BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**4405 of 2023**
Date of complaint	:	**18.09.2023**
Date of order	:	**16.08.2024**

1. Ravinder Dagar
2. Ratna Devi Dagar
Both R/O: - H.No.636, Sector -31, Gurgaon **Complainants**

Versus

1. Orris Infrastructure Pvt. Ltd.
Regd. Office at: J-10/5, DLF Phase-2,
MG Road, Gurugram, Haryana- 122002.
2. Bright Buildtech Pvt. Ltd.,
Regd. Office at: D-107, Panchsheel Enclave,
New Delhi-110017
3. **Ace Mega Structures Private Limited**
Regd. Office at: Plot No.1B, 8th Floor,
Greater Noida Expressway, Sector -126
Noida-201303 **Respondents**

CORAM:
Sanjeev Kumar Arora **Member**

APPEARANCE:
Mayank Sharma (Advocate) Complainants
Charu Rustogi (Advocate) Respondent No.1
Ashwarya Jain (Advocate) Respondent No.2 & 3

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for

violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name of the project	'Woodsview Residencies', sector-89-90, Gurugram
2.	Nature of project	Residential plotted colony
3.	RERA registered/not registered	34 of 2020 dated 16.10.2020
4.	DTPC License no.	59 of 2013 dated 16.07.2013
	Validity status	15.07.2021
	Name of licensee	Orris Land & Housing Pvt. Ltd. & 42 Ors.
	Licensed area	100.081 Acres
5.	Unit no.	B-112, First Floor [as per BBA on page 46 of complaint]
6.	Unit measuring	1090 sq. ft. (super area) [as per BBA on page 46 of complaint
7.	Date of execution of builder buyer agreement	17.09.2015 (page 45 of complaint)
8.	Possession clause in builder buyer agreement	**5. Possession of Dwelling Unit** 5.1 *Subject to Clause 5.2 and subject to the Buyer making timely payments, the Company shall endeavour to complete the construction of the Building Block in which the Dwelling Unit is situated within 36 months, with a grace period of 6 (six) months from the date of issuance of Allotment Letter provided that all amounts due and payable by the Buyer*

		has been paid to the Company in timely manner. The Company shall be entitled to reasonable extension of time for the possession of the Dwelling Unit in the event of any default or negligence attributable to the Buyer's fulfillment of terms & conditions of this Agreement.
9.	Date of allotment	16.03.2015 (page 42 of complaint)
10.	Due date of possession	16.09.2018 (grace period is allowed being unqualified)
11.	Total Sale Consideration	Rs.89,87,361/- (page 48 and 64 of complaint)
12.	Total amount paid by the complainant	Rs.29,56,189/- (as per page 18 of complaint)
13.	Occupation certificate	Not yet received
14.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions:

I. That the complainant applied for allotment of a dwelling unit/plot in the project under the name of "Woodview Residences" in Sector-89 and 90, Gurugram, Haryana being developed by the respondents. It is submitted that the Complainant was allotted a unit bearing no. **b-112-ff**, located on first floor, having plot area of approximately 153.01 sq. m. (or 183 sq. yd.) with a super area of 101.26 sq m. (or 1090 sq ft.) and terrace area of 22.85 sq. m. (or 246 sq. ft.) which comes to a total area of 124.12 sq. m. (or 1336 sq. ft.).

II. That it was represented by the respondent No.1 and 2 to the prospective buyers that they had the requisite license from the Department of Town and Country Planning, Haryana, Chandigarh vide license vide license no. 59 of 2013 dated 16.07.2013 vide which the

promoters and collaborators were issued license to develop a plotted colony on 101.81 acres of land falling in the revenue estate of village Hayatpur & Badha, Sector 89 and 90, District Gurugram. The said license was valid till 15.07.2017. In light of the aforementioned license, the complainants/allottees were made to believe that the project would be completed well before the timeline in the builder buyer agreement i.e. much before 16.03.2018.

III. That the complainants were issued an allotment letter dated 16.03.2015 which was subject to execution of the builder buyer agreement and other terms of application. At or about the time of issue of the allotment letter (which is duly referred to in the recitals of the builder buyer agreement) the complainants made three payments of Rs.1,17,103/-, Rs.5,00,000/- and Rs.3,00,000/- against which the respondent no.2 issued receipts bearing no. 2100000138, 2100000136 and 2100000135 all dated 16.03.2015 respectively.

IV. That, thereafter, the complainants entered into a builder buyer agreement dated 17.09.2015 with respondent no.2. The complainants were assured that all the necessary approvals/sanctions are in place and the complainants shall be offered possession of the said unit within 36 months from the date of issuance of the allotment letter dated 16.03.2015 as per Clause 5.1 of the builder buyer agreement dated 17.09.2015 with a maximum grace period of 6 months (as per the BBA). Therefore, as per the provisions of the buyer agreement dated 17.09.2015, the complainants was supposed to get possession of the allotted unit by 16.03.2018.

V. That the complainants made certain payments as per the demands of the respondents and a total sum of Rs.29,56,189.98/- was paid by the complainants to the promoters towards the purchase of the said unit. Instead of being handed over the physical possession unit by the stipulated handing over dated i.e. 16.03.2018, the complainants were informed that the management of the said project had been taken over by respondent no.3. It was further informed that, from now onwards, respondent no.1 would be responsible for developing and delivering the said project.

VI. That even till January 2022 the complainants neither received any updates regarding the abovementioned project. In light of this, the complainants wrote an email dated 29.01.2022 vide which the complainants raised their concern regarding the aforesaid issue. In response, the official of respondent no.3 offered an additional discount of Rs.500/per sq. ft. from the earlier offered discount of Rs.300/sq. ft. Unsatisfied by the response of the respondent no.3, the complainants asked as to how much amount would be due receivable in case they hand over the unit back to the promoter(s). However, the complainants did not receive any response from the respondent no.3.

VII. That, thereafter, the complainants sent another email dated 25.03.2022 to the respondent no.3 officials that their purchase price was Rs.7000 per sq. ft. whereas the current price of any similar unit in the area would be Rs.7500-7750 per sq. ft. So, the complainants/ demanded the deposited amount + Rs.950 per Sq. ft and asked if the respondent No.3 could make the payout by 31.03.2022.

VIII. That, in response to the above email dated 25.03.2022, the respondent no.3 sent an email dated 26.03.2022 whereby the respondent informed the complainants that whatever the amount had been deposited by them, and the same would be refunded to them. When the response of the respondent no.3 was not satisfactory as almost 7 years had already elapsed since the deposit of the money by the complainants / allottees and that the deadline for handing over for the project had also passed long back in march 2018, the complainants, dissatisfied with the response that only principal amounts deposited would be refunded, the distressed complainants told the respondent no.3 official vide email dated 17.05.2022 that, in the prevailing situation, they would rather keep the allotted unit and inquired about when the construction would be completed as the complainants would have to arrange the remaining funds. The complainants thereafter issued a reminder dated 19.05.2022 asking the respondent official to revert to the earlier email. When there was still no response, even after more than 1 month of the previous email, the complainants issued an email dated 22.06.2022 demanding the respondent no.3 to process the refund at the earliest. The respondent no.3 official issued a reply on the same day with only the word "noted" in response.

IX. That vide email dated 17.06.2023 the complainants once again sought the status of the refund from the promoter of the project i.e. respondent no.3.

X. Thus, it is clear that the project had still not been completed by 22.10.2021 and perhaps had not even started construction. The respondent no.2 has been impleaded as a party to the present complaint as the builder buyer agreement dated 17.09.2015 was

executed between the complainants and respondent no.2. The respondent no.1 is a necessary and proper party to the present complaint as the builder buyer agreement dated 17.09.2015 and the HARERA registration of the project and the permission letter 22.10.2021 of DTCP, Haryana show clearly that the respondent no.1 is one of the main promoters of the project who was having the responsibility of development of the project. The respondent no.3 is the party who has taken over the project woodview residences in or about the year 2019 from respondent no.2. Therefore, respondent no.3 is also a necessary and proper party to the present complaint. It is also pertinent to mention that the project was marketed by M/s Lotus Greens Developers Pvt. Ltd. and was to be developed by M/s Bright Buildtech Pvt. Ltd. and was later taken over by M/s Ace Mega Structures Pvt. Ltd. who are all related parties as per the Annual Report 2019-20 of M/s Bright Buildtech Pvt. Ltd. as on date of filing the present complaint). Therefore, the fraud being played by the above companies, all of which are related parties to each other, against the innocent allottees, is writ large and the Hon'ble Authority should take cognizance of the above fraud in which the above companies used the corporate veil to defraud homebuyers by misusing the concept of corporate veil to their advantage. Hence, it is thus prayed to the Hon'ble Authority that strictest action permissible under law be taken against the abovementioned companies by cancelling their HARERA registrations and by way of imposition of the strictest penalties on them.

XI. That in light of the above facts and circumstances, the complainants seek to withdraw from the project u/s 18(1) of the Real Estate

(Regulation and Development) Act, 2016 and pray to the Hon'ble Authority to pass an order of refund in favour of the complainants as detailed hereunder in the prayer clause.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

I. Grant the refund of the total amount paid by the complainants along with prescribed rate of interest.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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 no. 1

6. The respondent no.1 vide reply dated 15.12.2023 contested the complaint on the following grounds: -

i. That as per the documents annexed by the complainant, he was allotted a unit no. B-112-FF, first floor, admeasuring total area of 1336 sq. yards for which application for allotment was made to respondent no. 2 by the complainants in the project 'ace palm floors' which was erstwhile known as 'woodview residencies'. The said allotment dated 16.03.2015, was issued by the respondent no. 2, ie Bright Buildtech Pvt Ltd, on the application so made by the complainants.

ii. That thereafter, as per the records provided by the complainant, the buyer's agreement was executed between the respondent no. 2 and the complainant dated 17.09.2015 wherein the signatories to the said agreement are also the respondent no. 1 and the complainants.

iii. That thereafter, the complainants have annexed some payment receipts all of which were issued on the Letter Head of the Lotus Greens (who

has not been made party to the present complaint) and under the signatory of respondent no. 2, i.e. Bright Buildtech Pvt Ltd. The complainants have annexed an email communication which took place between the complainants and the respondent no. 3, i.e., Ace Mega structures Pvt Ltd. The answering respondent has no knowledge of any document being executed or any payment made by the complainants since the complainant is the customer of the respondent no. 2 and 3.

iv. That it is a self-admitted fact by the complainants that they had invested in a project which is in the name of ace palm floors launched by the respondent no. 2, for which the respondent no. 3 was appointed as the 'Development Manager' for development, construction, sales and marketing of the said project.

v. That it is submitted that the complainants have been unable to develop or proof any kind of relationship to exist between the complainant and the respondent no. 1 and the complainant is just arm twisting the facts to drag the answering respondent into the present litigation.

vi. That when the possession was not delivered, the complainants have filed the present false, fabricated and frivolous complaint against the answering respondent, ie, respondent no. 1 in order to harass the respondent no. 1 despite acknowledging and admitting that the complainant had booked the unit in question with the respondent no. 2, respondent no. 3 and lotus Greens.

vii. That it is humbly submitted that the documents which have been annexed by the complainant clearly distinguishes the relationship between the complainant, respondent no. 2, respondent no. 3 and Lotus Greens. It is pertinent to note that there is no proof in the entire complaint that the complainant is anywhere related/ customer of the

respondent no. 1 and therefore, as per section 2 (d) of the Real Estate (Regulation & Development) Act, 2016, a person is said to be an allottee:

viii. That through the definition of *"allottee"* under section 2 (d) of the Real Estate (Regulation & Development) Act, 2016, it is crystal clear that the complainant is not the allottee in relationship with the respondent no. 1 as neither the unit in question was allotted by respondent no. 1, nor the respondent no. 1 executed any buyers agreement or any other document, nor the respondent no. 1 accepted the payment, if any, made by the complainant towards the unit in question.

ix. That in the present case in hand, the respondent no. 2 and respondent no. 3 are the promoter in question who has issued the various documents on record such as the buyers agreement, the allotment letters, payment receipts due to which the complainants falls in the category of the being an allottee and the present case does not involve respondent no. 1 anywhere.

x. That it is submitted that at the inception when the project 'Woodview Residencies' was launched, the respondent no. 1 in collaboration with the respondent no. 2 wherein both the respondent no. 1 and 2 had equal developmental rights equivalent to 50%. It is noteworthy that after the inception of RERA, when the RERA registration became mandatory, the Respondent No. 2 got its project area registered under the name and style of 'Ace Palm Floors', ie the project in question, bearing RERA registration no. RERA-GRG-PROJ-388-2019. It is further submitted that the said fact can be verified from the demand letters/ payment receipt acknowledgement/ Buyers Agreement and the RERA registration certificate which bears the same account details of the respondent no.

2. That further, the respondent no. 1 got its project registered with RERA in the name and style of 'Woodview Residencies' and also obtained RERA Registration Certificate for the same bearing no. RERA-GRG-PROJ-640-2020.

xi. Thus, it is clear from the above that the complainants are neither the customer of the answering respondent, ie, respondent no. 1 nor the complainants have made any payment to the respondent no. 1 nor any communication, agreement has been exchanged between the complainant and the respondent no. 1 which could imply that the respondent no. 1 holds any liability or accountability towards the complainant.

xii. That from the facts as narrated above, the present complaint is liable to dismissed on the account of mis-joinder of parties wherein the respondent no. 1 has been wrongly impleaded as the party to the present complaint and the complainant is not entitled to any reliefs as claimed herein by this Hon'ble Authority.

E. Reply by the respondent no. 2 and 3

i. That the respondent no. 2 is developing the project namely 'Woodview residences' (now known as "*ace palm floors*") on its share in the project land measuring 101.081 acres situated at revenue estate of village Hayatpur, Sector-89 and 90, Gurugram. The respondent no. 3 has been appointed by the respondent no. 2 as the 'development manager' for development, construction, sales, has been appointed for development and marketing of the project vide 'development management agreement' dated 23.05.2019 only with the objective of ensuring expeditious development of the project and to provide professionally proficient customer-care interaction. The status of the

respondent no. 3 is purely that of a service provider who shall receive a fee as consideration for providing project management and development services to the respondent no. 2.

ii. That the complainants on their own free will and volition had approached the respondent no. 2 for allotment of 'unit' in said project and initially submitted application form for booking the dwelling unit in the said project. Upon submission of the application form for allotment of the unit, the respondent no. 2 vide letter of allotment dated 16.03.2015 had allotted to the complainant flat no. b-112, first floor at the basic sale price plus edc, idc charges plus club members fee plus interest free maintenance security totaling to Rs. 89,87,361/- The allotment letter also contained the details of the payment plan and the particulars of the Unit allotted to the complaint in the said project. As per payment plan opted, the complainants have only paid an amount of Rs. 26,59,189/- and accordingly, the respondent no. 2 had issued payment acknowledgment receipts.

iii. That vide letter dated 21.08.2015, the respondent no. 2 shared with the complainant two sets of the draft builder buyer agreement with instructions for signatures and execution of the agreement. The complainant was required to submit the signed copies of the builder buyer agreement to the respondent no. 2, however despite repeated requests by the respondent no. 2 and its representatives, the builder buyer agreement was not timely submitted by the complainants. Thereafter, the builder buyer agreement was executed between the parties on 17.09.2015 which contained all the terms and conditions of the allotment and possession of the unit booked by the complainants. As per the terms of the agreement, the unit of the complainant was to

be completed within a period of 36 months + 6 months grace from the date of execution of the builder buyer agreement. Albeit the period 42 months in total elapsed in the month of March 2019, however due to unforeseen circumstances beyond the control of the respondent no. 2, the project could not be completed on time.

iv. That the complainants are well aware of the fact that respondent no. 2 has appointed 'ace' i.e. respondent no. 3 as the development manager for construction and completion of the said project. The respondent no. 2 had informed the complainants about the appointment of the "development manager" who is responsible for all activities including the construction and sales of the project as per the development management agreement (dma) dated 23.05.2019. Due to the exponential increase in the cases of 'Covid-19', the Central Govt. had imposed nationwide 'lockdown' w.e.f. 25.03.2020 which has been extended till 30.06.2020, resultantly, the same has caused serious impact on the economy posing difficult challenges for everyone. It is pertinent to mention that prior, to this unprecedented situation of pandemic 'Covid-19', the Respondent No. 2 along with the development manager had been carrying out the construction of the Project at full pace and was expecting to deliver the Units to the Buyers by the end of year 2020, however, due to the sudden outbreak of the pandemic and closure of economic activities, the respondents had to stop the construction work during the 'lockdown', as such, amid this difficult situation of 'force majeure' the respondent no. 2 is not in a position to adhere to the arbitrary demands of the complainant for cancellation of the allotment and refund of the monies along with interest due the reasons mentioned hereinabove. Other than the above

reasons, the delay in handing over the possession of the dwelling Unit/ apartment has been caused due to various reasons which were beyond the control of the respondents. Following important aspects are relevant which are submitted for the kind consideration of this Hon'ble Authority:

a. Non-booking of all apartments seriously affected the construction: It is submitted that the global recession badly hit the economy and particularly the real estate sector. The construction of project of the respondent no. 2 is dependent on the monies received from the bookings made and monies received henceforth, in form of instalments paid 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 no. 2 at the time of launch of the Project. The reduced number of bookings along with the fact that several Allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent no. 2, henceforth causing delay in the construction work of the project.

b. Other various challenges being faced by the Answering respondents: The following problems which are beyond the control of the respondents which seriously affected the construction;

- Lack of adequate sources of finance;
- Shortage of labour;

- Rising manpower and material costs;
- Approvals and procedural difficulties.

In addition to the aforesaid challenges the following factors also played major role in delaying the offer of possession;

- There was extreme shortage of water in the region which affected the construction works;
- There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln;
- Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labours;
- Recession in economy also resulted in availability of labour and raw materials becoming scarce;
- There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM);
- 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 NCR region.

c. 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.

v. All the above stated problems are beyond the control of the developer i.e., the respondent no. 2. it may be noted that the respondent no. 2 had at many occasions orally communicated to the complainant that the construction activity at the said project site had to be halted for some time due to certain unforeseen circumstances which are completely beyond the control of the developer.

vi. The table concluding the time period for which the construction activities in the project was restrained by the orders of competent authority/court are produced herein below as follows:

S. No.	Court/Authority & Order Date	Title	Duration
1.	National Green Tribunal- 08.11.2016 10.11.2016	Vardhman Kaushik vs Union of India	08.11.2016 to 16.11.2016
2.	National Green Tribunal 09.11.2017	Vardhman Kaushik vs Union of India	Ban was lifted after 10 days
3.	Press Note by EPCA-Environment Pollution (Prevention and Control) Authority	Press Note-31.10.2018	01.11.2018 to 10.11.2018
4.	Supreme Court-23.12.2018	Three-day ban on industrial activities in pollution	23.12.2018 to 26.12.2018

		hotspots and construction work	
5.	EPCA/ Bhure lal Committee Order-31.10.2018	Complete Ban	01.11.2019 to 05.11.2019
6.	Hon'ble Supreme Court 04.11.2019-14.02.2020	M.C Mehta v. Union of India Writ Petition (c) no. 13029/1985	04.11.2019 to 14.02.2020
7.	Government of India	Lockdown due to Covid-19	24.03.2020 to 03.05.2020
8.	Government of India	Lockdown due to Covid-19	8 weeks in 2021
	Total	37 weeks (approximately)	

vii. That in view of the above facts and circumstances the demand of the complainants for a refund of the amount along with exorbitant compensation is baseless and the same cannot be allowed under any situation as it will jeopardise the situation of the whole project. It is respectfully submitted that if such prayers are allowed, the same will materially affect the construction works at site, which will affect the interests of all the other allottees who have booked flats in the said project. It is relevant to point out herein that at present the respondents are focusing on the completion and delivery of the said project. The monies received from the allottees have been utilized in the construction activity and thus there is no justification in the demand for refund.

viii. That the project of respondent no. 2 is almost nearing the stage of completion. The respondent no. 2 has launched 420 numbers of independent floors to be constructed on 140 plots. Out of the 258 floors / units were sold by the company till date.

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 submission made by the parties.

F. Jurisdiction of the authority

9. The respondents have raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.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.

F.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) 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;***
> ***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 complainants 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(C), 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*** and 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 case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

G. Findings on the objections raised by the respondent no. 2 and 3.

G.I Objections regarding the circumstances being 'force majeure'

15. The respondent no.2 took an objection that the project was delayed because of the 'force majeure' situations like outbreak of Covid-19, ban on construction by competent authorities, delay on part of govt. authorities in granting approvals and other formalities, non-booking of apartments, lack of adequate source of finance, shortage of labour, etc which were beyond the control of respondents. Therefore, as per the grounds mentioned above, the authority allows a grace period of 6 months to the respondent for handling over the possession of the said unit as per possession clause 5.of the buyer's agreement. Hence, the due date for handling over the possession of the said unit after granting a grace period of 6 months comes to 16.09.2018.

H. Findings on the relief sought by the complainants.

H.I Grant the refund of the total amount paid by the complainants along with prescribed rate of interest.

16. The complainants intend to withdraw from the project and are seeking refund of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. 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)*

23. Though, the complainants stated that before filing of this complaint they have sent several emails to the respondent no.1 to cancel their booking and to refund the paid-up amount due to non-compliance of terms of the buyer's agreement by the respondent, but the same was not bothered by it. However, there is no document available on the record to support their claim.

24. Further possession clause 5.1 of the apartment buyer's agreement annexed in complaint provides for handing over of possession and the same is reproduced below:

> *"**5. POSSESSION OF THE DWELLING UNIT***
>
> ***5.1** Subject to Clause 5.2 and subject to buyers making timely payment, the company shall endeavor to complete the construction of the building block in which the dwelling unit is situated within 36 months with a grace period of 06 months from the date of issuance of allotment letter, provided that all*

amounts due and payable by the buyer has been paid to the company in timely manner. The company shall be entitled to reasonable extension of time for the possession of the dwelling unit in the event of any default or negligence attributable to the buyer's fulfillment of terms & conditions of this agreement."

25. **Admissibility of refund along with interest at prescribed rate of interest:** However, the allottees 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."*

26. 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.

27. 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., 16.08.2024 is **9.10%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%.**

28. The respondent no. 1 raised an objection that the respondent no. 1 should not be a party to this complaint as the buyer's agreement was executed between the respondent no. 2 and the complainant dated 17.09.2015 , documents which have been annexed by the complainant

clearly distinguishes the relationship between the complainant, respondent no. 2, respondent no. 3 and the payment receipts are in the name of respondent no. 2 .However, it is essential to note that all payment were made in favor of the respondent no. 2 by the complainants as evident from the payment receipts issued by the respondent no. 2 . Consequently, at the time of these transactions and the execution of the builder-buyer agreement, the respondent no. 2 was the primary responsible entity and respondent no. 3 is the development manager for construction and the completion of the project. Therefore, the respondent no. 2 and 3 are liable towards delays or failures in the project's development, as it was the responsible entity during the period when payments were made and the agreement was executed.

29. 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;"*

30. The authority has observed that even after a passage of more than 8 years (i.e., from the date of allotment till date) neither the construction is complete nor the offer of possession of the allotted unit has been

made to the allottees by the respondent/promoters. 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. Further, the respondent also shows its inability to deliver the unit to the allottees due to non-booking of flats by prospective buyers in the tower in question. The authority observes that there is no document placed on record from which it can be ascertained that whether the respondent-builder has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottees intend 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.

31. Moreover, 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 allottees cannot be expected to wait endlessly for taking possession of the allotted unit 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....."*

32. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others (Supra)***, it was 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."*

33. 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) of the Act. 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 the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.

34. 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 respondent no. 2 and 3 are entitled to refund of the entire paid-up amount of Rs.29,56,189/- at the prescribed rate of interest i.e., @11.10% 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.

I. Directions of the authority

35. 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 and 3 are directed to refund the entire amount i.e., Rs.29,56,189/- received by them from the complainants along with interest at the rate of 11.10% 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 date of refund of the deposited amount.

ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

36. Complaint stands disposed of.

37. File be consigned to the registry.

HARERA
GURUGRAM

(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.08.2024