

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

Complaint no.: 1905 of 2022
Date of filing: 10.05.2022
Date of decision: 08.11.2024

Sudhanshu Bhasin
R/O: - 1-40 Jangpura Extention Ground Floor , New
Delhi -110014

Complainant

Versus

M/s Citra Properties Ltd.
Regd. Office at: - M 62 & 63, First Floor, Cannaught
Place New Delhi -110001

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Shri Pankaj Yadav
Shri Rahul Yadav

Counsel for the Complainant
Counsel for the Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 provision 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed below in a tabular form:

S.No.	Particulars	Details
1.	Name and location of the project	"Indiabulls One 09", Sector - 109, Gurugram
2.	Project area	5.9 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	43 of 2012 dated 05.05.2012 valid up to 04.05.2023
5.	Name of the Licensee	Citra Properties
6.	RERA registered/ not registered and validity status	Registered No. - 298 of 2017 Valid up to 31.05.2014
7.	Unit no.	504, 5 th floor (Page no. 18 of complaint)
8.	Unit admeasuring	543 sq. ft. (Page no. 18 of complaint)
9.	Date of flat buyer's agreement	31.03.2016 (Page no. 17 of complaint)
10.	Possession Clause	<i>23. The Developer shall endeavour to complete the construction of the Unit within a period of forty eight months with a six months grace period thereon, from the date of execution of the Buyers Agreement subject to timely payment by the Buyers) of the Sale Consideration payable according to the Payment Plan applicable to him her them or as demanded by the Developer. The Developer on completion of the construction development shall issue final call notice to the Buyers), who shall within 15 days thereof, remit all dues and take possession of the Unit in the</i>

		<p>eyent of his her their its failure to take possession of the Unit within the stipulated time for any reason whatsoever, he/she shall be liable to bear all taxes, levies, outflows and » maintenance charges/ cost and any other levies on account of the allotted Unit along with interest and penalties on the delayed payment, from the dates these are levied/made applicable irrespective of the fact that the Buyer(s) has/have not taken possession of the Unit or has/have not been enjoying benefit of the same. The, Buyer(s) in such an eventuality shall also be liable to pay the holding charges@ Rs. 7 per sq ft (of the Super Area) per month to the Developer, from the date of expiry o said 30 days till the time possession is actually taken over by the Buyer (s).</p>
11.	Due date of possession	31.09.2020 (calculated as per possession clause including grace period of 6 months)
12.	Total sale consideration	Rs. 33,80,483/- (as per BBA on page no. 21 of complaint)
13.	Total amount paid by the complainant	Rs. 10,37,843/- (as per customer ledger at page no. 43 of complaint dated 24.04.2019)
14.	Occupation certificate	19.07.2024 (As per DTCP website)
15.	Offer of Possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- a) That the complainant booked a commercial unit no. 504 on 5th floor and measuring 543 sq. ft. in the respondent's project namely "Indiabulls One

09", Sector 109, Gurugram, Haryana for a basic sale consideration of Rs.33,80,483/- and the buyer's agreement for the said unit was executed on 31.03.2016 between the parties and the project was to be delivered in 2019.

- b) That the complainant has paid an amount of Rs.10,37,843/- against the sale consideration. However, the respondent has falsely cited reasons such as the Covid-19 pandemic for the delay in completing the project. It is important to note that the respondent did not fulfill their obligations and complete the project even prior to the onset of the Covid-19 pandemic, indicating that the delay cannot be attributed to the pandemic.
- c) That the respondent has falsely circulated satisfaction forms via email and collected responses from buyers without engaging in proper two-way communication. Additionally, the respondent used inappropriate methods to seek approvals for project extensions, bypassing necessary dialogue and transparency with the buyers. The respondent failed to respond to the queries raised by the buyers regarding the project. Moreover, the respondent has not provided any updates or details about the stage-wise schedule for the completion of the project, further demonstrating their failure to perform their duties and responsibilities.
- d) That despite paying all the payments the respondent failed to deliver the possession of the said unit as per the agreement executed between the parties .Hence this complaint is filed by the complainant to claim for refund of the amount paid along with interest.

C. Relief sought by the complainant.

4. The complainant has sought following relief:
 - i. Direct the respondent to refund the total amount paid by the complainant along with the prescribed rate of interest.

D. Reply by the respondent.

5. The respondent contested the complaint on the following grounds:-

- a) That the present complaint of the complainant is liable to be dismissed on the sole ground for being filed improperly and not as per the prescribed format i.e. FORM-CRA-II as prescribed by the "Haryana Real Estate Regulatory Authority Gurugram Haryana". As such the present complaint is liable to dismissed and rejected.
- b) That the instant compliant filed by the complainant is outside the purview of this Hon'ble Authority as the complainant looking into the financial viability of the project and its future monetary benefits willingly approached the respondent for provisional reservation of a commercial shop/ unit in the project in question, and the complainant after making requisite due diligence on his own applied for provisional reservation of a commercial unit by signing an application form dated 17.08.2015.
- c) That the complainant at the time of provisional reserving the subject shop/ unit had opted for possession linked payment plan (PLP) which is as below:

On Booking	Rs.2 lacs
Within 30 days of advance towards booking	10% of sale price less 2 Lacs
Within 90 days of advance towards booking	20% of Sale Price
On Completion of Super Structure or 18 months (whichever is later)	40% of Sale Price
On offer of possession	30% of Sale Price + Maintenance Security

Accordingly, as per the payment plan opted by the complainant he has only paid an amount of Rs.10,37,843/- out of the total sale consideration of Rs.33,80,483/- As such an amount of Rs.25,38,571/- remains due payable amount to be paid by the complainant upon offer of possession.

- d) That the complainant post understanding the terms & conditions of the buyer's agreement voluntarily executed a buyer agreement with the respondent on 31.03.2016. As per the agreement duly executed between the complainant and the respondent, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional unit booked by the complainant, the same shall be adjudicated through Arbitration mechanism as detailed in the clause 56 in the agreement. The dispute, if any, between the parties are firstly arising out of the said duly executed buyer's agreement and it was specifically agreed to refer the dispute, if any, qua the agreement to Arbitration. Thus, the complainant is contractually and statutorily barred from invoking the jurisdiction of this Hon'ble Authority.
- e) That the respondent also draws attention of this Hon'ble Authority to Section 4(2)(1)(C) of The RERA Act, 2016 which enables the developer / promoter to revise the date of completion of project and hand over possession. that it is pertinent to mention herein that as per the revised RERA Registration no. 298 of 2017/7(3)/2022/6 having Unique no. RERA-GRG-PROJ-987-2021 is extended till 04.05.2023 i.e. the completion date as declared by the promoter/ respondent.
- f) That the present complaint is not maintainable and the period of delivery as defined in clause 23 of buyer's agreement is not sacrosanct as in the said clause, it is clearly stated that "the developer shall endeavor to complete the construction of the said building/unit" within the stipulated time. This clause clearly shows that the delivery of the unit in question

was subject to timely payment of the installments towards the basic sale price.

- g) That in view of the outbreak of COVID-19, the Government of India took various precautionary and preventive steps and issued various advisories, time to time, to curtail the spread of COVID 19 and declared a complete lockdown in India, commencing from 24.03.2020 midnight thereby imposing several restrictions mainly non-supply of non-essential services during the lockdown period, due to which all the construction work got badly affected across the country in compliance to the lockdown notification. Additionally, the spread of COVID 19 was even declared a 'Pandemic' by World Health Organization on March 11, 2020, and Covid-19 got classified as a "Force Majeure" event, considering it a case of natural calamity i.e. circumstances to be beyond the human control, and being a Force Majeure period. Further, the Haryana Real Estate Regulatory Authority Gurugram also vide its circular / notification bearing no. No.9/3-2020 HARERA / GGM (Admn), dated 26.05.2020 extended the completion date / revised completion date or extended completion date automatically by 6 months, due to outbreak of Covid-19.
- h) That due to the notification by the Central Government with regard to demonetization, the implementation of the project in question got delayed on account of the issues faced by contractor due to the said notification of Central Government. The said event of demonetization was beyond the control of the respondent company, hence the time period for offer of possession should be deemed to be extended for 6 months on account of the above. Several other allottees were in default of the agreed payment plan, and the non-payment of instalments delayed the construction of the entire project.

- i) That the complainant has miserably failed to make a case against the respondent. It is submitted that the complainant has merely alleged in his complaint about delay on part of the respondent in handing over of possession but have failed to substantiate the same.
6. All other averments made in the complaint were denied in toto.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. 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 allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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.

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 complainants 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** 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. (supra)***, the authority has the jurisdiction

to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Finding on objections raised by the respondent

F.I. Objection regarding complainant is in breach of agreement for non- invocation of arbitration.

14. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

56. That any dispute, controversy or claim arising between the parties to this Agreement out of or relating to this Agreement, including their respective rights and obligations contained herein, or the breach, termination, or validity of this Agreement, or relating to interpretation of any provisions herein, such differences or disputes or matters shall be submitted for arbitration to a sole Arbitrator appointed by the Developer, who shall be a retired judge of any competent court of jurisdiction, who shall decide the same in accordance with the Arbitration and conciliation Act, 1996 and any other statutory modifications or re-enactment thereof. The language to be used in the arbitration shall be English. The arbitration proceedings shall be held in Delhi. Each party further agreed that it shall not commence or maintain any suit or legal proceedings concerning a dispute hereunder until such dispute has been finally settled in accordance with the arbitration procedure provided for herein. The courts at Gurugram alone shall have the jurisdiction over the disputes arising out of this agreement.

15. The respondent has submitted that the complaint is not maintainable for the reason that the agreement/application form contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which

falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

16. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. Further, while considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court in *case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018* has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. Therefore, in view of the

above judgements and considering the provision of the Act, the authority is of the view that complainant is well within his right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.II Objection regarding the force majeure.

17. The respondent-promoter raised the contention that due to the notification by the Central Government with regard to demonetization, the implementation of the project in question got delayed on account of the issues faced by contractor due to the said notification of Central Government. The said event of demonetization was beyond the control of the respondent company, hence the time period for offer of possession should be deemed to be extended for 6 months on account of the above. Several other allottees were in default of the agreed payment plan, and the non-payment of instalments delayed the construction of the entire project. Further, the respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic.
18. It is pertinent to mention here that flat buyer's agreement was executed between the parties on 31.03.2016. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 31.09.2020. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid

reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to refund the total amount paid by the complainant along with the prescribed rate of interest.

19. The respondent in its reply stated that the complainant in the present complaint has filed the CRA improperly and has not filed it as per the prescribed format i.e. FORM-CRA-II as prescribed by the "Haryana Real Estate Regulatory Authority Gurugram Haryana. Following the same the complainant filed the Amended CRA on 04.12.2023. Vide proceedings dated 12.07.2024, and 16.08.2024 the respondent was given the opportunity to file the reply as per the amended CRA. However the respondent failed to submit any response within the stipulated time. Hence, the Authority is proceeding with the reply of the main complaint filed by the respondent.
20. That the complainant booked a unit no. 504 on 5th floor admeasuring 543 sq. ft. in the respondent's project namely "Indiabulls One 09", Sector 109, Gurugram, Haryana for an agreed sale consideration of Rs.33,80,483/- against which complainant has paid an amount of Rs. 10,37,843/-and the respondent has failed to hand over the possession till date.
21. That the complainant intend to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso reads as under:

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 of 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)

22. As per clause 23 of the agreement provides for handing over of possession and is reproduced below:

23. The Developer shall endeavour to complete the construction of the Unit within a period of forty eight months with a six months grace period thereon, from the date of execution of the Buyers Agreement subject to timely payment by the Buyers) of the Sale Consideration payable according to the Payment Plan applicable to him her them or as demanded by the Developer. The Developer on completion of the construction development shall issue final call notice to the Buyers), who shall within 15 days thereof, remit all dues and take possession of the Unit In the event of his her their its failure to take possession of the Unit within the stipulated time for any reason whatsoever, he/she shall be liable to bear all taxes, levies, outflows and » maintenance charges/ cost and any other levies on account of the allotted Unit along with interest and penalties on the delayed payment, from the dates these are levied/made applicable irrespective of the fact that the Buyer(s) has/have not taken possession of the Unit or has/have not been enjoying benefit of the same. The, Buyer(s) in such an eventuality shall also be liable to pay the holding charges@ Rs. 7 per sq ft (of the Super Area) per month to the Developer, from the date of expiry o said 30 days till the time possession is actually taken over by the Buyer (s).

23. On consideration of the abovementioned clause, 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 23 of the agreement dated 31.03.2016, the possession of the subject unit was to be delivered within a period of 48 months with an additional grace period of 6 months from the date of execution of the buyer's agreement. Accordingly, the due date of possession comes out to be 31.09.2020 and there is a delay of 2 years on the date of filing of complaint to handover the possession of the allotted unit.

24. The occupation certificate/part occupation certificate of the buildings /towers where allotted unit of the complainant is situated was received after filing of complaint by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the buyer's agreement. The complainant has already wished to withdraw from the project.
25. Further, vide proceedings dated 08.11.2024, the counsel for the respondent stated at bar that occupation certificate has been obtained on 19.07.2024 from the competent authority and the complainant is seeking refund of the deposited amount and the counsel for the respondent agrees to refund the amount along with interest.
26. Keeping in view the fact that the allottee/complainants wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
27. **Admissibility of refund at prescribed rate of interest:** The complainants are seeking refund amount at the prescribed rate of interest on the amount already paid by them. However, allottees intends 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.

28. 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.

29. 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., 08.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

30. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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—
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 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;"*

31. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022. It was observed 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."*

32. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoters are 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 them in respect of the unit with interest at such rate as may be prescribed.

33. The authority hereby directs the promoter to return the amount deposited by the complainant along with interest at the rate of 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 its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the Authority

34. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations

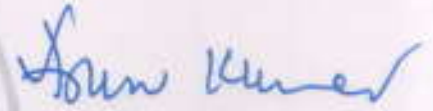
cast upon the promoter as per the function entrusted to the authority under section 34(f):

- I. The respondent/promoter is directed to refund the amount deposited by the complainant along with prescribed rate of interest @ 11.10% p.a. from the date of each payment till its realization as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.
- II. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

35. Complaint stands disposed of.

36. File be consigned to registry.

Dated: 08.11.2024



Arun Kumar
(Chairman)
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM