



HARERA
GURUGRAM

Complaint No. 5461 of 2023

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

Complaint no. : 5461 of 2023
Date of decision : 20.11.2024

Shailender Kumar Sinha
R/o: 205, Kashi Palce, 2nd floor,
Dak Bungalow, Patna-800001.

Complainant

Versus

M/s Advance India Project Ltd.
Having Regd. Office at: 232-B, Floor-4th,
Okhla Industrial Estate, Phase-3,
New Delhi-110020.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Ashwini Kumar (Advocate)
Dhruv Rohatgi (Advocate)

Complainant
Respondent

ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions 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.no	Particulars	Details
1.	Name of the project	"AIPL Joy Square".
2.	Location of the project	Sector-63-A, Gurgaon, Haryana.
3.	Total area of the project	2.838 acres
4.	Nature of the project	Commercial
5.	DTCP license no.	License no. 71 of 2014 dated 29.07.2014 License no. 119 of 2011 dated 28.12.2011
6.	Registered/not registered	Registered vide no. 259 of 2017 dated 03.10.2017
7.	Allotment letter	12.12.2018 (As on page no. 57 of complaint)
8.	Unit no.	GF/090, Floor-Ground, Tower-Joy Square, Retail shop (As on page no. 57 of complaint)
9.	Area of the unit	452.09 sq.ft. [Super-Area] (As on page no. 57 of complaint)
10.	Buyer's agreement	Not executed
11.	Possession clause	<i>Not available</i>
12.	Due date of possession	12.06.2022 [Calculated 36 months from the date of



		allotment + 6 months grace period on account of Covid-19]
13.	Total sale consideration	Rs.75,04,694/- (As on page no. 58 of complaint)
14.	Total amount paid by the complainant	Rs.33,41,851/-
15.	Letter inviting objections/suggestions of the allottee for changes in building plan	12.07.2019 (As on page no. 52 of reply)
16.	Reminders for payment	01.02.2019 11.02.2019
17.	Pre termination letter	14.03.2019 (As on page no. 65 of reply)
18.	Intimation of termination	24.04.2019 (As on page no. 67 of reply)
19.	Reminder letter	04.03.2020 14.03.2020 26.03.2021 15.11.2021 09.12.2021
20.	Pre-Termination letter	19.02.2022 (As on page no. 76 of reply) 20.05.2022 (As on page no. 77 of reply)
21.	Intimation of termination	12.08.2022 (As on page no. 78 of reply)
22.	Occupation certificate	09.11.2023
23.	Offer of possession	Not offered



B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- I. That the respondent, M/s Advance India Projects Limited, is a company incorporated under the Companies Act and is developing a commercial project known as "AIPL JOY SQUARE" on an area admeasuring 2.838 acres falling in Sector 63A, Village Kadarpur, District Gurugram, Haryana.
 - II. That the project is part of residential plotted colony. Looking at the advertisements of the project and learning about assured returns and financial loans to be provided by respondent, the complainant booked a retail unit bearing unit no. GF-90 on ground floor having super area 452.09 sq. ft. along with one car parking.
 - III. At the time of booking, the respondent had promised assured returns, financial loans to the complainant and also leasing of the unit. The Total Sale Consideration of the unit was Rs.75,04,694/- excluding Stamp Duty and other charges. The same was to be paid as under:
 - a. At the time of booking: Any amount
 - b. By December 31, 2018: 40.00% of BSP, DC, PLC
 - c. 22 months from booking: 40.00% of BSP, DC, PLC
 - d. On offer of possession: 20.00% of BSP, DC, PLC and 100.00% of IFMS
 - IV. That the pre-printed application form for allotment of the unit was signed by the complainant on 04.06.2018 and a booking amount of Rs.2,50,000/- was paid. That till date the complainant has made payments amounting to Rs.33,41,851/- to the respondent.
 - V. That the respondent has also promised the complainant 'Assured Returns' amounting to Rs.23,960/- per month starting from 14.09.2019. The respondent vide letter dated 16.09.2019 sent a cheque dated



02.09.2019 to the complainant for assured returns of an amount of Rs.12,522/.

- VI. Subsequently, the respondent vide letter dated 30.11.2019 suspended the assured returns for no fault of the complainant. The complainant received several emails from the respondent promising payment of Assured Returns, however, till date no further assured returns payment has been made by the respondent.
- VII. That the respondent had also promised the complainant that they would get the unit financed through their company or a financial institution. The complainant vide email dated 01.08.2019 requested the respondent:
- "Kindly go through our correspondences through email earlier. I have all along been requesting from the date of retention of shop at Joy Square referred above can only be purchased and the payment schedule can be maintained only if the shop is financed through your company or financial institution only after payment of 40% of the price and rest 60% was assured by the Broker Agent and as well as the Principal Builder Company. [...] has presented the balance amount upto 40% through account payee cheque on the condition to be presented only if the condition of payment are acceded to by the Company and the Project is financed afterwards the RERA approval and I should not be demanded for the balance payment afterwards. If this proposal is accepted by you. If as was commitment to me is acceptable the you can present the cheque or otherwise my paid amount be refunded at once."*
- VIII. That the respondent vide email dated 08.08.2019 replied stating:
- "In reference to the email as received below, please be assured that on or before your next installment, we shall be providing the finance/loan facility from financial institution. With this assurance, we are banking the cheque paid to us vide cheque No.031901 dated 11.07.2019 for Rs.3,58,057/-."*
- IX. The complainant again reiterated vide email dated 08.08.2019:
- "Thanks for your assurance and commitment for getting the rest of the payment through financing to be arranged by your Company as we are not in a position to make the next payment of due installment and if for any reason the due installment are not financed for any reasons I may not be treated to be defaulter at that time only."*
- X. That the respondent reconfirmed its promise to the complainant vide its email reply 13.08.2019 as under:



"In refer3nce to the email as received below, please be assured that on or before the next installment, we shall be providing the finance/loan facility from financial institution."

- XI. That till date the respondent has not provided any financial information to the complainant in respect of any loan or finance as promised by them nor have paid the promised assured returns. The respondent on 12.08.2022 sent a letter to the complainant titled as 'Intimation of Termination' to cancel the allotment of the unit and forfeit the monies paid by the complainant.
- XII. That the respondent had earlier also sent emails captioned Intimation letter prior to termination dated 06.02.2020 when no dues were pending and the said email was recalled by the respondent on the same day. The complainant reached out to the respondent seeking fulfillment of their promise of advancing loans/finance to the complainant as per their email dated 08.08.2019 and 13.08.2019 and also requested the respondent to make payment of the sums of money due from the Assured Return monthly payments between August 2019 till February 2020. Hence the present complaint.
- C. Relief sought by the complainant:**
4. The complainant has sought following relief(s).
- Direct the respondent to deliver the actual vacant physical possession of the unit to the complainant.
 - Direct the respondent to pay assured returns of an amount of Rs.23,960/- per month from 14.09.2019 till the date of filing of the complaint.
 - Direct the respondent to provide the finance/loan to the complainant in term sof the assurances made by the respondent vide emails dated 08.08.2019 and 13.08.2019.
 - Restrain the respondent from acting upon the termination notices issued by the respondent.
 - Declare the termination letter dated 12.08.2022, void ab initio.



- vi. Direct the respondent to withdraw the demand notices and termination notice until the finance/ loan is arranged by the respondent.
 - vii. Restrain the respondent from seeking any maintenance charges from the complainant until the handing over of actual physical possession of the unit to the complainant.
 - viii. Direct the respondent to pay a sum of Rs.5/- per sq.ft. per month for delay in handing over of actual physical vacant possession of the said unit to the complainant.
 - ix. Direct the respondent to pay pendente lite and future damages i.e., a sum of Rs.5/- per sq.ft. per month or at such higher rate to which the complainant may be found entitled.
 - x. Direct the respondent to pay a sum of Rs.1,00,000/- towards punitive, compensation for mental agony, inconvenience and harassment caused to the complainant.
 - xi. Costs of this complaint be awarded in favour of the complainant and against the respondent.
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.

6. The respondent contested the complaint on the following grounds: -
- I. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The present complaint raised several such issues which cannot be decided in summary proceedings and require extensive evidence to be led by both the parties. Therefore, the disputes raised in the present complaint can only be adjudicated by the Civil Court.



- II. That the complainant is not an "Allottee" but Investor who has booked the unit in question as a speculative investment in order to earn rental income/profit from its resale.
- III. That the complainant had approached the respondent and expressed an interest in booking a unit in the commercial colony developed by the respondent and booked the unit in question, bearing no. GF/90, Ground Floor admeasuring 452.09sq.ft. and one car parking area of the project known as "AIPL Joy Square" situated at Sector-63A, Gurugram, Haryana.
- IV. That the booking was categorically and willingly made by the complainant with an understanding of the same being for leasing purpose and not self use and the same is clearly mentioned in clause K of the Application Form. Thus, the complainant purchased the unit only on the categorical understanding that the unit shall not be for self-occupation but for the purpose of leasing to third party.
- V. That pursuant thereto, the respondent issued an Allotment letter to the complainant on 12.12.2018. The loan facility was to be availed by the allottee and the same is based on the credit score of the allottee. The respondent is only a facilitator to connect the allottee with the financial institutions, but cannot guarantee the sanction of any loan.
- VI. That in terms of Clause j of the Application Form, the respondent had assured to handover possession of the unit on or before December, 2022. That the project underwent a change and upon the same being done, objections/suggestions for approval of building plans were invited from the complainant but the complainant chose to be a mute spectator.
- VII. That the respondent was miserably affected by the ban on construction activities, orders of NGT and EPCA, demobilization of labour, etc being



circumstances beyond the control of the respondent and force majeure circumstances. That the payment of the assured return was severely affected during this period and the same was rightfully intimated to the complainant on 30.11.2019.

- VIII. That the complainant has defaulted in timely remittance of payment of instalments. The respondent issued several reminders to the complainant requesting him to remit the outstanding payments that he is bound to pay. Running out of options, the respondent was constrained to issue Pre-termination letter on 14.03.2019 to the complainant. Thereafter, the complainant made certain payments and the respondent reinstated the unit. However, soon thereafter the complainant again started to default and the respondent after issuing various reminders to the complainant cancelled the unit vide Termination Letter dated 12.08.2022.
- IX. That despite the defaults of the complainant and several others allottees, the respondent has completed the project and obtained the Occupation Certificate on 26.06.2023.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.
- E. Jurisdiction of the authority**
8. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction



9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. 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.

11. 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.

F. Findings on the objections raised by the respondent

F.I. Objection regarding complainant being an Investor and not Allottee.

12. The respondent submitted that the complainant is an investor and not an allottee, thus is not entitled to the protection of the Act and hence the present complaint is not maintainable.



13. The Authority observes that the Act is enacted to protect the interest of the consumers of the real estate sector. It is a settled principle of interpretation that the preamble is an introduction of a statute and it states the main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under Section 31 of the Act, any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment lettef, it is revealed that the complainant is an allottee/buyer and he has paid total price of **Rs. 33,41,851/-** towards the purchase of the said unit in the project of the promoter. At this stage, it is important to stress upon the definition of the term allottee under the Act, the same is reproduced below for ready reference:

" 2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be , has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but doesnot include a person to whom such plot, apartment or building , as the case may be , is given on rent."

14. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the allotment letter executed between the respondent and the complainant, it is crystal clear that the complainant is an allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor" . The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 000600000010557 titled as **M/s Srushti Sangam**



Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts And anr. Has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of the promoter that the complainant-allottee being investor is not entitled to protection of this Act stands rejected.

- G. Findings on the relief sought by the complainant.
- G.I. Direct the respondent to deliver the actual vacant physical possession of the unit to the complainant.
- G.II. Direct the respondent to pay assured returns of an amount of Rs.23,960/- per month from 14.09.2019 till the date of filing of the complaint.
- G.III. Direct the respondent to provide the finance/loan to the complainant in terms of the assurances made by the respondent vide emails dated 08.08.2019 and 13.08.2019.
- G.IV. Restrain the respondent from acting upon the termination notices issued by the respondent.
- G.V. Declare the termination letter dated 12.08.2022, void ab initio.
- G.VI. Direct the respondent to withdraw the demand notices and termination notice until the finance/ loan is arranged by the respondent.
- G.VII. Restrain the respondent from seeking any maintenance charges from the complainant until the handing over of actual physical possession of the unit to the complainant.
- G.VIII. Direct the respondent to pay a sum of Rs.5/- per sq.ft. per month for delay in handing over of actual physical vacant possession of the said unit to the complainant.
- G.IX. Direct the respondent to pay pendente lite and future damages i.e., a sum of Rs.5/- per sq.ft. per month or at such higher rate to which the complainant may be found entitled.
15. All the above mentioned are inter related and thus are being dealt together. In the present complaint, the complainant intend to continue with the project is seeking the above mentioned reliefs w.r.t to physical possession of the unit along with delayed possession charges and assured returns.



Haryana. The complainant made an application for booking of a unit bearing no. GF/90 on the ground floor admeasuring super area of 452 sq.ft alongwith one car parking space. The unit was allotted by the respondent to the complainant vide Allotment Letter dated 12.12.2018. No Buyer's Agreement has been executed between the complainant and the respondent till date. The total sale consideration of the unit was Rs. 75,04,694/- and the complainant has till date made a payment amounting to Rs. 33,41,851/- As per the payment plan annexed with the allotment letter on page no. 58 of the complaint, the payment was to be made by the complainant to the respondent as follows:

Milestone Name	BSP	PLC	DC	IFMS	Other charges	Total price
At the time of Booking	Any	-	सत्यमेव जयते	-	-	Rs.2,23,214.28/-
By December 31, 2018	40.00%	40.00%	40.00%	-	-	Rs.27,60,579.72/-
22 months from date of booking	40.00%	40.00%	40.00%	-	-	Rs.29,83,794.00/-
On offer of possession	20.00%	20.00%	20.00%	100.00%"	-	Rs.15,37,106/-
Total	100%	100%	100%	100%"	-	Rs.75,04,694.00/-

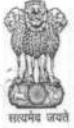
17. The complainant has submitted that the respondent had at the time of booking of the unit assured the complainant that monthly assured returns shall be paid to the complainant of an amount of Rs. 23,960.78/- from the date 14.08.2019 and the same is evident as per the E-mail sent by the respondent to the complainant on 17.09.2019 on page no. 90 of



the complaint. The respondent submitted that the complainant failed to remit timely payments of the instalments and in lieu of the same, the respondent sent a Pre-Termination letter to the complainant on 14.03.2019 and thereafter terminated the unit of the complainant on 24.04.2019. Thereafter, the complainant approached the respondent and made the payment and the unit was re-instated in favour of the complainant. Again due to non remittance of the payments, the respondent cancelled the unit of the complainant on 12.08.2022. As on now, the unit stands cancelled.

18. **Due date of possession** : As per the documents available on record, no BBA has been executed between the parties and the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the case where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in **Fortune Infrasructure vs. Trevor d' Lima (2018) 5 SCC 442: (2018) 3 SCC (civ) 1** and then reiterated in **Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan (2019) Sc 725:-**

“Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered.”



19. Accordingly, the due date of possession is calculated as 3 years from the date of allotment i.e., 08.11.2020. Therefore, the due date of handing over of the possession of the unit comes out to 12.12.2021. Further, an extension of 6 months is granted to the respondent in view of notification no.9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 12.06.2022.
20. After considering the available documents and the submissions made by the parties, it is determined that the due date for possession was 12.06.2022, and the complainant's unit was cancelled by the respondent on 12.08.2022. In the present complaint, the complainant had booked a unit in the project "AIPL Joy Square," being developed by the respondent. The complainant was allocated a retail shop, identified as no. GF/090, located on the ground floor of Tower Joy Square, for a total sale consideration of Rs. 75,04,694/-. To date, the complainant has made a payment of Rs. 33,41,851/-. The respondent cancelled the unit due to non-payment within the specified time. The complainant disputes this cancellation, claiming that the respondent had assured the complainant that financing would be arranged, with the remaining payment to be covered through a financial institution. However, the respondent failed to secure the loan facility for the complainant, which led to the delay in payment and the subsequent cancellation of the unit.
21. Upon reviewing the documents on record, particular attention is drawn to an e-mail dated 16.07.2019 sent by the complainant to the respondent. In this email, the complainant clearly outlined the assurance given by the respondent at the time of booking the unit, wherein the respondent had promised to provide loan facility for the unit. The complainant further



stated that, in the absence of such a loan facility, he would not be able to make further payments and thus conditioned his payment on the provision of the loan. The complainant specifically requested that the respondent either accept the payment only if the loan facility was provided, or else refund the amount paid. In response, the respondent sent an email on 01.08.2019, assuring the complainant that the loan facility would be made available from a financial institution on or before the next instalment. The same is reiterated below:

" Dear Sir,

Greetings from AIPL!!

In reference to the email as received below, please be assured that on or before your next instalment, **we shall be provide the finance/loan facility from the financial institution.**

With this assurance, we are banking the cheque paid to us vide cheque no. 031901 dated 11.07.19 for Rs.3,58,057/-
Hope this clears all the concerns." सत्यमेव जयते

[Emphasis supplied]

22. Thus, it is evident that the respondent persuaded the complainant to make further payments based on the assurance that a loan facility would be arranged prior to the next due instalment. The respondent, under the guise of false assurances, induced the complainant to make payments despite the complainant having already expressed his inability to do so in the absence of the loan facility. However, due to inability of the complainant in making the payment, the unit has been cancelled by the respondent and even third party rights have been created by the respondent on the same. The respondent by way of an application dated 13.11.2024, has brought on record that after the cancellation of the unit on 12.08.2022 and forfeiting an amount of Rs.27,34,625/-, the respondent issued a refund cheque on 02.09.2024 amounting to Rs.6,07,226/- in favour of the complainant. The Authority is of the view that the complainant is entitled to full refund of the amount paid by him



to the respondent i.e., Rs.33,41,851/- along with interest. The Authority notes that the complainant, too, should have exercised due diligence and should have assessed his financial capabilities before making the investment. The principle of *caveat emptor* ought to have been followed in this regard. It serves as a reminder for buyers to act with caution and due diligence in such transactions. In the interest of justice with regard to both the parties, the Authority is of the opinion that the complainant is entitled to a full refund in the present case. However, the rate of interest shall be calculated from the date of cancellation of the unit, i.e., 12.08.2022.

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.

23. 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.
24. 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., 20.11.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
25. In the present complaint, the complainant is entitled to refund of the entire amount paid by him 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 cancellation of the unit i.e., 12.08.2022 till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid, after adjusting any amount paid by the respondent to the complainant, on account of assured returns.

G. X Direct the respondent to pay a sum of Rs.1,00,000/- towards punitive, compensation for mental agony, inconvenience and harassment caused to the complainant.

G.XI. Costs of this complaint be awarded in favour of the complainant and against the respondent.

26. The complainant is seeking the above mentioned reliefs w.r.t compensation. The Hon'ble Supreme Court of India in Civil Appeals no. 674445-679 of 2021 titled as **M/s Newtech Promoters and Developers Ltd. V/s State of UP (Supra)** has held that an allottee is entitled to claim compensation and litigation charges under Section 12, 14, 18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation charges shall be adjudicated by the adjudicating officer having due regards to the factors mentioned in Section 72. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation

H. Directions of the authority

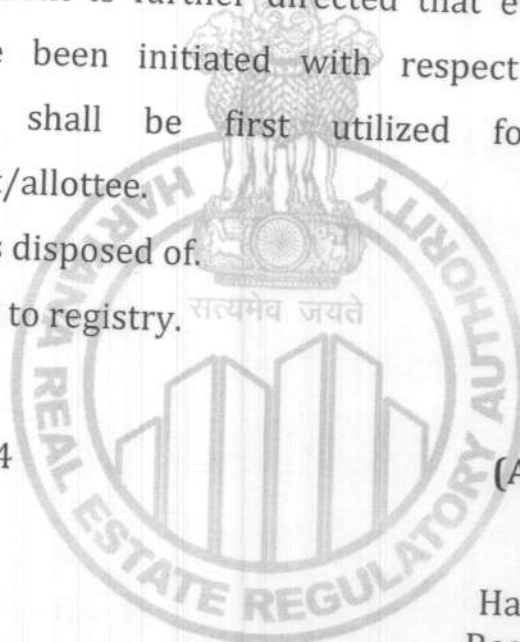
27. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

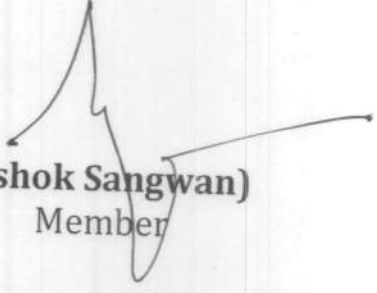
- i. The respondent/promoter is directed to refund the entire amount paid by the complainant i.e., Rs.33,41,851/-along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real

Estate (Regulation and Development) Rules, 2017 from the date of cancellation of the unit i.e., 12.08.2022 till the actual realization, after deducting any amount credited by the respondent, on account of assured returns.

- 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.
 - iii. The respondent is further directed that even if, any third party rights have been initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainant/allottee.
28. Complaint stands disposed of.
29. File be consigned to registry.

Dated: 20.11.2024




(Ashok Sangwan)
Member

Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM