

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

<b>Complaint no.:</b>	<b>5580 of 2023</b>
<b>First date of hearing:</b>	<b>15.03.2024</b>
<b>Date of decision:</b>	<b>27.09.2024</b>

1. Rajiv Arora
  2. Shikha Arora
- R/o H. no. A-3/276, Janakpuri, New Delhi

**Complainants**

Versus

1. Identity Buildtech Pvt. Ltd.
  2. Ansal Housing & Construction Ltd.
- Office address:** 15 UGF, Indraprakash, 21, Barkhamba  
Road, New Delhi- 110001.

**Respondents**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Lokesh Bholra (Advocate)

None

**Complainants**

**Respondents**

**ORDER**

1. The present complaint dated 05.12.2023 has been filed by the complainants/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 as provided under the provision of the Act or the Rules and regulations made there under 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 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.	Project name and location	"Ansal Highland Park" , Sector 103 Gurugram
2.	Nature of project	Residential
3.	RERA registered/not registered	Registered 16 of 2019 dated 01.04.2019 and valid till 30.05.2024
4.	DTPC license no. & validity status	License No. 32 of 2012 dated 12.04.2012 valid upto 11.04.2025
5.	Date of builder buyer agreement	04.07.2013 (page no. 20 of complaint)
6.	Unit no.	INVES 0204 (page no. 23 of complaint)
7.	Area admeasuring	Super Area 1762 sq. ft. (page no. 23 of complaint)
8.	Possession clause	<b>31</b> The Developer shall offer possession of the Unit any time, within a <b>period of 48 months from the date of execution of</b>

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		<b>Agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later</b> subject to timely payment of • all the dues by Buyer and subject to force-majeure circumstances as described in clause 32. Further, • there shall be a grace period of <b>6 months allowed to the Developer over and above</b> the period of 42 months as above in offering the possession of the Unit. (Emphasis supplied)
8.	Due date of possession	04.01.2018 (48 months from the date of agreement i.e 04.07.2013 as the date of construction is not on record plus 6 months grace period allowed being unqualified)
9.	Letter of time extension for completion of the said project and the same was accepted by the complainants.	31.10.2022 (Page 40 of complaint) Informed vide letter dated 27.01.2020
10.	Total sale consideration	Rs.88,79,408/- (Page 23 of complaint)
11.	Paid up amount	Rs.90,85,006/- (as stated by the complainants at page 18 of complaint)
12.	Occupation certificate	Not obtained
13.	Offer of possession	Not Offered

**B. Facts of the complaint**

3. The complainants have pleaded the complaint on the following facts:

4. That the complainants are the homebuyers and have booked a flat in a project namely 'Ansals Highland Park' in sector-103, Gurgaon, Haryana by signing an application form, dated 27.09.2012, by making payment of Rs.12,72,443/- as a booking amount.
5. That subsequently, complainants had applied for allotment of unit no. INVES-0204 in the said project. The complainants executed the apartment buyer's agreement with respondent no. 1, dated 04.07.2013 for a total sale consideration of Rs.95,88,728/-.
6. That as per clause 31 of BBA, it was also agreed by respondent no.2 that respondent no.2 shall offer possession of the said unit anytime within period of 48 months from the date of execution of agreement, i.e. on or before 04.07.2017, however, respondent no.1, failed to handover the possession within stipulated period. The complainants has opted construction link plan for the said unit.
7. Further, it came to knowledge of complainants that the promoter of the said project has been unilaterally changed from ansal housing and construction limited to identity buildtech private limited, without any prior consent of complainants which is contrary to RERA Regulations. As per Haryana RERA Regulations, it is settled proposition that if promoter wishes to transfer or assign majority of its rights and liabilities in a real estate project to a third party, written consent from two-thirds of the allottees would be needed in addition of the written approval of RERA, thus respondent no.2 have flouted the Haryana RERA Regulations thereby not seeking any consent of our client in this respect.

8. That the complainants were shocked to receive a letter, dated 27.06.2020, from respondent no.1 seeking time extension for the completion of said project on or before 31.10.2022, on the pretext of arranging third party funds to which complainants firstly, showed their reluctance however, complainants vide letter dated 03.08.2020, accepted the time extension subject to completion of project by 31.10.2022, otherwise this extension shall be treated null and void.
9. Further, complainants had made payment of Rs.90,85,006/- out of total sale consideration of Rs.95,88,728/- since, complainants had paid more than 90% of total sale consideration despite the same respondents miserably failed to handover the possession of the said unit to complainants.
10. That the respondents have violated the agreed terms and conditions between the parties and has miserably failed in delivering the possession of the said unit till date even after a delay of approximately 6 years from the due date of possession i.e., 04.07.2017, as per BBA and hence is liable for delay possession charges from the due date of possession till actual realization.
11. Thereafter, the complainants through their counsel issued a legal notice dated 04.11.2023, by speed post calling upon the respondent no.1 and 2, to refund an amount to the tune of Rs.90,85,006/- along with interest @18% per annum from the date payments till respective date of realisation and the said legal notice was successfully delivered to respondent nos. 1 and 2, on 06.11.2023, with the remarks "Item Delivered" However, the respondents did not even bother to reply to the said legal

notice and even failed to refund the said amount, which clearly reveals true colours of respondents as respondents are trying to evade from their liability.

12. Thereafter, on 16.11.2023, the complainants through their counsel issued legal notice dated 04.11.2023, by speed post on another address of the respondent no.2, calling upon the respondent no.2 to refund an amount to the tune of Rs. 90,85,006/- along with interest @18% per annum from the date payments till respective date of realisation and the said legal notice was successfully delivered to respondent no.2 on 28.11.2023, with the remarks "Item Delivered". However, no reply has been received on behalf of the respondents.

**C. Relief sought by the complainants:**

13. The complainants have sought following reliefs:
- Direct the respondents to refund an amount of RS. 90,85,006/- along with interest @ 18% p.a. from respective date of payments till its realization.
14. On the date of hearing, the authority explained to the respondents/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondents**

15. The respondents have contested the complaint on the following grounds:
16. That the respondents are developers and has built multiple residential and commercial buildings within Delhi/NCR with a well-established reputation earned over years of consistent customer satisfaction.

17. That the complainants had approached the answering respondents for booking a unit no. INVES-02040 in an upcoming project namely Ansals Highlands Park, Sector 103, Gurugram. Upon the satisfaction of the complainants regarding inspection of the site, title, location plans, etc. a BBA dated 04.07.2013 was signed between the parties.
18. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainants and the answering respondents was in the year 2013. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that Parliament would not make the operation of a statute retrospective in effect.
19. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. The complainants cannot be allowed to take advantage of his own wrong.
20. That even if for the sake of argument the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainants belatedly. The complainants have admittedly filed the complaint in the year 2023 and the cause of action accrue 04.07.2017 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
21. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2013 without coercion or any duress cannot be called in question today. The builder buyer agreement

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provides for a penalty in the event of a delay in giving possession. That as per clause 37 of the said agreement provides for Rs. 5/ sq foot per month on super area for any delay in offering possession of the unit as mentioned in clause 31 of the agreement. Therefore, the complainants will be entitled to invoke the said clause and is barred from approaching the Hon'ble Commission in order to alter the penalty clause by virtue of this complaint more than 10 years after it was agreed upon by both parties.

22. That the respondents had in due course of time obtained all necessary approvals from the concerned authorities. The permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging the foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainants.
23. That the answering respondents has adequately explained the delay. The delay has been occasioned on account of things beyond the control of the answering respondents. The builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondents ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process.



24. Similarly, the complaint itself reveals that the correspondence from the answering respondents specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.
25. That the answering respondents and the complainants admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. Clause 32 of the builder buyer agreement is clear that there is no compensation to be sought by the complainants/prospective owner in the event of delay in possession.
26. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

**E. Jurisdiction of the authority**

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

**E.I. Territorial jurisdiction**

28. 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**

29. 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.

30. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
31. 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." SCC Online SC 1044 decided on 11.11.2021 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."

32. Furthermore, the said view has been reiterated by the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021**". The relevant paras of the above said judgment reads as under:

"23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.

24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.

25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018,

*passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."*

33. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, and the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others. (supra)**", the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the objections raised by the respondents**

**F.1 Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act**

34. The contention of the respondents is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular

manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

35. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and

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*unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

36. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the apartment buyer's agreement has been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

**F.II Objection regarding complaint barred by Limitation Act, 1963**

37. The counsel for the respondents have raised an objection that the complaint is barred by limitation as the complainants has admittedly filed the complaint in the year 2023 and the cause of action accrued on 04.07.2017.
38. On consideration of the documents available on record and submissions made by the party, the authority observes that the buyer's agreement w.r.t. the unit was executed with the allottee on 04.07.2013. As per clause 31 of the buyer's agreement, the possession of the subject unit was to be offered with in a period of 48 months plus 6 months from date of obtaining all the required sanctioned and approvals necessary of commencement of construction, whichever is later. The authority calculated due date of

possession from the date of date of agreement i.e., 04.07.2013 which comes out to be 04.01.2018.

39. However, the said project of the allotted plot is an ongoing project, and the respondents/promoter has failed to apply and obtaining the CC/part CC till date. As per proviso to section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

*Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:*

40. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. Since no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project.
41. Moreover, it is observed that despite passing a benchmark of due date as 04.01.2018, till date the respondents have failed to handover the possession of the allotted unit to the complainants and thus, the cause of action is continuing till date and recurring in nature. The authority relied upon the section 22 of the Limitation Act, 1963, Continuing breaches and torts and the relevant portion are reproduce as under for ready reference:

**22. Continuing breaches and torts-**

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*In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.*

42. Keeping in view the aforesaid facts and legal position, the objection with regard to the complaint barred by limitation is hereby rejected.

**F.III Objection regarding delay due to force majeure circumstances**

43. The respondents-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the courts, non-availability of construction material and labour, demonetisation of currency and lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour. But all the pleas advanced in this regard are devoid of merit. Further, the authority has gone through the possession clause of the agreement and observed that the respondents-developer proposes to handover the possession of the allotted unit within a period of 48 months plus grace period of six months from the date of execution of agreement or the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. In the present case, the date of execution of agreement is 04.07.2013 and date of commencement of construction is not on record so, the due date is calculated from the date of date of execution of agreement, hence, the due date of subject unit comes out to be 04.01.2018 including the grace period of 6 months. ***Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S***

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**Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020** dated 29.05.2020 which has observed that-

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

44. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 04.01.2018 i.e., before 25.03.2020. Therefore, an extension of 6 months is not to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. The due date of subject unit comes out to be 04.01.2018, prior to the occurrence of Covid-19 restrictions and hence, the respondents cannot be benefitted for his own wrong. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondents. Thus, the promoter/respondents cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

**G. Findings on the relief sought by the complainants**

**G.I. Direct the respondents to refund an amount of RS. 90,85,006/- along with interest @ 18% p.a. from respective date of payments till its realization.**

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45. In the present complaint, the complainants intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest 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)***

46. Clause 31 of the BBA dated 04.07.2013 provides for the handing over of possession and is reproduced below for the reference:

***"31. The developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit."***

47. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of

terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoter are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

- 48. Admissibility of grace period:** The respondents/promoter has raised the contention that the construction of the project was badly affected on account of the orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, may be harmful to the public at large without admitting any

liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only buy liquid cash. The sudden restriction on withdrawals led the respondents unable to cope with the labour pressure.

The promoter has proposed to hand over the possession of the apartment within a period of 48 months plus 6 months from date of agreement or from the date of approvals required for the commencement of construction which whichever is later. The due date of possession is calculated from the date of agreement i.e., 04.07.2013 as the date of commencement of construction is not available on record. The period of 48 months expired on 04.07.2017. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Hence, the due date date comes out to be 04.01.2018.

49. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid alongwith interest at the prescribed rate. 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"***

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*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."*

50. 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.
51. 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., **27.09.2024** is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
52. 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. The due date of possession as per agreement for sale as mentioned in the table above is 04.01.2018.
53. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents-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....."*

54. 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. (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. it was observed

*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.*

55. 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 promoter is liable to the allottee, as 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 the unit with interest at such rate as may be prescribed.


56. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
57. The authority hereby directs the respondents/promoter to return the amount received by it i.e., Rs. 90,85,006/- 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 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*.

**H. Directions of the authority**

58. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f):

- i. The respondents/promoter are directed to refund the entire amount of Rs. 90,85,006/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount.
  - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
  - iii. The respondents/builder are directed not to create third party right against the unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainants-allottee.
59. Complaint stands disposed of.
60. File be consigned to registry.

**HARERA**  
GURUGRAM

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.09.2024