq. Feet super area in the building plan for the new project. As such the complainant seeks refund of paid amount along with interest as well as compensation for mental pain and agony suffered by the complainant at the hands of the respondents.

- VI. That thereafter the complainant has visited various times to the office of the respondents and asked to cancel the unit and refund the paid amount but the respondents did not pay any heed to the just and reasonable demands of the complainant. It is pertinent to mention here that even after requesting the respondents for cancellation of the unit the respondents kept sending the messages and kept misleading the complainant.
- VII. That without prejudice, the respondent has failed to give the possession of the unit as per MOU, hence he has the right to get the refund of the paid money along with interest. Moreover, the respondent cannot hand over any unit which was originally booked by the complainant as per his requirement as the unit allotted to the complainant and the said project is not in existence.
- VIII. That the complainant wants to withdraw from the project, the promoter has not fulfilled his obligation therefore as per obligations on the promoter under section 11(4), 12, 18(1) & 19(4), the promoters obligated to refund the paid amount along with the prescribed rate of interest.

C. Relief sought by the complainants:

4. The complainant has sought following relief(s):
- i. Direct the respondent to refund the paid money along with prescribed interest from the date of payment till date of refund.
 - ii. Direct the respondent to give compensation of Rs.5,00,000/- for causing mental pain & agony and Rs.1,00,000/- towards cost of this litigation.
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. An app on behalf of respondent no 1 for deletion of name has been filed on 03.08.2023
7. The respondent by way of written reply made following submissions:-
 - I. At the outset it is submitted that the present complaint has been filed by the complainant before the Hon'ble Adjudicating Officer in Form CAO. However, any complaint qua relief of refund is required to be filed before the Hon'ble Authority in CRA Form. It is in the humble submission of the answering respondent herein since the same has been filed under CAO form and any complaint before this Hon'ble Authority for refund has to be filed in CRA form, the present complaint needs to be dismissed. It is submitted that the complainant have also claimed the relief of compensation which cannot be dealt with and adjudicated upon by this Hon'ble Authority.
 - II. That respondent company is a company of repute having immense goodwill, reputation and enjoying market leadership in the real estate Industry.
 - III. It is submitted that the complainant made an application for provisional allotment of a shop bearing no. SF-19 Located on 2nd Floor in the project developed by the respondent known as **VSR 85 Avenue which is now known as Park Street** vide an application form.
 - IV. That as per the memorandum of understanding (MOU) the price of the shop for an area admeasuring 302.68sq.ft. was Rs. 23,60,904/- **Exclusive** of EDC, IDC, Interest Free Maintenance Security (IFMS), Electricity Connection Charges, Power Back up charges, Air Conditioning Charges, service tax and such other levies/cessess/VAT as may be imposed by the any statutory Authority.
 - V. That the complainant has made payments of Rs.12,24,223/- including service tax to the respondent at the time of allotment. However, in addition

to the above additional cost the complainant is also supposed to make other payments in the nature of EDC, IDC, Interest Free Maintenance Security (IFMS), Electricity Connection Charges, Power Back up charges, Air Conditioning Charges, service tax and such other levies/cess/VAT as per the demands raised by the respondent. It is submitted that the amount paid till date by the complainant is Rs. 12,24,223/- including service tax. That an amount of Rs. 15,00,687/- is still pending at the end of the complainant.

- VI. That it is pertinent to mention here that there was no time limit provided under the MOU for handing over the possession of the unit. Thus, time was not the essence of the contract for delivering the possession, however it was mutually agreed upon that the complainant will be entitled to the benefit of assured returns as per the terms of the MOU. That the very inclusion of such a clause in the MOU goes a step further in illustrating the fact that the Complainant very well knew and understood the implication of the terms of the MOU having no date of possession but having a buffer/protection of payment of assured return till completion of the building Hence, now it doesn't lie in the mouth of the Complainant to allege that there has been undue delay in the handing over of the possession. It is submitted that the present case needs to be dealt within the parameters of the clauses contained in the MOU that was executed between the parties by fully understanding the import of the contents of the MOU without any coercion, influence of undue pressure.
- VII. That as per the terms of the **MOU**, it was also agreed that the Respondent will pay an assured return at the rate of Rs.39.75/- per sq.ft. of the super area till the time less than 47.50% amount is due as per Installment payment plan. However, the payment of assured return was subject to force majeure clause as provided under Clause 5.1 of the MOU

and other clauses of the MOU. It is submitted that an amount of Rs. 4,76,476/- has been paid by the respondents as assured return to the complainant herein.

- VIII. That the legislature passed a legislation titled as 'The Banning of Unregulated Deposit Schemes Act, 2019' (hereinafter referred to as "**BUDS Act**"), with the aim and objective to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business, and to protect the interest of depositors and for matters connected therewith or incidental thereto. With the enactment of the BUDS Act, the investment return plan/ assured return/assured rental linked fell within the ambit of "*deposit*" and "*Unregulated Deposit Scheme*" under the BUDS Act. Thus, in pursuant to the provisions of Section 3 of the BUDS Act, all the "*Unregulated Deposit Schemes*" were barred and all the deposit takers including the Respondent dealing in "*Unregulated Deposit Schemes*" were stopped from operating such schemes. It is further submitted that in terms of Clause 5.11 of the MOU and all such provisions of the said MOU were void, illegal and unenforceable under the BUDS Act. In view of the above, the Respondent is under no obligation to pay the assured returns to the Complainant.
- IX. That the present application qua enforcement of the terms of the said MOU qua assured returns deems dismissal is liable to be dismissed for the reason that this Hon'ble Authority cannot adjudicate over the subject matter of the assured returns/rentals in as much as the same is an aspect/facet out of the many related/incidental aspects covered under the BUDS Act. As a necessary corollary, an order/decision on the subject matter falling within the realms of the BUDS Act, would not only amount to exercise of arbitrary and excessive jurisdiction by the Hon'ble Authority

but such action would also be unsustainable in the eyes of law. Pertinently, Section 8(2) of the BUDS Act provides that no Court other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of the BUDS Act apply.

X. It is submitted that the construction and development of the project was affected due to force majeure conditions. It is submitted that this Hon'ble Authority vide its order dated 26.05.2020 has invoked the force majeure clause. That the Complainant is also liable to make other payments as prescribed under the MOU.

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial Jurisdiction:

10. 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:

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:



Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. 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 complainant at a later stage.
13. 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."

14. 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 relief sought by the complainant.**
- F.I i. Direct the respondent to refund the paid money along with prescribed interest from the date of payment till date of refund.**
15. In the present complaint, the subject unit was booked by the complainant by paying booking amount of Rs. 12,24,223/- in the project of the respondent no. 2 namely, "Park street", Sector 85, Gurugram, Haryana. The complainant booked a unit vide booking application form dated 21.02.2014. After, that a memorandum of understanding was executed between the parties for the booked unit. Thereafter, the complainant paid an amount of Rs. 12,24,223/- till date. Though, no buyer's agreement was executed between the parties. Accordingly, the complainant failed to abide by the terms of the booking application form executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule.
16. The authority has gone through the payment plan, which was duly signed by both the parties, which is reproduced for ready reference: -

Plan-A, Installment Payment Plan

Construction Schedule	All payment are inclusive of BSP
At the time of booking	10% of BSP
Within 45 days of booking	10% of BSP
On start of Excavation	10% of BSP
On start of Casting of foundation	10% of BSP
On casting of 2 nd Basement Floor Slab	7.5% of BSP + 25% EDC & IDC
Rest as per construction schedule to be decided by the company	47.5% of BSP + 75% EDC & IDC + 100% PLC
At the time of offer of possession	5% of BSP + IFMS + Power backup + Electric Connection Charges + Air Conditioning charges + IFCRF

+ Specification Charges + Registration Charges, Stamp duty and other charges as applicable

17. In the present case, the complainant booked the aforesaid unit under the above mentioned payment plan and paid an amount of Rs. 12,24,223/- against the total consideration of Rs. 23,60,904/- which constitutes 51.85 % of the total sale consideration and they have paid the last payment on 21.02.2014. In the instant matter, even after lapse of 9 years from the date of first payment till the filling of the present complaint, no buyer's agreement has been executed inter- se parties. The respondent no. 2 has failed to state reasons as to the non-execution of the buyer's agreement and the authority in a rightful manner can proceed in light of the judicial precedents established by higher courts. When the terms and conditions exchanging (agreement) between parties omits to specify the due date of possession, the reasonable period should be allowed for possession of the unit or completion of the project. The respondent no. 2 instead of executing buyer's agreement in terms of the Act of 2016, has executed MOU on 27.02.2014, which is also does not specify the due date of handing over of possession and is also not as per the model agreement to sell provided under the Act and the Rules, thereby violating the provisions of the Act of 2016.
18. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the complainant/allottee. Further, the Hon'ble Supreme Court in the case of **Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018** observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation.

Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.

19. In view of the above-mentioned reasoning, the date of signing of booking application form, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 21.02.2017. Further, there is no document placed on record from which it can be ascertained that whether the respondent no. 2 has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. It is pertinent to mention over here that even after a passage of more than 9 years from the date of booking, neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent no.2. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. Further, the authority observes that the respondent no. 2 has failed to execute the buyer's agreement as per the model agreement provided in Real Estate Regulation and Development Rules, 2017 in according to section 13(1) of the Act, 2016 the respondent shall not accept a sum more than ten percent of the cost of the apartment, plot or building, as an advance payment or an application fee, from a person without first entering into a written agreement for sale. Whereas, in the instant matter the respondent no. 2 has taken 51.85 % of the consideration in the year 2014, without executing the BBA. The relevant section of the Act is as follows: -

"Section 13. No deposit or advance to be taken by promoter without first entering into agreement for sale.

A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."

20. The respondent no. 2 instead of executing buyer's agreement in terms of the Act of 2016, has executed MOU on 27.02.2014, which also does not specify the due date of handing over of possession and is also not as per the model agreement to sell provided under the Act and the Rules, thereby violating the provisions of the Act of 2016. The allottee intends to withdraw from the project and is well within the right to do the same in view of section 18(1) of the Act, 2016.
21. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by her along with interest prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:
- Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**
- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*
22. 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.
23. 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., 19.04.2024 is

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

24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
25. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***
- ".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*
26. Moreover, 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."

27. 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 unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
28. 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 complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount after deduction of amount of assured return already paid. within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
29. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech*

Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.(supra), has held that an allottee is entitled to claim compensation & 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 & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

30. The project namely "Park Street" was registered under section 3 of the Act of 2016 vide registration number 41 of 2019 dated 30.07.2019, which was valid up to 31.12.2021. Thereafter, the completion date was extended of the said registration certificate vide number 07 of 2023 dated 10.04.2023, which also expired on 30.06.2023. Since the occupation certificate of the project has not been received till now therefore, the promoter is liable to further extension of the said project. Accordingly, the planning branch is directed to take the necessary action as per provisions of the Act of 2016.

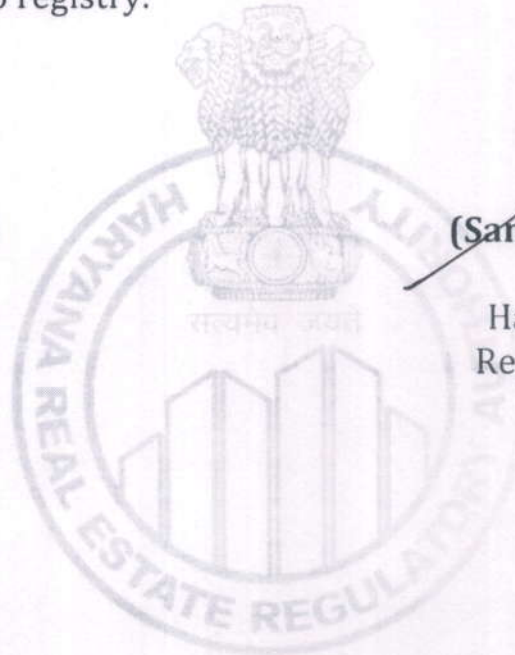
G. Directions of the authority

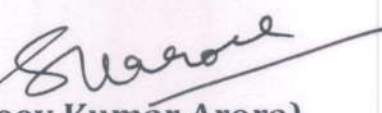
31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent no. 2 is directed to refund the entire paid-up amount i.e., Rs. 12,24,223/- received by it from the complainant along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real

Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual realization of the amount after deduction of amount of assured return already paid to the complainant.

- ii. A period of 90 days is given to the respondent no. 2 to comply with the directions given in this order and failing which legal consequences would follow.
32. Complaint stands disposed of.
33. File be consigned to registry.

Dated: 19.04.2024




(Sanjeev Kumar Arora)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
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