

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

<b>Complaint no.:</b>	<b>1146 of 2022</b>
<b>First date of hearing:</b>	<b>12.05.2022</b>
<b>Date of decision:</b>	<b>20.12.2024</b>

Lt. Col Rohit Sharma

**R/o:** - H. no. 1160/81, Defence Enclave, BOH Road,  
Ambala Cantt, Haryana

**Complainant**

Versus

1. M/s Agrante Developers Private Limited.

**Office address:** 522-524, DLF Tower-A, Jasola, New  
Delhi-110044

2. Tata Capital Housing Finance Limited

**Office address:** 11<sup>th</sup> Floor, Tower A, Peninsula Business  
Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai-  
400013

**Respondents**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Shri Chirag Jamwal (Advocate)

**Complainant**

None

**Respondent no. 1**

Shri Sham Taneja (Advocate)

**Respondent no. 2**

**ORDER**

1. The present complaint dated 30.03.2022 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 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. Project and unit related details**

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

S. N.	Particulars	Details
1.	Name of the project	"Beethoven's 8", Sector- 107, Gurgaon
2.	Nature of project	Group housing complex
3.	RERA registered/not registered	Not Registered
4.	DTPC License no.	23 of 2012 dated 23.03.2012
	Validity status	Not available on record
	Name of licensee	Narendra Kumar Gupta & others
	Licensed area	18.0625 acres
5.	Unit no.	Minor-H/A/102 [pg. 45 of complaint]
6.	Unit area admeasuring	1300 sq. ft. [pg. 45 of complaint]
7.	Allotment letter	24.04.2015 [pg. 26 of complaint]



8.	Date of builder buyer agreement	25.11.2016 [pg. 36 of complaint]
9.	Total sale consideration	₹ 91,45,500/- [pg. 45 of complaint]
10.	Amount paid by the complainant as per sum of receipts	₹ 9,47,000/- (As per page 23-26 of complaint)
11.	Possession clause	<b>Clause 18(a)</b> <i>Subject to other terms of this Agreement/Agreement, including but not limited to timely payment of the Total Price, stamp duty and other charges by the Vendee(s), the Company shall endeavor to complete the construction of the Said Apartment <b>within 42 (Forty-two) months from the date of Allotment, which is not the same as date of this Agreement.</b> The Company will offer possession of the Said Apartment to the Vendee(s) as and when the Company receives the occupation certificate from the competent authority(ies). Any delay by the Vendee(s) in taking possession of the Said Apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof.</i> (Emphasis supplied) [pg. 52 of complaint]
12.	Due date of possession	24.10.2018 [Due date calculated from date of allotment i.e., 24.04.2015]
13.	Delay in handing over possession till the date of filing of this complaint i.e., 30.03.2022	2 years 5 months 6 days

14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint: -
- a. That the complainant is a serving Army Officer and the Allottee. In the year 2014, the complainant, while being posted at Samba, Jammu, was approached by one Mr. Ankit Sarpal for the purchase of a flat, at one of the projects undertaken by the respondent at Gurugram.
  - b. That right at the inception, the complainant intimated the respondent, that he does not have funds to purchase such an expensive flat, costing almost Rs. One Crore. However, the respondent assured the complainant should not worry, as they had an official tie up with Tata Capital Housing Finance Limited and thus, the loan will be approved in no time. It was also vividly stated that the EMI's shall be paid by the respondent, directly to TCHFL till the possession is handed over. On these assurances, the complainant agreed to purchase a flat.
  - c. That the complainant paid the respondent, the agreed- advance sum of Rs. 9,47,000/- towards the allotment of flat at Beethoven's 8 project, Sector 107 Gurgaon. Vide payment receipts dated 08.09.2014, 16.10.2014 & 23.04.2015.
  - d. That vide allotment letter dated 24.04.2015 the respondent provisionally allotted unit no. Minor/H/A/102 at Beethoven's 8 Project, Sector 107 Gurgaon. The said flat was purchased under the subvention scheme, whereby the complainant initially had to pay 10% of the total Sale



consideration out of his pockets, while the remaining amount had to be paid at the time of possession.

- e. That the builder buyer agreement was entered on 25.11.2016. As per BBA the possession of the unit was to be handed over within 42 months from the date of issuance of allotment letter. In the present case the allotment letter was issued on 24.04.2015. Therefore, the possession had to be handed over by 24.10.2018.
- f. That from the date of issuance of allotment letter, it has been over 6 ½ years, however, the construction is far away from completion. The respondent has conveyed that it would atleast take 2 more years, before possession is handed over, which is not acceptable to the complainant.
- g. That for the purchase of the said flat, the complainant took home loan from the afore-mentioned TCHFL. The amount thereof stands directly credited to respondent's account, by the said bank. Since Dec 2019 the EMI are being debited by the said bank.
- h. That in the month of March 2020, the complainant visited respondent's office at Jasola, where he was handed over a letter that all EMI's shall be paid by the respondent to the concerned bank directly, till the time possession is handed over. But till date not a single EMI has been paid by the respondent to the TCHFL.
- i. That the bank has now started threatening the complainant of dire consequences for non-payment of said EMI's. The bank has further warned that the account of the complainant shall be rendered NPA. Despite several telephonic calls, the respondent has failed to render any resolution.





- j. That quite shockingly vide Notice dated 09.11.2021 the said Bank has now taken possession of the property described herein above, whilst exercising powers under Sec 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred as SARFAESI Act).
- k. That furthermore, despite number of requests the respondent has failed to share the status of construction of the said project.
- l. That the complainant sent various emails to the respondent, for refund of the payment already made. But the same did not elicit any response from the respondent.
- m. That vide legal notice dated 04.03.2021 the complainant through its counsel made a demand for refund and compensation. However, as per the tracking report, the respondent left the premises without any instructions.
- n. That the complainant vide email dated 05.03.2021 sent the above mentioned legal notice to the respondent, at its official email id. That in order to avoid immediate escalation of the issue, yet another legal notice was sent on 22.03.2021 the same was delivered via speed post.
- o. That despite several requests and representations, made on behalf of the complainant, the respondent has failed to finish the project and handing over the possession.
- p. That the respondent even made false promises and tall claims, to complete the development work and handover the possession, but till date none of its assurances have seen the light of the day.

**C. Relief sought by the complainant: -**

4. The complainant has sought following relief(s)



- a. Direct the respondent no. 1 to refund the amount of Rs. 9,47,000/- paid by complainant with interest @ 12% p.a. from the date of actual deposit till date of realisation.
  - b. Direct the respondent no. 1 to timely pay the EMI to respondent no. 2.
  - c. Direct the respondent no. 2 to stay the operation of notice dated 09.11.2021.
  - d. Direct the respondent to pay cost of litigation.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent no. 1.**

6. The respondent no. 1 has contested the complaint on the following grounds:
- a. That the complainant had availed a loan facility for financing the allotted unit and the unit was mortgaged in favour of the financial institution. The financing institution has initiated recovery proceedings of its disbursed amount along with its pending dues and invoked SARFAESI proceedings against the complainant. The respondent has been approached by the financial institution seeking details with respect to all payments qua the unit and apprised that they have issued necessary legal notice of possession of the unit and they will initiate necessary steps in order to auction the said unit to realise its dues.
  - b. That the complainant's Tower-H is ready and the construction of super structure comprising fourteen floors is completed. The necessary

electrical wiring and works pertaining to plumbing and sanitation are also ready. The promoter would be in a position in all probability to offer possession of the flats in Tower-H in 6-7 months from the date of filing of the present reply. The promoter has incurred and utilised his own funds and loans towards construction of the project and if the complaints pertaining to refunds are entertained at this stage it would jeopardize the fate of the project which would consequently hamper the valuable rights of the other allottees of project. The promoter is in the process of applying for occupation certificate for Tower- H. The promoter is willing to adjust for the interest components as computed for delay in offering possession towards the balance sale consideration of the complainant as the promoter will offer possession in Tower-H to the complainant.

- c. That the Agrante Developers Pvt Ltd. was granted development licence from Director Town and Country Planning, Haryana ("DTCP") for development of land spread over a total area of 18.0625 acre of land on which the present project is being developed. The said license was granted on 27.03.2012 and was valid for 4 years.
- d. That due to non-registration with HRERA the Promoter is unable to sell its proposed units in its project. More particularly the applicant is crippled financially as no demand can be raised by the Promoter from its existing members. It is to be kindly considered by this Hon'ble Court that the Promoter has accordingly not raised a single demand from its members and has not collected more than 40% of total sale consideration of a unit from any of its members. On the contrary the promoter has undertaken the tedious task of completing the





construction of the project from its own finances and loans so as to offer possession and is also remitting the interests on subvention scheme on behalf of customers so as to protect them from further loss. The overall conduct of the promoter plays a vital part in deciding the complaint such as the present one. The promoter is faced with peculiar circumstances which would require mutual cooperation of its members.

- e. That the crisis of COVID-19 pandemic has also given a blow to smooth working of the promoter. During the lockdown imposed by the Central Government, the workforce at the project site left for their homes and there was a complete halt in the work which added to further delay. It was after sincere efforts of the promoter that the workforce could be again mobilised and presently the works are being carried out at the site.
- f. That the respondent has been diligent in remitting the agreed Pre-Emi applicable on the disbursed amount of loan on behalf of the complainant till the date of the filing of the present complaint. The respondent is further willing to adjust for the pending dues towards interest on disbursed amounts and delay in offering the possession of the unit.

**E. Reply by respondent no. 2.**

7. The respondent no. 2 has contested the complaint on the following grounds:
  - a. That respondent no.2, Tata Capital Housing Finance Limited (TCHFL) is a company incorporated under the Companies Act 1956, and registered with the National Housing Bank as a housing finance company and operating from the above-mentioned address.

- b. That there is no role of the answering respondent no. 2 except to finance the residential flat/unit which the complainant himself from his own free will had selected and accordingly verified the project details. The answering respondent no. 2 has performed/discharged all its obligations truly in accordance with the 'agreements'.
- c. That in the year 2016, the complainant along with Mrs. Riti Sharma had approached the answering Respondent No. 2 for availing housing loan facility for purchasing the flat/unit, which the complainant, after verifying the project, had selected and booked the unit/flat on its own free will in the year 2014 and accordingly submitted the documents for sanctioning the loan. The answering respondent on considering the financial eligibility had sanctioned an amount of Rs. 60,50,000/- and as per request obtained from the complainant by way of the disbursement request form, the answering respondent no. 2 had disbursed a 'Housing Loan' of Rs. 40,00,145/ out of the total sanctioned loan amount of Rs. 60,50,000/-, vide loan account No. 9832032. The said loan is to be paid in Equated Monthly Instalments (EMI) of Rs. 52,794/- each commencing from 09.02.2017 (Repayment Commencement Date).
- d. That complainant had also obtained subvention scheme for a fixed 'subvention period' of 36 months, whereby the developer agreed and undertook to service the Pre-EMI interest, on the entire amount of loan disbursed by TCHFL, as payable by the borrower to TCHFL for a fixed period of 36 months and after the expiry of said period, the borrower/complainant shall be solely liable to service/pay the Pre-EMI/EMI as per the terms & conditions contained in the loan agreement. Since the complainant has miserably defaulted in repayment of the balance Pre-EMI/EMI for a long period of time in spite of repeated



reminders, the answering respondent no. 2 had no other option but to initiate proceedings to recover its debts under the provisions of the SARFAESI Act, 2002 after legally declaring the loan account of the complainant as non-performing assets (NPA).

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**F. Jurisdiction of the authority**

9. The application 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.

**F. I Territorial jurisdiction**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**F. II Subject matter jurisdiction**

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....



(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)** and reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of





*seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

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

**G.I Direct the respondent no. 1 to refund the amount of Rs. 9,47,000/- paid by complainant with interest @ 12% p.a. from the date of actual deposit till date of realisation.**

**G.II Direct the respondent no. 1 to timely pay the EMI to respondent no. 2.**

15. In the present complaints, the complainant intend to withdraw from the project and is seeking return of the amount paid by him 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)*

16. Clause 18(a) of the agreement provides for handing over of possession and is reproduced below:

**“18(a).**

*Subject to other terms of this agreement/agreement, including but not limited to timely payment of the total price, stamp duty and other charges by the vendee(s), the company shall endeavour **to complete the construction of the said apartment within 42 (forty-two) months from the date of allotment, which is not the same as date of this agreement.** The company will offer possession of the said apartment to the vendee(s) as and when the company receives the occupation certificate from the competent authority(ies). Any delay by the vendee(s) in taking possession of the said apartment from the date of offer of possession, would attract holding charges @Rs. 05 (Five) per sq. ft. per month for any delay of full one month or any part thereof.”*

17. At the outset, it is relevant to comment on the preset 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 these agreements 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 allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer’s agreement by the promoter is



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.

18. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

19. 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.
20. 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., 20.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

21. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

22. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 18 of the agreement dated 25.11.2016, the possession of the subject apartment was to be delivered within a period of 42 months from the date allotment which is not the same as date of this agreement. The due date is calculated 42 months from date of allotment letter i.e., 24.04.2015. Accordingly, the due date of possession comes out to be 24.10.2018.

23. Keeping in view the fact that the allottee/complainant wish to withdraw from the project and is 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.

24. The due date of possession as per agreement for sale as mentioned in the table above is **24.10.2018**.

25. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit 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....."*

26. Further, 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."*

27. 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 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 he 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.
28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the 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 deposit till its realization and the amount paid by the respondent towards Pre-EMI shall be adjusted in above refundable amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
29. Out of total amount so assessed, the amount paid by the bank i.e., respondent no. 2 be refunded first in the bank and the balance amount along with interest if any will be refunded to the complainants.

**G.III. Direct the respondent no. 2 to stay the operation of notice dated 09.11.2021.**





30. The said relief stands redundant since the refund has been allowed by the authority along with the interest to be first paid to the bank and the remaining to the complainant.

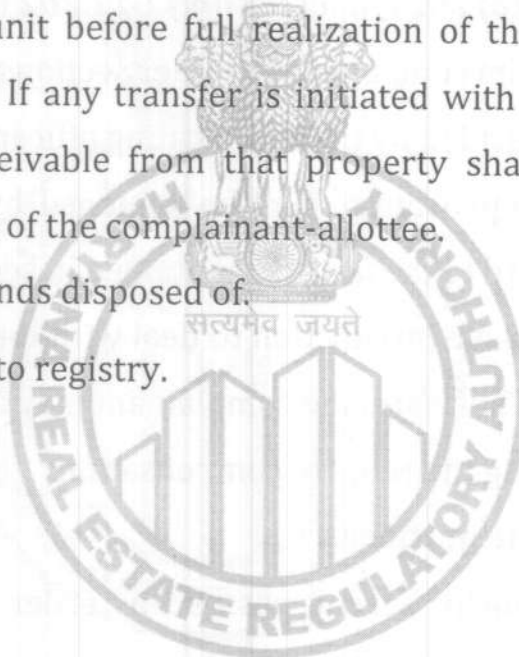
**G.IV. Direct the respondent to pay cost of litigation.**

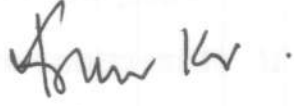
31. The complainant in the aforesaid relief is seeking relief w.r.t compensation *Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021)*, has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the authority**

32. 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):
- The respondent/promoter is directed to refund the amount received by it 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 deposit till its realization and the amount paid by the respondent towards Pre-EMI shall be adjusted in above refundable amount.

- ii. Out of total amount so assessed, the amount paid by the bank i.e., respondent no. 2 be refunded first in the bank and the balance amount along with interest if any will be refunded to the complainants.
  - iii. 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.
  - iv. The respondent builder is directed not to create third party right against the unit before full realization of the amount paid by the complainant. 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 complainant-allottee.
33. The complaint stands disposed of.
34. File be consigned to registry.





**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.12.2024

**HARERA**  
**GURUGRAM**