

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

Complaint no. : 4247 of 2022  
First date of hearing: 24.06.2022  
Date of decision : 09.07.2024

**1. CHALLA GOPALA KRISHAN MURTHY**

S/o. Lakshmi Lalitha Prasasa  
R/o. Am 81 14<sup>th</sup> main road Annanagar  
Chennai Tamil Nadu- 600040

**2. MRS. CHALLA SUREKHA**

W/o. Challa Gopala Krishna Murthy  
R/o. E51 Lakshmi Nivasam Behind  
Lakshmi Hyundai Showroom Murlinagar  
Visakhapatnam, Andra Pradesh-530007

**Complainants**

**Versus**

**1. AGRANTE DEVELOPERS PVT. LTD.**

3<sup>rd</sup> floor Suncity Trade Centre  
sector-21 Gurgaon-122001

**2. HOUSING DEVELOPMENT FINANCE  
CORPORATION LIMITED (HDFC LIMITED)**

Regd. Office. Raman house 169,  
Backbay Reclamation,  
HT Parekh Marg, Mumbai-400020

**Respondents**

**CORAM:**

Shri Arun Kumar  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Prashant Vashisht, Advocate  
Sh. Tarun Biswas, Advocate  
Sh. Virender Singh, Advocate

**Complainants**  
**Respondent no.1**  
**Respondent no. 2**

**ORDER**

1. The present complaint dated 24.06.2022 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 under the provisions of the Act or the Rules and regulations made there under 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 complainant, 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.	Harmony-II L/B/1705 [Page no. 37 of complaint]
6.	Unit area admeasuring	1702 sq. ft. [Page no. 37 of complaint]

7.	Allotment letter	Not provided
8.	Date of Agreement to Sale (ATS)	30.10.2014 [Page no. 28 of complaint]
9.	Date of Home Loan Agreement/ tripartite agreement	25.11.2014 [Page no. 61 of complaint]
10.	Quadripartite Agreement	30.10.2014 [Reply by respondent no.2]
11.	Possession clause	<p><b>Clause 18(a)</b></p> <p><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></p> <p>(Emphasis supplied)</p> <p>[as per ATS at page no. 44 of complaint]</p>
12.	Due date of possession	30.04.2018 [Due date calculated from date of agreement i.e., 30.10.2014]
13.	Total sale consideration	Rs.1,01,26,900/-

		[Page no. 37 of complaint]
14.	Amount paid by the complainant	Rs.46,00,272/- [Rs.34,50,204/- paid by bank R.2 i.e., HDFC Limited Bank + Rs.11,50,068 paid by complainant to respondent.]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Refund Legal notice to respondent no.1 for an amount of Rs. 12,60,412/- including Rs.1,10,344/- paid as interest to the bank by complainant on behalf of respondent. [as per legal notice at page 96 of complaint]	08.11.2021 [Page 92 of complaint]

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
  - i. That the complainants herein are simple law-abiding citizens possessed of limited means and resources. It is submitted that the complainants being desirous of having their own house invested their hard-earned monies in the respondent no.1 project upon being represented to the complainant that the company had the requisite licenses/ permission to develop the Group Housing Colony and that the colony was to comprise of the suitable infrastructure facilities including basement, parking etc. It is submitted that under the under the promotion scheme floated by the respondent no.1 it was also mentioned that the homebuyers can easily avail home loan in the project.

- ii. That the complainants accordingly, in the year 2014, approached the respondent no.1 inhibiting their interest in an apartment complex being developed by respondent no.1, in response to the tall claims being made by respondent no.1 in various advertisements, inviting applications for purchase of apartments sought to be built/under development by respondent no. 1, on earmarked land under the Group Housing Scheme/apartment complex titled Beethoven's 8 in Sector-107, Gurgaon, Vil. Dharampur, Tehsil & Distt. Gurgaon, Haryana.
- iii. That the complainants were given an impression by respondent no.1 of being sincere, accountable, honest and leading real estate developers in Gurgaon and was promised of timely delivery and execution of projects while adhering to all local and municipal laws and byelaws. It is submitted that the complainants believing the assurances and representations by respondent no. 1, invested in the said project. It is further submitted that complainants were also assured by the respondent no.1 that after paying certain upfront amount/booking amount; the complainants could avail easily home loan under the subvention scheme.
- iv. That the complainants, accordingly, were allotted apartment no. Harmony II L/B/1705 located on 17<sup>th</sup> floor in tower/building no. Harmony II, Beethoven's 8 measuring 1702 sq. ft. for a total sale consideration of Rs.1,01,26,900/- vide agreement to sale dated 30<sup>th</sup> October 2014 enumerating the terms and conditions under which the said sale was to take place.
- v. That the complainants humbly submit that in accordance with the said agreement, the total sale consideration of Rs.1,01,26,900/- was to be paid in accordance with the terms contained in the Said Agreement wherein a sum of Rs.11,50,068/- amounting to approximately 10% of the sale consideration was paid by the complainants at the time of the execution of the said agreement which was duly acknowledged by respondent no.1; while the

balance amount of Rs.1,08,40,592 was to be paid as per the payment plan contained therein.

- vi. That the complainants submits that to effectuate the payment to respondent no.1 as per the terms of the said agreement, complainants entered into subvention plan availed Home Loan from HDFC Ltd. (respondent no. 2) vide Home Loan Agreement dated 25<sup>th</sup> November 2014 under the Subvention Plan. It is pertinent to point out the fact that the entire process of availing of home loan was arranged by the respondent no.1 and allotted flat was kept as mortgage to fund the construction of the said project. It is further submitted that the entire arrangement under the subvention plan apparently point out the fact that respondent no.1 and respondent no.2 were necessary parties for the construction of the project.
- vii. It is submitted that as per the terms of the said agreement, it was assured by respondent no.1 shall complete the projectile construction of the said apartment within a period of 42 months from the date of the said agreement. Further, according to the terms of the agreement, in the event failure to complete the project within the stipulated time, respondent no. 1 were to provide a notice of 30 days to complainants intimating of such failure and tender a refund of the amount collected with simple interest @7% on the same.
- viii. It is further pertinent to mention that as per the terms and conditions of the said agreement, complainants were expressly entitled to cancel the allotment of the said apartment, in the event of non-fulfillment and/or breach of terms and conditions of the agreement by respondent no.1.
- ix. That it is pertinent to note that the respondent no.2, without any request of disbursement of the loan amount from the complainants as per the request and communication with the respondent no.1, disbursed an amount of Rs.34,50,204/- in favor of respondent no.1 from the total sanctioned amount

of Rs.86,00,000/- under subvention plan. It is pertinent to note that the respondent no.2, without taking note of the stage of construction of the said project disbursed the aforesaid amount in favor of the respondent no.1.

- x. That the complainants herein submits as per terms and condition of the agreement and assurances given by the respondent no.1, complainant expected the said apartment to be completed by May 2018; However, to the utter shock of complainants, respondent no.1 issued a notice to our clients dated 13.10.2017 wherein respondent no.1 raised frivolous pleas for the delay in the said construction citing 'challenges in the real estate industry' and unequivocally assured complainants that the project shall be completed by end of 2019. It is further pertinent to note that vide the said notice respondent no.1 undertook that they have already paid the payable interest from the respondent no.2 on the disbursed amount and shall be further pay the interest payable till the offer of possession, from 15<sup>th</sup> November 2017 onwards.
- xi. That the complainants having due regard to immense trust reposed in respondent no.1 and their reputation in the real estate market, complainants had no option but to believe the assurances of respondent no.1 and expected the construction of the said apartment to be completed by end of 2019. It is further submitted that upon the undertaking by respondent no.1 regarding the payment of interest to respondent no. 2, complainants was assured that his investment is safe with the respondent no.1 and further respondent no.2 being a direct financier of the project, complainants would not have to worry regarding his flat.
- xii. That It Is pertinent to mention that not only the construction of the apartment complex failed to reach its completion by the end of 2019, but it was also later realized, that there was in fact no construction work to begin with. It is stated that upon gaining knowledge, complainants immediately contacted

respondent no.1 seeking cancellation of the said booking and demanding the refund of the amount paid by complainants under the terms of the agreement.

- xiii. That the complainants wants to point out the facts that despite repeated communications via emails and phone calls by regarding the breach of agreement by respondent no.1, they did not issue notice of cancellation of booking, nor did respondent no.1 refund the amount as per the terms and conditions of the agreement. It is further submitted that respondent no.1, in order to buy more time, assured complainants that the amount paid by them had been wrongfully appropriated and the same would be duly returned by July 2020 to complainants.
- xiv. That the respondent no.1 not only miserably breached the terms of agreement, but even failed to commence the construction of the said apartment building even by August 2020, let alone completing the construction within the stipulated time in accordance with the agreement. It is further submitted that complainants on various dated continued to attempt to communicate with respondent no.1 seeking to cancellation of booking and claiming the refund owing to the breach of terms and conditions of the agreement, however, the same fell on deaf ears.
- xv. That it is pertinent to mention herein that complainants left with no other option, personally met a representative of the respondent no. 1 at the office of respondent no.1 at Sun City Trade Tower, sector 21, Gurgaon on 21<sup>st</sup> October 2021 and sought the status of the request for cancellation of booking and refund. However, to the utter shock of complainant, it was discovered during this meeting that the project in question was not even registered before the Hon'ble HRERA.
- xvi. That the complainants humbly states that it is clear from the actions of respondent no.1 that they never had the intention of completing the construction of the said apartment complex, and simply invited applications



for allotment to wrongfully gain from hapless homebuyers such as complainants. It is further submitted that respondent no. 1 have audaciously gained wrongfully at the cost of complainants who had paid the respondent no. 1, the aforesaid sum of Rs.11,50,068/- and have further been having to pay interest since 2017 to the respondent No. 2, HDFC Ltd. which was liable to be borne by respondent no.1 as nothing was ever sanctioned in favor of complainants. It is further pertinent to mention herein that the entire arrangement under the subvention scheme would show that it is only respondent no.1 who got benefit of the abovementioned home loan passed under subvention plan and complainant had been forced to pay interest to respondent no. 2, whereas it was respondent no.2 duty to ask the interest on the disbursed amount from the respondent no.1.

- xvii. That the complainants herein humbly submits that due to casual and cavalier attitude of respondent no.1, complainants have been forced to pay interest to respondent no.2 and further due to said unreasonable demand of interest from the respondent no. 2, the financial credibility has been further tarnished in the market. It is further submitted that respondent no.2 has now started raising further demand of interest and EMI which is causing more hardship on the complainants and complainants has no liability to pay the interest as the money under the subvention scheme was disbursed in favor of respondent no.1.
- xviii. That it is relevant to mention that the complainants vide legal notice 08.11.2021 demanded refund of the sum of Rs.11,50,068/- from the respondent no. 1 paid along with all the interest paid to the respondent no.2 bank, but the respondent again choose to ignore the said notice.
- xix. That the complainants further aggrieved by the coercive actions of the respondent no.2 was constrained to prefer a representation dated 09.12.2021 to the respondent no.2 intimating about the abject breach of terms of the said

agreement on part of the respondent no.1, thereby estopping the respondent no.2 from taking any further coercive action against the complainants. However, to the utter shock of the complainant the respondent no.2 issued a frivolous reply dated 24.12.2021 to the complainants whereby the respondent no. 2 merely denied its obligations under the Subvention scheme causing further harassment for the complainants.

- xx. That the complainants stated that till date complainants have paid a total sum of Rs.1,10,344/- interest to the respondent no.2 owing to the fraudulent actions of respondent no.2. It is further submitted that the malafide intentions of respondent no.1 of cheating and defrauding complainants are further buttressed by the fact that respondent no.1 did not establish any communication with complainants despite multiple attempts but also the fact that respondent no.1 had enticed and defrauded the other homebuyers on the same false pretense.
- xxi. That the complainants submits that due to above mentioned acts and omissions, complainants are liable to refund the sum of Rs.11,50,068/- along with Rs. 1,10,344/- paid by complainants to the respondent no.2, as interest along with exemplary damages and interest @ 18% payable from the date the amount became due till the date of actual realization of the aforesaid amount.
- xxii. That it is submitted that respondent no.1 being the builder and the respondent no.2 being a bank who has disbursed loan in favor of respondent no.1 for the construction of the flat, steps into the shoe of assignee as the flat is question is already mortgaged in favor of respondent no.2.
- C. Relief sought by the complainant:**
4. The complainant has sought following relief(s).
- I. Direct the respondents no.1 to **refund** the entire amount paid by the complainant along with prescribed interest from the date of respective deposit till its actual realization.

- II. Direct the respondent no. 2 and respondent no. 1 to jointly and/or severally to refund the interest which is being levied on the Complainants due to culpability of respondent no.1 as nothing has ever been disbursed in favor of complainants.
  - III. Direct the respondent no. 1 to pay interest at the rate of 14% on the Rs.11,50,068/- paid as booking/upfront amount.
  - IV. Direct the respondent no. 1 to pay a compensation of Rs.1 lacs towards legal expenses incurred by the complainant.
  - V. Direct the respondent no. 1 to pay an amount of Rs.2 lacs to the complainant towards mental and physical harassment.
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 and 2**
6. **Written submission by respondent no. 1** (However, the defence of respondent no.1 was struck off vide order dated 14.09.2023, 26.10.2023, 25.01.2024 & 19.03.2024 for non-filing of written reply after several opportunities)
- i. That the tower in which the complainant had booked the unit is owing to certain force majeure circumstances, not ready. However, tower-H & J are ready and the construction of a building structure comprising fourteen floors is completed. The necessary electrical wiring and works pertaining to plumbing and sanitation are also ready. It is submitted that the promoter would be in a position in all probability to offer possession of the flats in tower-H in 4-5 months from the date of filing of the present reply. The promoter has incurred and utilized 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 the 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.

- ii. That the promoter is willing to adjust and give allotment and possession of the unit to the complainant in the said H or J towers where the construction is now 90% completed and the promoter would be able to deliver the unit in 8-9 months.
- iii. The statement of objects, reasons and preamble of the Act makes it manifestly clear that it is not only the interest of the consumers of the real estate sector which the Act seeks to protect and safeguard but also the promotion of the real estate with a view to ensure sale of plot, apartment etc. The Authority is empowered not only to monitor the projects but also to ensure their timely completion where projects are held up or stopped and to take steps so the same are completed in time and in the interest of the allottees who are awaiting possessions of the units in the project. It is not out of place to mention here that due to pending registration of the project with the Authority the promoter since the implementation of the Act was unable to raise funds from its existing customers nor it could raise finance by selling unsold inventory. The shortage of funds to enable rapid construction had been a determining factor for the delay as it slowed down the pace of construction considerably. It is reiterated that the Promoter is undertaking costs of constructions from its own pockets and is not demanding anything from the allottees, an act which is unprecedented by any other real estate company and it is now for this Authority to balance the interest of the consumers and the promoters harmoniously to achieve the maximum good and benefits.
- iv. **FORCE MAJEURE CIRCUMSTANCES**: That M/s RMS Estate Pvt Ltd (Now known as "Agrante Developers Pvt Ltd") was granted development license

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.

- That subsequent to grant of the above license the promoter had executed a development/collaboration agreement dated 23.05.2013 with M/s Sarvaram Infrastructure Pvt Ltd ("Collaborator"). An area admeasuring 10.218 acre out of the aforesaid total land was handed to the collaborator with absolute and exclusive rights for the purposes of developing the same. It is pertinent to mention here that M/s Sarvaram Infrastructure Pvt Ltd himself or through his nominee had proposed to build a separate project namely "ELACASSA" on that parcel of land with which the promoter has no association whatsoever. Thus, resultantly there were two projects being developed under the same license by two distinct colonizers with rights and liabilities strictly framed under the said collaboration agreement. It would not be out of place to mention here that such agreements were in common practice then.
- The development/collaboration agreement dated 23.05.2013 stipulated strict liability on M/s Sarvaram Infrastructure Pvt Ltd or his appointed nominee to be in compliance of all statutory compliances, bye-laws applicable as per HUDA, DTCP etc. as applicable for his parcel of land. M/s Sarvaram Infrastructure Pvt Ltd was further under the obligation to remit all the dues accrued towards governmental authorities arising under the agreement for the portion of land with the collaborator under the agreement.
- That M/s Sarvaram Infrastructure Pvt Ltd however, started defaulting in his compliance of statutory duties and contractual obligations. The promoter had on several occasions issued written requests and even served Legal Notices to M/s Sarvaram Infrastructure Pvt Ltd to rectify the said defaults *inter-alia*

payment of EDC and IDC charges. The promoter had taken every step to ensure compliance of statutory obligations as non-compliance by M/s Sarvaram Infrastructure Pvt Ltd would directly prejudice the Promoter's project completion having the common license. It is submitted that the license for the land lapsed due to non-renewal and it cannot be renewed until outstanding EDC & IDC charges along with penalty is not cleared for the total land jointly by the Promoter and M/s Sarvaram Infrastructure Pvt Ltd in proportion to their respective projects. Needless to mention here that the Promoter is ready and willing to pay its share of EDC and IDC charges for the purposes of renewal of license.

- That the bona-fide of the promoter can be further gathered by the fact that the promoter is running post to pillar and has filed a representation before Financial Commissioner (Haryana) seeking a bifurcation of the license in two parts for two projects respectively and pursuing the same sincerely. It is pertinent to mention that only after renewal of license the promoter will be competent to obtain RERA Registration. The promoter has undertaken every possible measure in his armor to salvage the project and complete the same. The process for bifurcation of license is still under consideration.
- That the promoter has filed for HRERA registration vide order letter dated 09.08.2018 of its project on the said land which was to be with the applicant as per the agreement. The fate of the application is dubious and is still pending as the aforesaid license has lapsed and not existing anymore as on date and further, EDC and IDC charges are unpaid which were to be paid by the M/s Sarvaram Infrastructure Pvt Ltd. It is pertinent to mention here that the directors of the Sarvaram Infrastructure Pvt Ltd are lodged in jail presently. The Promoter is crippled in the sense that he is unable to correspond with them which could perhaps lead to any fruitful results. Moreover, Insolvency

Proceedings are pending against them before Hon'ble National Company Law Tribunal.

- 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. 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 schemes 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 cooperation of its members.
- v. That lastly it is submitted that the crisis of COVID-19 pandemic has also given a blow to smooth working of the promoter. It is pertinent to mention here that 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 construction work which added to further delay. It was after sincere efforts of the promoter that the workforce could be again mobilized and presently the works are being carried out at the site.
- vi. It is submitted that complainant had invested in the said project after approaching the respondent no.1 and after getting themselves assured regarding the project. It is further submitted that as per clause 'k' of the agreement dated the timely completion of the project is subject to force majeure.

- vii. That respondent no.1 has paid Rs.28,34,661/- as pre-EMI and Rs.9,23,000/- as the upfront interest which was deducted at the time of disbursal of loan amount by the bank to respondent no.1. That respondent no.1 has paid huge amount of Rs.37,57,661/- as interest.
- viii. It is submitted that as per clause '13' of the quadripartite agreement dated 30.10.2014 the borrower/complainant has subrogated all its rights to claim refund in the event of cancellation of the Agreement to Sell/Buyer Agreement in favour of the lender.
- ix. That the unit of the complainant is not ready due to force majeure circumstances however, the respondent no.1 is willing to adjust and give allotment and possession of the unit to the complainant in the said H or J towers where the construction is now 90% completed and the promoter would be able to deliver the unit in 8-9 months.
- 7. Reply by respondent no.2:**
- i. That the respondent No. 2 i.e., Housing Developing Finance Corporation Limited ("HDFC Ltd."), is a company incorporated under the Companies Act 1956, and registered with the National Housing Bank as a Housing Finance Company. The Respondent No. 2 has its registered office at Raman House, H.T. Parekh Marg, 169, Backbay Reclamation, Mumbai-400020, Maharashtra and has its Northern Regional Office at The Capital Court, Olof Palme Marg, Outer Ring Road, Munirka, New Delhi-110067. The respondent no.2 is filling the present reply through its authorized signatory Naman Jain.
- ii. That the present complaint suffers from the basic lacuna of misjoinder or non-joinder of parties and HDFC LIMITED has been wrongly made the party to the complaint because it is neither a necessary nor a proper party in this case. The present complaint may thus be dismissed only on this point.
- iii. That the subject matter of the present complaint is a retail loan sanctioned and disbursed to the complainants, repayment of which is absolute and express



liability of the complainants. Any dilution to the agreed terms of home loan agreement and the tripartite agreement is unwarranted in law and any such assignment of loan as contended by the complainants is misconceived under law and hence may not be allowed.

- iv. That the mandate of Real Estate (Regulatory and Development) Act of 2016 is to protect the interest of home-buyers from the delays and defaults on part of the errant developers. The subject matter of the present complaint has arisen due to the alleged default on part of respondent no.1 in timely construction and handover of the project. However, the complainants have decided to wrongly impleaded HDFC Ltd. as respondent no. 2. The complainants have chosen to ignore the fact that the relationship of HDFC Ltd. and the complainants have arisen out of a loan agreement which has no correlation whatsoever with the builder. This Authority lacks jurisdiction to issue any directions or orders to any other person or entity who is not a promoter, real estate agent or allottee and respondent no.2 being the lender, does not fall under any of the aforementioned categories. The instant complaint is liable to be dismissed on account of mis-joinder of parties qua the respondent no.2. The domain of services provided by the respondent no.2 is completely separate and independent of respondent no.1 and hence the complaint ought to be dismissed as against respondent no.2 on account of lack of jurisdiction and lack of cause of action.
- v. Also, the scope of functioning of the respondent no. 2 falls outside the domain of this Authority. In addition to this the complainants have failed to disclose any separate cause of action against the respondent no. 2. On the grounds as stated, the Authority may be pleased to delete the respondent no. 2 from array of parties and/or dismiss the instant complaint as against respondent no.2.
- vi. That respondent no. 2 i.e., HDFC Ltd is no way concerned with the present complaint except that it had sanctioned and disbursed the Home Loan in terms

and conditions of the Home Loan Agreement (Loan A/c No 612660981) and Quadripartite Agreement dated 30.10.2014.

- vii. That subvention is an understanding/agreement between the complainant and the respondent no.1, wherein the builder assumes the liability of the borrower for a certain period of time towards repayment of the loan in form of EMI/Pre-EMI, while primary liability being of the borrowers/complainants. It is further submitted that the complainants/borrowers and respondent no.1 came up with the above stated arrangement whereas the answering respondent had only "informed" of the same on a later date. **The relevant portion of clause 4 of the Quadripartite Agreement dated 30.10.2014** is reproduced herein below:

*"4...The Borrower has informed HDFC of the scheme of arrangement between Borrower and the Builder in terms whereof the builder hereby assumes the liability of payments under the loan agreement as payable by the borrower to HDFC for **from date of first disbursement including month od disbursement** (the period to be referred to as the "Liability and the liability to be referred to as "Assumed Liability"). It is however agreed that during the liability period the repayment liability is joint and several by and between the Borrower and the Builder. The assumption of liability by the Builder is no manner whatsoever releases, relinquishes and/or reduces the liability of the Borrower and that same shall not be affected in any manner on account of any differences and/or dispute between the Borrower and the Builder and/or the Landowner under the arrangement between them."*

- viii. That the housing loan was granted by HDFC against the mortgage of the property flat-1705, floor-17<sup>th</sup>, Beethovens 8- tower L, sector-107, Village Dharampura, Gurugram, Haryana and the same was availed by the complainant in order to pay the balance amount of total consideration to the builder/respondent no.1. That the disbursal was made inly after the disbursal form was submitted by the complainants instructing the respondent no.2 to disburse the loan amount to respondent no.1. Respondent no.2 has acted in a

limited capacity of the financier as per the loan agreement and it is nowhere related to construction of the project.

- ix. However, if cancellation is made allowed by the Authority and a refund is order, it is submitted that the refund first to be paid to the answering respondent i.e., HDFC Ltd. to adjust the loan account of the complainant. The complainants have duly subrogated his rights unconditionally and irrevocably to refund the loan amount with interest under clause 13 and 14 of the Quadripartite Agreement. Since the loan availed by the complainants is currently default and the answering respondent still has to recover an amount of Rs.31,01,855/- as on 17.05.2023, the respondent no.2 is well within its rights to raise the demand of EMI's from the complainants as per loan agreement.
- x. That if any refund/compensation if allowed by the Authority, first to be refunded/paid to the respondent no.2 i.e., HDFC Limited to be adjusted to the loan account of complainant. As it is absolute liability of the complainants to repay the borrowed amount along with applicable interest to the respondent no.2.
8. That 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 these undisputed documents and submission made by the parties.

#### **E. Jurisdiction of the authority**

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

#### **E.I Territorial jurisdiction**

10. 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**

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. 2021-2022 (1) RCR (Civil), 357 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 case 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 complainants.**

**G.I Direct the respondents no.1 to refund the entire amount paid by the complainant along with prescribed interest from the date of respective deposit till its actual realization.**

**G.II Direct the respondent no. 2 and respondent no. 1 to jointly and/or severally to refund the interest which is being levied on the complainants due to culpability of respondent no.1 as nothing has ever been disbursed in favor of complainants.**

**G.III Direct the respondent no.1 to pay interest at the rate of 14% on the Rs.11,50,068/- paid as booking/upfront amount.**

15. The above mentioned reliefs no. G.I, G.II and G.III as sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

16. The subject unit was allotted to the complainants by the respondent no.1 for a total sum of Rs.1,01,26,900/-. A builder buyer agreement was executed between the respondent no.1 and complainants on 30.10.2014. The complainant on the basis of the agreement started making various payments against the allotted unit. Complainants were sanctioned a loan amount of Rs.86,00,000/- under home loan subvention scheme by Housing Developing Finance Corporation Limited ("HDFC Ltd.") and Rs.34,50,204/- was disbursed by R.2 i.e., HDFC Limited bank directly to respondent and Rs.11,50,068 paid by complainant to respondent. Thus, in total complainant has paid Rs.46,00,272/- to the respondent against the allotted unit. The complainants submitted that HDFC Ltd. is demanding Pre-EMI/EMI from the them for which they are not liable as per agreement. Complainant has already paid Rs.1,10,344/- as interest to the bank on behalf of respondent **The relevant portion of clause 4 of the Quadripartite Agreement dated 30.10.2014 is reproduced herein below:**

*"4...The Borrower has informed HDFC of the scheme of arrangement between Borrower and the Builder in terms whereof the builder hereby assumes the liability of payments under the loan agreement as payable by the borrower to HDFC for \_\_\_ from date of first disbursement including month od disbursement (the period to be referred to as the "Liability and the liability to be referred to as "Assumed Liability"). It is however agreed that during the liability period the repayment liability is joint and several by and between the Borrower and the Builder. The assumption of liability by the Builder is no manner whatsoever releases, relinquishes and/or reduces the liability of the Borrower and that same shall not be affected in any manner on account of any differences and/or dispute between the Borrower and the Builder and/or the Landowner under the arrangement between them."*

17. The Authority is of the view that the respondent builder as per clause 4 of the Quadripartite agreement is liable for payments under the loan agreement as payable by the borrower to HDFC from date of first disbursement including month of disbursement. Further the due date for completion of the project as per the buyer's agreement comes out to be 30.10.2018 which has already expired, and the project is still not ready. Thus, the respondent builder neither

paid all the Pre-EMI/EMI nor completed the project as per the agreement. So, keeping in view the fact that the allottee complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

18. The due date of possession as mentioned in terms of agreement to sell in the table above is 30.10.2018 which is taken from the date of execution of agreement to sell in absence of allotment letter and there is delay of 3 years 7 months 25 days on the date of filling of the complaint.
19. The occupation certificate/completion certificate of the project where the unit is situated has still not obtained by the respondent-promoter. The authority is of view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by the 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 services. 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..."*
20. Further, in the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357** 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

*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 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.*

21. The respondent-promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per buyer's agreement 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 buyer's agreement or duly completed by the date specified therein. Accordingly, the promoter is liable to the Allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
22. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 32 (1) of the Act of 2016.
23. The authority hereby directs the respondent no.1 to return the amount received by him i.e., Rs.46,00,272/- with interest at the rate of 10.95% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on 09.07.2024 + 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 abid.
24. While refunding the amount paid by the complainant to the respondent builder the amount received from the financial institution i.e., HDFC Limited



would be charge and the same would be paid to the institution respondent no.2 before paying any amount to the complainant against the total amount.

**G.IV Direct the respondent to pay Rs.1,00,000/- for litigation expenses.**

**G.V Direct the respondent to pay Rs.2,00,000/- on account of as mental and physical harassment**

25. The above-mentioned reliefs no. G.IV and G.V as sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

26. The complainants are also seeking relief w.r.t litigation expenses and compensation on account of harassment. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

#### **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 no.1 is directed to refund the amount received by him from the complainant alongwith interest at the rate of 10.95% p.a. as prescribed under rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of realisation.



- ii. The respondent is further directed that out of total amount so assessed, the amount paid by the bank i.e., respondent no.2 be refunded first in the bank.
- iii. The balance amount with the respondent builder after paying to the financial institution be refunded to the complainant alongwith interest at the prescribed rate of interest.
- iv. The respondent no.1 is directed to get the NOC from the respondent no.2 and give it to the complainant within period of 30 days of this order.
- v. It is also noted by the Authority that the project of the respondent falls under the category of 'ongoing projects' under section 3(i) of the Act of 2016. The promoter has prima facie violated the above provision of the Act, 2016 and is liable to be proceeded against under section 59 of the Act, 2016. The Planning branch of the Authority is directed to initiate action against the promoter in this regard within 30 days of passing of this order.

28. Complaint stands disposed of.

29. File be consigned to registry

(Demitted Office)

(Sanjeev Kumar Arora)

Member

**HARERA**  
**GURUGRAM**

(Ashok Sangwan)

Member

(Arun Kumar)

Chairman

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 09.07.2024**