BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 1576 of 2023
Complaint filed on : 10.04.2023
Order pronounced on: 12.09.2024

Gaurav Singhania
R/o: 17/2, Gopi Kristo Pal Lane Jorabagan, Kolkata-700006. **Complainant**

Versus

M/s Brahma City Private Limited.
Regd. office: Flat Number B-8, Cabin No.11, Ansal Tower, 38 Nehru Place, New Delhi, South Delhi- 110019. **Respondent**

CORAM:
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Shri Khush Kagra (Advocate) **Complainant**
Shri Venkat Rao (Advocate) **Respondent**

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project-related details:

2. The particulars of the project, the details of sale consideration, the amount paid

by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project	Miracle Mile
2.	Project location	Sector 60, Gurugram, Haryana
3.	Project type	Commercial Project
4.	HRERA registered/ not registered	Registered vide no. 327 of 2017 dated 23.10.2017
5.	Allotment letter dated	21.08.2013 (As per page no 25 of reply)
6.	Date of apartment buyer agreement	09.09.2021 (As per page no. 31 of the complaint)
7.	Unit no.	SF-30, 2nd Floor (As per page no. 34 of the complaint)
8.	Unit area admeasuring	49.96 sq. mtrs. (As per page no. 34 of the complaint)
9.	Possession clause	**7(1) Possession** *The promoter assures to* ***handover possession of the commercial unit as per agreed terms and conditions on or before 31.03.2022*** *unless there is delay due to "force majeure", court orders, govt policy/guidelines, decisions affecting the regular development of the project.*
10.	Due date of possession	31.09.2022 (Calculated as per BBA i.e., 31.03.2022 + 6 months grace period) ***(Grace period of 6 months is allowed unconditionally)***
11.	Sale consideration	Rs.1,24,41,769/- (As per page no. 40 of the complaint)
12.	Amount paid by the complainant	Rs. 16,71,432/- (After merger of one unit for which cancellation was sought by the complainant as per annexure- E & F at page 43 and 44 of the reply)

13.	Demand letters dated	27.04.2022, 17.12.2021
14.	Surrender request dated	24.01.2023 vide email (As per page no. 76 of the complaint)
15.	Pre-termination dated	30.03.2023 (As per page no. 286 of reply)
16.	Termination letter dated	17.07.2023 (As per page no. 287 of reply)
17.	Occupation Certificate dated	16.08.2023 (As per page no. 295 of reply)

B. Facts of the complaint:

3. The complainant in the year 2013 was looking to purchase a commercial unit, and the complainant was approached by the respondent for purchasing a unit in the commercial project being developed by the respondent named 'Miracle Mile' situated at Sector-60, Tehsil- Wazirabad, District- Gurugram, Haryana Based on the various representations made by the respondent, the complainant booked two commercial units in the project being developed by the respondent by paying an amount of Rs.8,35,716/- each as booking amount on 21.08.2013. Subsequently, the complainant vide an application form/allotment letter dated 21.08.2013 was provisionally allotted units bearing unit no. 211 (revised unit no sf-30) and unit no.212 (revised unit no. SF-28), having a carpet area of 537.77 sq. ft. each. Hence, the complainant paid a total amount of Rs. 16,71,432/- for both the units. Thereafter, the complainant out of his free will requested to cancel unit no. 212 (revised unit no. SF-28) allotted to him vide cancellation letter dated 20.11.2019 and adjust the consideration paid against the said unit against another unit bearing unit no. 211 (revised unit no SF-30) in the project. The same was complied by the respondent. In respect of the unit, the respondent executed agreement for sale dated 09.09.2021 in the name of the complainant. That the total consideration of the unit is Rs.1,25,75,408/-.

4. The complainant continuously followed up with the respondent through telephonic calls and office visits, for execution of the agreement for sale. However, the respondent executed the agreement for sale dated 09.09.2021 only after 8 years from the date of booking. That the agreement contained various one-sided, unilateral and arbitrary clauses, however, the complainant could not negotiate any of them since the respondent had by then collected a substantial amount towards the consideration of the said unit and any disagreement thereof would have led to cancellation of the unit and forfeiture of the earnest money, i.e., 10% of the total cost of the unit as per clause 7.5 of the agreement. Thus, the complainant had no other option but to sign on the dotted lines.
5. As per clause 7.1 of the agreement, the possession of the unit was promised to be offered latest by 31.03.2022. It is pertinent to mention here that the respondent vide email dated 02.12.2017 intimated the complainant about receiving of the approval of layout-cum demarcation plan & zoning plan which is contrary of the promises made by the respondent at the time of the booking of the unit.
6. The complainant booked the unit under a construction linked payment plan and the complainant made the payment of Rs. 16,71,432/- till august, 2013 towards the total consideration of the said unit. That the complainant diligently followed the respondent for execution of requisite payments but the same fell on deaf ears. It is pertinent to mention herein that the respondent sent a letter dated 17.01.2022 intimating the complainant that construction is still going on. This showcases the mala-fide action of the Respondent who enjoyed the hard-earned money of the complainant since past 8 years and the project is nowhere near completion in near future.
7. Seeing the callous attitude of the respondent since past 10 years from the date of booking, the complainant sought refund of its money and sent a mail dated

24.01.2023 for withdrawing from the project and seeking refund and delayed compensation. The respondent has since then tried to evade the process on one or the other pretext.

8. Despite collecting a substantial amount towards construction of the unit, the respondent utterly failed to provide regular updates with respect to the construction status of the said project. It is necessary to reiterate the fact that the Respondent has failed to offer the possession of the said unit as per the agreement despite there being an inordinate delay of more than 10 year from the promised date of possession till date.
9. Hence, it is submitted that the entire purpose of booking the said unit has utterly frustrated due to the inordinate delay in delivering the possession of the unit. in view of the same, the complainant seeks refund of the amount paid by them along with prescribed interest. Hence, the present complaint.

C. Relief sought by the complainant:

10. The complainants have sought the following relief(s):
    i. Direct the respondent to refund Rs. 16,71,432/- with prescribed rate of interest.
    ii. Direct the respondent to pay cost of Rs.2,00,000/- to the complainant for causing mental agony and harassment.
    iii. Direct the respondent pay sum of Rs. 1,00,000/- to the Complainant towards litigation cost.
11. 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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

12. The complainant vide provisional application form dated 21.08.2013 applied for two commercial unit no. 211 (revised unit no SF-30) and unit 212 (revised unit no SF-28) having a carpet area of 537.77 sq. ft. each in the project 'Miracle

Mile' in 'Brahma City' Sector -60, Gurgaon, Haryana, and accordingly paid a booking amount of Rs. 8,35,716/-(each), with receipt No. MM-0152 dated 21.08.2013. That subsequently, out of free will, the complainant vide email dated 20.12.2018, requested the respondent company for surrendering both the units in question. in furtherance of same, the respondent company shared the letter of consent vide email dated 11.07.2019.

13. Subsequent to several discussions between the complainant and management of respondent company, the complainant, vide email dated 03.09.2019 decided to give its consent to retain unit bearing no. SF-30 and further requested to merge the deposit made as booking amount towards unit no. SF-28 with the amount paid towards unit no. SF-30.

14. that post the retention of unit no. SF-30 and merging of deposit made towards unit No. SF-28 to unit No. SF-30, the respondent company sent a draft agreement for sale for unit no. SF-30 along with the due payment towards the said unit as per the construction link plan vide email dated 16.09.2019. Subsequently, the complainant vide email requested the respondent company to amend the payment plan as he wanted to make all the remaining payment at the time of possession. In furtherance to the same the complainant accepted the amended payment plan and gave its consent for execution of the agreement for sale in respect of unit bearing No. SF-30 vide its email dated 05.11.2019 & 14.11.2019.

15. The respondent company post sharing of the draft of agreement for sale, and and after receiving all the necessary documents from the complainant, sent emails dated 13.07.2020, 26.08.2020, 30.09.2020, 15.10.2020 and 27.10.2020 to the complainant for making payment of e-challan as being the statutory payment and requested the complainant to come forward to execute the agreement. It is further pertinent to mention that after chasing the complainant to get the agreement executed for a long period, the agreement was finally

registered on 09.09.2021. It is pertinent to mention that the complainant had executed the agreement with his own free will and consent, without any undue influence, coercion and mis-representation. The complainant has agreed to the timelines in the same and thereafter has failed to remit any payment pursuant to the agreed timelines of the agreement.

16. After execution of agreement to sale the respondent company sent a demand letter dated 30.10.2021 for an amount of Rs. 19,67,551/- as per the agreed payment plan which was due for payment by the complainant. To the utter shock of the respondent and contrary to the terms of the agreement, the complainant vide email dated 20.12.2021 further requested the respondent company to extend the deadline for making the payments till 28.02.2022. Subsequently, the respondent company again sent reminder letters dated 17.12.2021 and 27.04.2022 but the payments were not complied with for reasons best known to the complainant.

17. It is important to mention here that instead making any payment as per the agreed payment plan the complainant again requested for cancellation of the unit no. SF-30 to which respondent company sent an email response dated 16.11.2022 seeking consent letter for enabling the respondent company to cancel the unit no. SF 30 along with the recent photograph of the project. It is further submitted that the respondent company vide email dated 25.01.2023 accepted the request of cancellation of unit no. SF 30 and shared the calculation for cancellation and calculation for delayed payment to the complainant. It is important to mention here that neither did the complainant approach the respondent company for completing the necessary formalities for cancellation of the unit booked nor returned the original agreement for sale, payment receipt and other documents for enabling the respondent company to initiate refund as per the provision of the RERA Act and instead *mala fide* filed the

present complaint before the Authority just to extort the respondent company for gaining undue advantages.

18. The offer of possession of the disputed unit was subject to the timely payment of all the instalments of the payment plan as per agreement to sale dated 09.09.2021 executed by the complainant in free will, without any undue influence, coercion and mis-representation. As per agreement for sale dated 09.09.2021 the complainant had to pay an amount of Rs. 19,67,551 by despite clearing his dues the complainant shying away from its responsibility of paying the outstanding raised by the complainant. That as per clause 7.5 wherein the cancellation of commercial unit is made by the allottee the developer is entitle to forfeit earnest money and interest component on delayed payment to the developer at the rate of State Bank of India highest marginal cost of lending rate plus two percent.

19. It is important to mention here that the respondent company sent a notice prior to cancellation vide letter dated 30.03.2023 to the complainant for clearing the outstanding of Rs. 33,68,413/- to the complainant. It is further submitted that the complainant instead of making the payment, filed the present complaint on 10.04.2023 before the Hon'ble Authority with all the false averments which is mere an afterthought to shy away from the liabilities relating to payment of sale proceeds thereby resulting into breach of the terms of the agreement. it is also submitted that the respondent company finally sent a cancellation letter dated 30.03.2023 referring the clause 9.3 of the agreement to sale dated 09.09.2021 executed by the complainant wherein, the developer is entitled to cancel the allotment of the complainant on default of two consecutive demand.

20. The Hon'ble Supreme Court in Civil Appeal bearing No. 8977 of 2014 in case titled as *"Jai Naryana@ Jai Bhagwan & Ors Vs The State of Haryana & Ors."* vide order dated 01.11.2017 had directed the CBI for investigation with regards to acquisition of land falling in sector 58 to 63 and 65 to 68 of GMUC wherein,

application of extension/renewal of license of the Appellant was withheld by the DTCP Department (Respondent No. 2 herein) vide office memo no. CC-1185-JE(VA)/2020/7834-35 dated 11.5.2020. Thereafter, Hon'ble Supreme Court in Misc. Application No. 1955 of 2018 and M.A No. 2240 of 2018 in Civil Appeal bearing No. 8977 of 2014 has ordered that no further monitoring is required and DTCP vide separate office order dated 03-03-2021 granted relaxation for the period i.e., 01.11.2017 to 11.05.2020 as "Zero Period" wherein approvals were withheld by the department within said period.

21. The situation of COVID pandemic is in the knowledge of everyone, that since march 2020 till now our country has seen mass migration of labourers, complete lockdown in whole of the country, curfews and several other restrictions. That present situation seriously hampers the construction progress in real estate sector. That even RERA has extended the time limits for completion of project vide notification dated 26-05-2020, by six months. But the aforesaid was the period evidencing the first wave but the relaxation in restrictions were seen at fag end of year 2020 however soon thereafter our country saw a more dangerous variant of COVID from the month of March 2021 and only recently restrictions have been lifted by the government. That whole of this consumed more than 11 months wherein 2/3rd time there could be no construction and rest of the time construction progressed at very slow pace to several restrictions imposed by state government on movement and number of people allowed etc.

22. After completing the project, the respondent company filed the application for occupation certificate (OC) before the concerned department on 05.06.2023 and after necessary consideration the DTCP, Haryana issued Occupation certificate of the said commercial project on 16.08.2023 vide memo no. 5093.

23. Therefore, without prejudice to the submission that the present complaint deserves to be dismissed solely on account of the violations committed by the

complainant, on a demurrer, it is submitted that due to all the aforesaid facts the respondent company was temporarily not in a position to complete its part obligation which were beyond the control of the respondent company. As such, no adverse order in this regard may be passed by the Hon'ble Authority against the respondent company in respect of the present complaint.

24. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

25. The plea of the respondent regarding the rejection of the complaint on the grounds 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.

E. I Territorial jurisdiction

26. 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 the entire Gurugram District for all purposes 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

27. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

28. Hence, given 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.

F. Findings on the objections raised by the respondent:

F.I Objections regarding Force Majeure.

29. The respondent-promoter took a plea that period from 01.11.2017 to 11.05.2020 should be considered as zero period on the ground that as per order dated 01.11.2017 of Hon'ble Supreme Court in Civil Appeal bearing No. 8977 of 2014 in case titled as *"Jai Naryana@ Jai Bhagwan & Ors Vs The State of Haryana & Ors."*, the Hon'ble court had directed the CBI for investigation with regards to acquisition of land falling in sector 58 to 63 and 65 to 68 of GMUC wherein, application of extension/renewal of license of the Appellant was withheld by the DTCP Department vide office memo no. CC-1185-JE(VA)/2020/7834-35 dated 11.05.2020. Thereafter, Hon'ble Supreme Court in Misc. Application No. 1955 of 2018 and M.A No. 2240 of 2018 in Civil Appeal bearing No. 8977 of 2014 has ordered that no further monitoring is required and DTCP vide separate office order dated 03-03-2021 granted relaxation for the period i.e., 01.11.2017 to 11.05.2020 as "Zero Period" wherein approvals were withheld by the department within said period.

30. Upon perusal of the documents, it is noted that the respondent issued a demand on 16.09.2019, concerning the casting of the fifth floor, as communicated via

email, in relation to the construction-linked payment plan. The respondent contends that construction was halted due to ongoing proceedings before the Apex Court. However, the demand raised by the respondent sufficiently demonstrates that construction activities were, in fact, ongoing during that period. It is essential to underscore that the respondent has been in contravention of the Act by failing to execute the builder-buyer agreement for a duration of six years, despite the allotment being made as far back as 2013. Furthermore, the promoter obtained approval for the layout-cum-demarcation plan and zoning plan on 02.12.2017.

31. The fact cannot be ignored that the complainant initially booked two units and later on, the respondent on request of the complainant canceled a unit vide cancellation letter dated 20.11.2019 and adjusted the consideration paid against the canceled unit towards another unit bearing no. 211(revised unit no. SF 30) in the project. Further, in respected of revised unit, the respondent executed buyer's agreement dated 09.09.2021 after 8 years from the date of allotment. According to the buyer's agreement the due date of handing over possession was 31.09.2022. The contention that respondent has taken as zero period allowed by Directorate of Town and Country Planning (DTCP) is for limited purpose of renewal of license and Directorate of Town and Country Planning (DTCP) orders cannot dilute the builder buyer agreement.

32. In consideration of the aforementioned facts, it is manifestly clear that zero period is expressly designated for the limited purpose of license renewal and does not alter or diminish the obligations set forth in the builder-buyer agreement. The respondent's reliance on zero period to justify delays in the execution and possession of the units is untenable, particularly in light of non-compliance with the Act, including the failure to execute the builder-buyer agreement for a duration of six years. Consequently, the arguments proffered by the respondent lacks merit and the respondent's assertion regarding the

zero-period granted by the Directorate of Town and Country Planning (DTCP) is categorically denied.

33. The respondent's invocation of the force majeure clause, citing the COVID-19 pandemic as a justification for non-performance, is without merit in this case. The contractual due date for possession was clearly stipulated as 31.09.2022, while the nationwide lockdown was imposed on 20.03.2020. It is pertinent to note that the unit was allotted to the complainant in the year 2013. Thus, the respondent had ample time to fulfill their contractual obligations well before the pandemic's onset. The circumstances cited by the respondent as force majeure did not hinder their ability to meet the specified due date. Furthermore, a grace period of six months has already been unconditionally granted by the Authority. Therefore, the respondent's reliance on the alleged impacts of the pandemic is untenable. Consequently, the promoter-respondent cannot be afforded any leniency based on these reasons, as it is a well-established legal principle that a party cannot benefit from its own wrong. The objection raised by the respondent regarding project delays due to circumstances classified as force majeure is hereby dismissed.

F.II Objection regarding the delay in payment.

34. Another objection raised by the respondent regarding delay in payment by many allottees is totally invalid because the allottees have already paid the amount of Rs. 16,71,432/- against the basic sale consideration of Rs. 1,24,41,769/- to the respondent. The fact cannot be ignored that there might be certain group of allottees that defaulted in making payments but upon perusal of documents on record it is observed that no default has been made by the complainant in the instant case. As per the payment plan, 70% of BSP was to be paid at the time of offer of possession. Section 19(6) of Act lays down an obligation on the allottee(s) to make timely payments towards consideration of allotted unit. Moreover, the stake of all the allottees cannot put on stake on

account of non-payment of due instalments by a group of allottees. Hence, the plea advanced by the respondent stands rejected. The fact of inordinate delay of nearly 10 years cannot be ignored and the respondent/ promoter has not followed in any delay compensation while raising demand of balance amount which otherwise is payable in terms of clause 7(1) of buyer's agreement duly executed between the parties.

G. Findings on relief sought by the complainants:

G.I Direct the respondent refund the amount of Rs. 16,71,432/- with prescribed rate of interest

33. The complainant was allotted a unit in the project of respondent "Miracle Mile" at sector 60, Tehsil- Wazirabad, District- Gurugram, Haryana vide allotment letter dated 21.08.2013 for a total sum of Rs.1,24,41,769/- and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 16,71,432/- and the respondent has failed to handover the physical possession, hence, the complainants intend to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso reads as under:

> ***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 of 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."*

34. As per clause 7.1 of the agreement provides for handing over of possession

and is reproduced below:

> *The promoter assures to* ***handover possession of the commercial unit as per agreed terms and conditions on or before 31.03.2022*** *unless there is delay due to "force majeure", court orders, govt policy/guidelines, decisions affecting the regular development of the project.*

35. On consideration of the abovementioned clause, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 7.1 of the agreement, the possession of the subject unit was to be on or before 31.03.2022 with an additional grace period of 6 months is being allowed unconditionally, accordingly, the due date of possession comes out to be 31.09.2022.

36. The occupation certificate of the buildings/towers where allotted unit of the complainants is situated is received on 16.08.2023 i.e., after 4 months of filing of the present complaint. The complainant for return of the amount received by the promoter on failure of promoter to complete the project or unable to give possession of the unit in accordance with the terms of the buyer's agreement, wished to withdraw from the project.

37. Further, vide proceedings dated 26.10.2023, the counsel for the respondent stated at bar that the complainant has sent surrender request on 24.01.2023 and the respondent issued termination letter on 17.07.2023. The request for refund was made after due date but before offer of possession. Keeping in view the fact that the allottee/complainants wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

38. **Admissibility of refund at prescribed rate of interest**: The complainant is

seeking refund amount at the prescribed rate of interest on the amount already paid by them. However, allottees intends to withdraw from the project and is seeking refund of the amount paid by him 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.*

39. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rule, 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.

40. 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., 12.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

41. The definition of term 'interest' defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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—*
> *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 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;"

42. 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 allottee 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 promoters are 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 them in respect of the unit with interest at such rate as may be prescribed.

43. Therefore, the respondent/promoter is liable to return the amount received by it i.e., Rs. 16,71,432/- with interest at the rate of 11.10% (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 within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G.II Direct the respondent to pay compensation of Rs. 2,00,000/- on account of mental agony and litigation expenses of Rs. 1,00,000/-

44. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in case titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (2021-2022(1) RCR(C) 357)***, 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 complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions issued by the Authority:

45. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

I. The respondent is directed to refund the entire amount of Rs. 16,71,432/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.

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

46. Complaint stands disposed of.

47. File be consigned to the Registry.

Dated: 12.09.2024

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