

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

Complaint no.	:	4922 of 2022
Date of filing complaint	:	25.07.2022
Date of decision	:	20.09.2024

Muthunayagam Gaudama Vasan R/o- N-24, Panchsheel Park, New Delhi	Complainant
Versus	
Fantasy Buildwell Pvt. Ltd. R/o: Room No 205, Welcome Plaza, S-551 School Block-II Shakarpur, Delhi-110092	Respondent

CORAM:	
Shri Ashok Sangwan	Member

APPEARANCE:	
Shri Animesh Goyal, Advocate	Complainant
Ms. Priyanka Agarwal, Advocate	Respondent

ORDER

1. The present 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

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

S. No.	Particulars	Details
1.	Name of the project	"Paras Quartier", Sector-2, at Village Gwal Pahari, District- Gurugram
2.	Project area	10.096875 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no. and validity status	74 of 2012 dated 31.07.2012 valid up to 30.07.2020
5.	Name of licensee	Maxicon Traders Pvt. Ltd. and 2 others
6.	RERA Registered/ not registered	Registered vide no. 164 of 2017 dated 28.09.2017
7.	RERA registration valid up to	28.08.2022
8.	Unit No.	PL-3/27 02, 27 th floor, (as per allotment at page no. 21 of complaint)
9.	Unit admeasuring	6000 sq. ft. (Page no. 21 of complaint)
10.	Allotment letter	07.01.2013 [Page no. 21 of complaint]
11.	Date of execution of apartment buyer agreement	Not executed
12.	Due Date of possession	07.01.2016 <i>[3 years from the date of allotment - Calculated in view of judgement of Supreme Court of India in Fortune Infrastructure and Ors. vs. Trevor D&#39;Lima and Ors. (12.03.2018 SC); MANU/SC/0253/2018]</i>
13.	Total sale consideration including EDC, IDC, PLC, EEC, etc.	Rs.6,69,20,000/-, [as per booking application form at page 20 of reply]

14.	Amount paid by the complainant	Rs.1,85,93,400 /- [as per Statement of Account dated 19.07.2022 at page 30 of Reply]
15.	Occupation certificate	22.06.2020 [Page 71 of reply]
16.	Offer of possession	Not offered
17.	Payment Plan	Construction Linked Plan
18.	Surrender by the complainant vide e-mail	18.04.2018 (Page 26 of complaint)
19.	Pre-cancellation	11.12.2021 [page 69 of reply]
20.	Forfeiture Letter	18.07.2020 and 14.12.2021 [page 68 & 70 of reply]

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - i. In the year 2012, the respondent advertised their proposed township project called 'Paras Quartier', in sector-2 Gwal Pahari, Gurugram, Haryana, claiming that the township project would have easy access to facilities such as water, sewage and electricity.
 - ii. That the respondent specifically stated that the possession of the plots shall be delivered within 42 months of signing of the agreement to sell. The property dealers/agents hired by the respondent for marketing the project approached the complainant for booking a residential apartment in the project of the respondent showing them the rosy pictures.
 - iii. That from the aforesaid advertisements and assurances of the respondent, the complainant was induced by the respondent to part with their hard-earned money for booking the promised apartment. The standardized application form for booking the said residential apartment was submitted and the respondent allotted apartment no. PL-3/2702, 27th floor in Paras Quartier,

situated at sector-2, Gurgaon-Faridabad Road, Gwal Pahari Gurgaon vide allotment letter dated 07.01.2013 and deposited a sum of Rs.50,00,000/- vide receipt No.0080 dated 07.01.2013 to the respondent.

- iv. That the complainant deposited a total sum of Rs.1,85,93,400/- with the respondent towards part payment of the sale consideration.
- v. That at the time of issuance of allotment letter dated 07.01.2013 the complainant was apprised that the possession of the unit complete in all respect would be handed over to the complainant within a period of 42 months from the date of issuance of allotment letter. The respondent also assured that the respondent would also execute a regular builder buyer agreement with the complainant with respect to the allotted unit in due course of time. That however the respondent never came forward to execute the regular builder buyer agreement of the allotted unit with the complainant even after receiving huge amount as part sale consideration.
- vi. That however, the respondent miserably failed to complete the unit within the agreed time and also failed to handover the possession of the same causing tremendous pressure upon the complainant and instead of performing its part of the obligations illegally and unauthorizedly pressurized the complainant to make further payment even without execution of the regular builder buyer agreement.
- vii. That looking into the fact that there was no development on the spot, the complainant lost in trust in the project. Besides it the complainant and his wife suffered with severe diseases causing huge mental agony and scarcity of funds. The wife of the complainant Geetha Vasani died on 08.02.2017 in Max Hospital Saket, New Delhi on account of disease.
- viii. That since the respondent failed to perform its part of the obligation and to complete the project and despite that started pressurizing the complainant to make payment of further amount, the complainant apprised the respondent

vide emails dated 18.04.2018 and subsequent emails requested the respondent to cancel the unit and to refund the amount deposited by the complainant or allot alternative unit.

- ix. That however, the respondent never came forward either to refund the amount or to allot some alternative property of the value of the total amount of Rs.1,85,93,400/-.
- x. That even thereafter the complainant had been requesting the officials of the respondent to refund the total amount as the complainant, who is a senior citizen and continuously under the treatment of doctors due to the many severe diseases require the money to save his life since the complainant has no source of income the leading the retired life.
- xi. That however the respondent never cared for the requests of the complainant and issued a forfeiture letter dated 18.07.2020 illegally and unauthorizedly forfeiting the whole of the paid-up amount of Rs.1,85,93,400/- deposited by the complainant way back in the 2013 and illegally and unauthorizedly claimed a sum of Rs.1,24,87,469/-. The said letter dated 18.07.2020 is totally illegal, null, void and not binding upon the complainant. The complainant is entitled to refund of the whole of the amount of Rs.1,85,93,400/- along with interest from the date of payment till realization of the amount.
- xii. That the complainant also came to know that there was no development of the project on the spot till the time the complainant requested the respondent for refund of his amount and even till date the project has not been completed in all respects so as to make it inhabitable for the residence of the allottees. Even the respondent never apprised the complainant about completion of the project after completion of the period of 42 months in the years 2016, nor ever offered the possession of unit on time before the complainant asked the respondent for refund of the amount and issued the forfeiture letter dated 18.07.2020 illegally and unauthorizedly only to usurp the huge hard earned

money despite knowing fully well that the complainant was going through the trauma of death of his wife and suffering from various diseases.

- xiii. That the complainant booked the residential plot keeping in view the fact and believing that the respondent would hand-over the possession of the said apartment within the stipulated period. However, the inordinate delay committed by the respondent in handing over the possession of the unit had diminished all the hopes of the complainant and the complainant lost interest in the project and requested the respondent for refund. Hence the present complaint is being filed for refund of the total amount of Rs.1,85,93,400/- paid to the respondent along with interest equal to the rate of interest i.e. @ 18% P.A. being claimed by the respondent from its customers or any other rate of interest deem appropriate by this Authority.
- xiv. That the complainant had invested his hard-earned money and life savings with hope of having a residential apartment as promised by the respondent. However, the complainant having been highly disappointed and discouraged due to the illegal, unethical, and non-cooperative attitude besides committing various deficiency and inordinate delay as stated above, hence the complainant left with nowhere to go except to approach the Authority.
- xv. That it is submitted that the modus operandi of the respondent has caused tremendous financial pressure upon the complainant herein for which the complainant is entitled to be reimbursed forthwith as well as for the mental agony caused to the complainant by the acts, omissions and mala fide conduct on the part of the respondent.
- xvi. That it is submitted that the conduct of the respondent has resulted in wrongful loss to the complainant and wrongful gain to the respondent herein, for which the respondent is liable to be prosecuted under Indian Penal Code.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- To declare that the forfeiture letter dated 18.07.2020 is totally illegal, unauthorized, null, void and not binding upon the complainant.
 - Direct the respondent to refund the entire amount of Rs.1,85,93,400/- paid by the complainant along with interest @ 18% per annum from the date of payment till its actual realization.
 - Direct the respondent to not to create any charge, lien or third-party rights in any manner upon the aforesaid plot till final realization of the amount by this Hon'ble court along with upto date interest.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent have contested the complaint on the following grounds:
- That the complainant approached the respondent and booked a residential unit in the project "Paras Quartier" situated at sector-02, Gurugram by paying a booking amount of Rs.50,00,000/- vide cheque nos. 629322 & 629321. As per the application form, the total sale consideration of the unit was Rs.6,69,20,000/-, including basic sale price, preferential location charges, external development charges, infrastructure development charges, parking space charges.
 - That on 07.01.2013, the complainant was allotted a unit no. PL-3/2702 on 27th floor, super area admeasuring 6000 Sq. ft. at the basic sale price of Rs.10,000/- per sq. ft. exclusive of PLC (if any), EDC, IDC, Car Parking, Club Membership and IFMS etc on terms and conditions as contained in the application form.
 - That the complainant had opted for a construction linked plan as per which, the complainant was liable to pay the amounts as and when demands were to be raised by the respondent company in accordance with the progress in the development of the project. However, as per the complainant's own admission,

the complainant has only paid 3 instalments amounting to Rs. 1,85,93,400/- last payment being received on 30.10.2013.

- iv. That the complainant had booked the unit in the year 2013, i.e., before the implementation of the real estate (regulation & development) Act, 2016, when the real estate industry was majorly regulated by industry standards. Thus, the respondent company cannot be dragged into the preview of the Act, as the respondent company had done all the formalities in accordance with the industry standards prevalent at that time.
- v. That the respondent company had duly sent two copies of the builder buyer agreement to the complainant for signing through DTDC courier on 22.07.2014. It is the complainant who never sent back the duly signed copies of the builder buyer agreement for execution.
- vi. That the complainant had always been a habitual defaulter in making payments despite multiple reminders from the respondent company and after 30.10.2013, completely stopped making any further payments. The respondent company had sent demand letters, requesting the complainant to pay the outstanding dues, however, the complainant did not do the same, Thereafter, several reminder letters & final reminder letters were sent to the complainant, requesting them to pay the outstanding dues, but to no avail.
- vii. That the construction of the project was going on in full swing, however, the same got severely hampered several times due to the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India, which were issued in order to curb the level of pollution in the NCR region. All the above problems are beyond the control of the answering respondent. It may be noted that the respondent company had at many occasions orally communicated to the complainant that the construction activity at the subject project had to be halted for some time due to certain unforeseen circumstances which were completely beyond the control of the answering respondent.

- viii. That respondent company was faced with certain force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc.
- ix. That the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna Riverbed. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made, and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. It is to be noted that the development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession.
- x. That during the years of 2015 to 2019 there was stoppage of work at the project site due to government's/statutory authority order. Stoppage of construction activity for one reason or the other has become an annual fixture for the last four - five years.
- xi. That the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 ✓

banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019. additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. That the covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various state governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine *force majeure* circumstances and the said period shall not be added while computing the delay.

- xii. That despite the aforesaid circumstances beyond the control of the respondent, the construction of the project was duly completed in 2019 and the respondent was granted the same vide occupation certificate dated 20.06.2020.
- xiii. That complainant was given ample opportunities to clear the outstanding dues, but the complainant failed to do the same. Thus, finally, the allotment of the complainant was cancelled on 18.07.2020 vide forfeiture letter dated

18.07.2020, after making deductions of the earnest money and other dues, in terms of the application form & allotment letter.

- xiv. Respondent being a consumer centric company, gave one final opportunity to the complainant, and sent a pre-cancellation Letter dated 11.12.2021, however, when the complainant did not even respond to the said pre-cancellation letter dated 11.12.2021, the allotment of the complainant was finally cancelled on 14.12.2021.
- xv. That the complainant never had any intentions of making any payments but held on to the allotment for years, in hopes that someday, he might be able to take undue advantage of the same, and the complainant is doing exactly doing the same by way of this complaint.
7. 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:

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

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 allottees 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

12. 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 and followed in *M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to

refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

13. 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. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)**, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

F. Findings on objections raised by the respondent:

F.I Objection regarding delay due to force majeure circumstances

14. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as COVID-19 outbreak, certain environment restrictions, weather conditions in NCR region, shortage of labour, increase in cost of construction material and non-payment of instalment by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. 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 respondent. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault

of some of the allottees. Thus, the promoter/respondent 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 complainant:

- G.I To declare that the forfeiture letter dated 18.07.2020 totally illegal, unauthorized, null, void and not binding upon the complainant.**
- G.II Direct the respondent to refund the entire amount of Rs.1,85,93,400/- paid by the complainant along with interest @ 18% per annum from the date of payment till its actual realization.**

15. The above-mentioned reliefs in G.I & G.II are interconnected and hence taken together for adjudication.

16. In the present case, the complainant booked a unit with the respondent in its project project "Paras Quartier", in Sector 2, Village-Gwal Pahari, Gurugram, Haryana. The complainant was allotted a unit/plot bearing no. PL-3/27, 27th floor, admeasuring 6000 sq. ft. of super-area vide allotment letter dated 07.01.2013 for a total consideration of Rs.6,69,20,000/-, out of which the complainant had paid a sum of Rs.1,85,93,400/- as per statement of account dated 19.07.2020. No builder buyer agreement has been executed between the parties till date. The Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018* observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. The allotment in favour of the complainant was made vide allotment letter dated 07.012013. The period of three years from the date of allotment

expired on 07.01.2016. Therefore, the due date of handing over possession is 07.01.2016.

17. It is pertinent to mention over here that even after two years from the due date of possession the construction was not completed. In view of the same the complainant had surrendered the unit after two years of the due date of possession i.e., 07.01.2016 vide an email dated 18.04.2018 as per the documents placed on record. However, the offer of possession was never offered to the complainant and the occupation certificate in respect of the project in question was received on 22.06.2020 i.e., four years from after the due date of possession. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the Authority observes that the due date of possession was 07.01.2016, but occupation certificate in respect of the project was received on 22.06.2020 and offer of possession was never offered. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
18. The complainant after the due date vide email dated 18.04.2018 requested the respondent to cancel the unit and to refund the amount deposited by the complainant, the refund request was made when it was observed by the complainant that even after two year from the due date there was no development on the site of the project and the occupation certificate was not received. In view of the same the forfeiture letter dated 18.07.2020 and 14.12.2021 forfeiting the whole amount paid is invalid as the surrender request was already made in 2018.
19. In the present complaint, the complainant intends to withdraw from the project and is seeking refund of the amount paid by him in respect of subject

unit along with interest. 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)

20. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them along with interest prescribed rate of interest 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.

21. 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.

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22. 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., 20.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

23. An allotment letter dated 07.01.2013 has been issued by the respondent but no builder buyer's agreement has been executed. So, the document/receipt/provisional allotment letter so issued in favour of a person can be termed as an agreement for sale to drag the developer before RERA Authority and compelling it to fulfil its obligations against the holder of that document.

24. The Hon'ble Supreme Court of India in the cases ***of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. observed as under:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

25. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale ✓

under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to pay the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received in respect of the unit with interest at such rate as may be prescribed.

26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent are established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.II Direct the respondent to not to create any charge, lien or third-party rights in any manner upon the aforesaid plot till final realization of the amount by this Hon'ble court along with upto date interest.

27. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

H. Directions of the Authority:

28. 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 is directed to refund the amount i.e., Rs.1,85,93,400/- received by him from the complainant along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

29. Complaint stand disposed of.

30. Files be consigned to registry.



HARERA
GURUGRAM

(Ashok Sangwan)
Member

Haryana Real Estate
Regulatory Authority,
Gurugram

Dated: 20.09.2024