

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

Complaint no.: 7877 of 2022
Date of first hearing: 28.12.2022
Date of order 13.02.2025

Chandan Meet Singh Sethi
R/o: - 603, Akashdeep Building, 26A,
Barakhamba Road, Connaught Place, New
Delhi-110001

Complainant

Versus

1. M/s Imperia Structures Limited
2. Brajinder Singh Batra, Joint Managing
Director of R1
3. Harpreet Singh Batra, Managing
Director of R1
4. Ram Singh, Director of R1
5. Karaj Singh, Director of R1

Respondents

Regd. office at: A-25, Mohan Cooperative
Industrial Estate, Mathura Road, New Delhi-
110044

Corporate office at: Plot No. 14, Ground
Floor, Sector- 44, Institutional Area,
Gurugram- 122003 Haryana

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Manish Khurana (Advocate)
Sh. Geetansh Nagpal (Advocate)

**Complainant
Respondents**

ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section

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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 thereunder or to the allottee 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. No.	Particulars	Details
1.	Project name and location	"The Esfera" at sector 37C, Gurgaon, Haryana
2.	Project area	17 acres
3.	Nature of project	Group housing Colony
4.	RERA registered/not registered	352 of 2017 dated 17.11.2017 valid up to 31.12.2020 plus six months covid-19 extension i.e., 30.06.2021
5.	Extension of RERA registration	RC/ REP/HARERA/GGM/ 352 of 2017 /7(3)/2022/04 dated 30.08.2022
6.	Validity of extension	01.07.2021 to 30.06.2024
7.	DTCP license no.	64 of 2011 dated 16.07.2011
	Valid up to	15.07.2024
	Name of Licensee	M/s Prime IT Solutions Pvt. Ltd. and 4 others
8.	Date of execution of MoU	29.05.2012 (As per page no. 23 of the complaint)
9.	Allotment letter	06.06.2013 (As per page no. 32 of the complaint)
10.	Date of execution of apartment buyer's agreement	17.07.2013 (As per page no. 38 of the complaint)
11.	Unit No.	1801, 18 th Floor, Block-A (As per page no. 40 of the complaint)
12.	Unit area admeasuring	4840 sq. ft. (super area)

		(As per page no. 40 of the complaint)
13.	Assured return clause	4. That the developer will pay Rs.2,40,000/- per month as an assured return to the allottee(s) from 19.06.2012 till offer of possession of the said unit. (As per page no. 27 of the complaint)
14.	Possession clause	10.1 Schedule for possession of the said apartment The developer/company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clauses 11.1, 11.2, 11.3 and clause 41 or due to failure of intending allottee(s) to pay in time the price of the said apartment along with other charges and dues in accordance with the schedule of payments given in Annexure F or as per the demands raised by the developer/company from time to time or any failure on the part of the intending allottee(s) to abide by all or any of the terms or conditions of this agreement. (As per page no. 55 of the complaint)
15.	Due date of delivery of possession	17.01.2017 (Note: Due date to be calculated three and half years from the date of execution of apartment buyer's agreement i.e., 17.07.2013)
16.	Total consideration	Rs.3,62,78,765/- (As per SOA on page no. 13 of the reply)
17.	Total amount paid by the	Rs.2,65,41,600/-

	complainant	(As per SOA on page no. 14 of the reply)
18.	Occupation certificate	12.07.2024 (As per website of DTCP)
19.	Offer of possession	17.07.2024 (As per page no. 9 of the reply to application under section 36 filed by the complainant)
20.	Legal notice for payment of outstanding assured return from 01.04.2018	06.06.2018 (As per page no. 114 of the complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- I. That the complainant, Mr. Chandanmeet Singh Sethi was born and brought up in India and has deep ties with his relatives and immediate family members who are living in India. The complainant is an NRI, residing in the USA. The complainant spends at least a couple of months in India every year.
 - II. That the family had their ancestral house in Delhi and when the same was sold and disposed off by the family members in the year 2011-12, the proceeds of share of the complainant were used by him to purchase a residential unit in the project of the respondents with an intention to use it for his personal use during his visits to India, which normally are for a couple of months every year. The complainant intends to settle in India after retiring from his work in the USA. The decision to purchase the residential unit in the project of the respondent was taken upon visiting the project site and office of the respondent to negotiate for the best deal. The respondents gave option to the complainant to pay the almost entire amount of basic sale price for the residential unit at the time of booking, and the

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- respondent no.1 would pay assured return to the complainant @12% p.a. from the date of entering into such memorandum of understanding till the actual handover of possession of the said residential unit.
- III. That the parties entered into a memorandum of understanding dated 29.05.2012 for purchase of an apartment admeasuring about 4800 sq. ft. in the aforesaid project being developed by the respondents for a basic sale consideration of Rs.5,000/- per sq. ft. and total sale consideration of Rs.3,00,82,000/- + service tax, or applicable taxes.
- IV. That the complainant paid a sum of Rs.2,65,41,600/- (including development charges and service tax), out of which Rs.2,40,00,000/- was towards the basic sale price of the apartment and the balance was towards the service tax and other incidental charges. The said amount was paid way back in 2012 itself and the same has been duly acknowledged by the respondents as well. The respondent no. 1 agreed to pay assured return @12% p.a. to the complainant on the said amount of Rs.2,40,00,000/- after deducting TDS as per Section 194A of the Income Tax Act, 1961. Thus, as per the MOU dated 29.05.2012, the respondent no. 1 was obligated to pay to the complainant assured returns from 19.06.2012 till the time the actual physical possession of the unit is handed over to the complainant. In the MOU dated 29.05.2012, it was acknowledged by the respondent no.1 that the complainant has handed over the cheques for the total sale consideration of Rs.2,40,00,000/-. All the cheques were duly honoured and the monies have been transferred from the account of the complainant to the respondent no.1. Further, the entire sum of Rs.2,65,41,600/- has been acknowledged by the respondent in clause 3 of the ABA dated 17.07.2013.

- V. That the parties entered into an apartment buyers' agreement on 17.07.2013 and the complainant was allotted the unit no. 1801 along with two parking spaces in Tower A in the project. As per clause 10.1 of the aforesaid agreement dated 17.07.2013, the respondents were obligated to hand over the possession of the unit to the complainant within a period of three and a half years from the execution of the agreement, which needless to say has not been offered even till date. It is reiterated that the possession of the unit was to be handed over within three and a half years, i.e., 42 months from 17.07.2013, i.e., by 16.01.2017, however, even till the date of possession of the unit has not been handed over to the complainant.
- VI. That the respondent unilaterally stopped the payments towards the assured returns to the complainant from April, 2018. The assured returns were paid by the respondents in terms of the clause 4 of the MoU dated 29.05.2012 since 2012 and even the TDS was being deducted by the respondent no.1 under Section 194A of the Income Tax Act, 1961.
- VII. That the complainant sent a legal notice dated 06.06.2018 to the respondents asking them to make the payment towards the unpaid assured returns as per the MOU dated 29.05.2018 from April, 2018, however, the respondents chose neither to make any payment towards the unpaid assured return, nor to even respond to the legal notice sent on behalf of the complainant.
- VIII. That the sudden silence of the respondents towards the legal and legitimate demands of the complainant regarding the unpaid assured returns, was a warning bell for the complainant that the respondent no.1 company is not left with sufficient means to honour its financial liabilities, thus, the complainant filed a petition under Section 7 of the

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Insolvency and Bankruptcy Code, 2016 before the Hon'ble National Company Law Tribunal, Principal Bench (NCLT) bearing CP(IB) No. 1436(PB)/2018. The Hon'ble NCLT vide order dated 22.10.2018 issued notice on the said petition to the respondent no. 1. During the pendency of proceedings before the NCLT, the respondents approached the complainant to settle the matter amicably, and resultantly, a memorandum of settlement dated 06.03.2019 was executed between the parties, whereby, the respondents admitted its liability. It was assured by the respondents that the complainant will be offered the possession of his unit on or before 30.09.2020. It was further agreed between the parties that the respondents would adjust the unpaid assured returns from April, 2018 till the date of possession, i.e., up to 30.09.2020 against other charges such as EDC/ IDC/ PLC/ IFMS/ Electrification Charges/ Escalation Charges towards increase in cost of construction or any other charges of similar nature which may be due and payable by allottees at the time of handover of physical possession of the unit. The respondents also agreed to be responsible for any statutory dues (including GST) against the unpaid assured return.

- IX. That on the basis of the aforesaid memorandum of settlement dated 06.03.2019, the complainant herein withdrawn his petition before the NCLT vide order dated 07.03.2019. Despite undertaking to deliver the physical possession of the unit to the complainant on or before 30.09.2020 as per the memorandum of settlement dated 06.03.2019, the respondents have once again failed to handover the physical possession of the unit to the complainant even till date, i.e., till 27.04.2022.

- X. That the respondents had *malafidely* enticed the complainant to enter into the aforesaid memorandum of settlement dated 06.03.2019 only with a view to put an end to the proceedings before the NCLT. It was never the intention of the respondents to handover the possession of the unit to the complainant or to fulfil the rights and obligations guaranteed by the respondent no. 1 to the complainant under the agreement dated 17.07.2013 or by way of MOU dated 29.05.2012.
- XI. That the complainant is neither being paid the assured returns since April, 2018, nor has he been offered the possession of his residential unit despite repeated assurances and agreements by the respondent to that effect. It is submitted that as per the agreement between the parties dated 17.07.2013, the possession was to be handed over to the complainant within three and a half years, i.e., on or before 16.01.2017, however, despite entering into a subsequent MOU dated 06.03.2019 and assuring the delivery of possession by 30.09.2020, the respondents have failed to deliver the possession to the complainant even till date.
- XII. That the complainant is being made to run from post to pillar to exercise his legal and lawful rights, and the respondents on the other hand continue to enjoy the benefits by avoiding to make the payments to the complainant by misappropriating such funds for their own uses. The same is causing financial stress and continuous harassment to the complainant, thus compelling the complainant to approach this Hon'ble Authority by way of the present complaint.
- XIII. That the complainant prays for issuance of necessary directions to the respondents to refund the entire sum paid by him to the respondents along with interest and penalty.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondents to refund the entire sum of Rs.2,65,41,600/- along with interest @12% per annum from dates of respective instalments/realization of the sale consideration;
 - ii. To revoke the registration of the said project under Section 7 of the RERA for violating the provisions of the RERA.
 - iii. Direct the respondents to pay the complainant an amount of Rs.1,00,000/- as a penalty for contravention of the provisions of the RERA Act, 2016, and the HRERA, Rules,2017;
 - iv. To direct the respondents to place on record all statutory approvals and sanctions of the project;
 - v. To provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and pending demand if any;
 - vi. Direct the respondents to pay a sum of Rs.10,00,000/- to the complainant as damages on account of mental agony, torture, and harassment;
 - vii. Direct the respondents to pay a sum of Rs.10,00,000/- to the complainant as damages on account of deficiency in service on part of the respondent;
 - viii. Direct the respondents to pay a sum of Rs.5,00,000/- to the complainant as escalation costs towards the similar property.
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 respondents:

6. The respondents have contested the complaint on the following grounds:
- i. That the complainant, after making independent enquiries and only after being fully satisfied about the project, had approached the

respondent company for booking of a residential unit in respondent's project 'The Esfera' located in sector-37-C, Gurugram, Haryana. The respondent company provisionally allotted the unit bearing no. Tower A 1801 in favor of them for a total consideration amount of Rs.3,62,78,765/- including applicable tax and additional miscellaneous charges vide booking dated 09.06.2012 and opted for return on investment plan on the terms and conditions mutually agreed by them.

- II. That the respondent company had successfully completed the construction of the said project, way before the agreed timeline, and has applied to the competent authority for issuance of occupancy certificate on 15.04.2021 itself, after complying with all the requisite formalities, and the same is awaited to be procured anytime now between month of July to August.
- III. That consequently respondent company entered into a MOU dated 23.05.2012 with the complainant, according to which the respondent company agreed to pay a sum of Rs.2,40,000/- per month as assured return on investment made by the complainant and thereafter, an apartment buyer's agreement dated 17.07.2013 was executed between the parties in the interest of the booked unit. The BBA duly covers all the liabilities and rights pertaining to both the parties involved.
- IV. That payment of consideration amount as and when asked for is a necessary consideration and obligation which was supposed to be fulfilled by the complainant. The BBA executed between the parties have clearly depicted the intention of the respondent company with respect to schedule of payment.

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- V. That the terms of the BBA were agreed to and signed by the complainant and, as such, the parties are bound by the terms and conditions mentioned in the said agreement. As per the clause of the BBA entered between the parties, time was agreed to be a matter of essence in the BBA and the allottees were bound to make timely payments of the instalments due as per the payment plan opted by the complainant. The said BBA was duly acknowledged by the complainant after completely and thoroughly understanding each and every clause therein. The complainant was neither coerced nor influenced by the respondent company to sign the said BBA. It was the complainant who voluntarily and knowingly breached the provisions of the said agreement.
- VI. That despite numerous reminders, the complainant failed to comply by the obligations laid down by the BBA he willingly entered into. Herein it is pertinent to mention that a sum of Rs.97,37,165/- is still due to be paid by the complainant.
- VII. That it is a trite law that the terms of the BBA are binding between the parties. The Hon'ble Supreme Court of India in the case of **Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704** observed that a person who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. It has been observed that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract. Thus, it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the signed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.

- VIII. That the Hon'ble Apex Court, in the case of **Bihar State Electricity Board, Patna and Ors. Vs. Green Rubber Industries and Ors, AIR (1990) SC 699** held that a person who signs a document, which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect.
- IX. That the complainant has not approached this Hon'ble Authority with clean hands. It is submitted that the complainant is attempting to raise non-issues in order to acquire benefits for which the complainant is not entitled in the least.
- X. That the default of the complainant in paying the outstanding amount and honoring the payment plan, in addition to default in payment by various other buyers in the said project, the respondent company has incurred huge losses/damages. On account of the breach of the terms of the agreement by the complainant, and other buyers in the said project, the respondent company had no option left but to resort to availing a last mile funding of Rs.99 crores from SWAMIH Investment Fund-I. The said Alternate Investment Fund (AIF) was established under the special window by the Hon'ble Finance Minister to provide priority debt financing for the completion of stalled, brown field, RERA registered residential developments that are in the affordable housing /mid-income category, are net-worth positive and require last mile funding to complete construction. After long overdue application to the said policy, the respondent company was finally granted a sanction on 23.09.2020. It is pertinent to mention that this act of the respondent company depicts the will and bona fide intention of completing the said project and delivering their duties.

- XI. That it must be brought to light that despite the obstructions and impediments faced in completion of the said project, the respondent company had completed the construction and development of the said project way before the agreed timeline and has already applied to the competent authority on 15.04.2021 for the issuance of occupancy certificate after complying with all the requisite formalities.
- XII. That the terms under buyer's agreement delineates the respective obligations of the complainant as well as of the respondent as an aftermath of breach of any of the conditions specified therein.
- XIII. That this provision was also confirmed and agreed to by the complainant, who are now attempting to put on an innocent facade to escape his responsibilities and liabilities. This complaint has been made to injure and damage the interest and reputation of the respondent and that of the said project. Therefore, the instant complaint is liable to be dismissed in limine.
- XIV. That delay was caused in completion of construction of the said project due to certain unforeseeable circumstances. Firstly, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court directed a ban on construction activities in the said region from November 4, 2019 onwards, which was a huge hurdle to realty developers in the city. The Air Quality Index (AQI) at the time was running as high as 900 PM, which is severely unsafe for the health. Later, in furtherance of declaration of the AQI levels as 'not severe' by the Central Pollution Control Board (CPCB, the Hon'ble Supreme Court lifted the ban conditionally on December 9, 2019, allowing construction activities to be carried out between 6 a.m. and 6 p.m. and consequently, the complete ban was lifted by the Hon'ble

Supreme Court on 14.02.2020. It is submitted that this had caused the project to be delayed and thus, there was a delay in application for Occupancy Certificate. Secondly, when the complete ban was lifted on 14.02.2020, the Government of India imposed National Lockdown on 24.03.2020 due to pandemic COVID-19, and later lifted the lockdown, conditionally, on 17.05.2020. It must be pertinent to mention herein that the pandemic COVID-19 has caused immense delay and obstruction to the construction of the building, as the procurement of labour and raw material proved to be highly challenging. The whole situation led to a reverse migration of workers, who left cities and returned back to their villages, for safety of themselves and their families. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers are stuck in relief camps. The aftermath of lockdown or post lockdown periods have left great impact on the realty sector for resuming their respective constructions. Thus, causing delay in the completion of the said project, which was already hampered by the non-payment of outstanding dues by numerous allottees, including the complainant.

- XV. That the respondent company had allotted the unit to the complainant at the price prevalent in the market on the assurance that the complainant will make timely payments and honor the terms of the BBA. However, the complainant defaulted in making payment despite several opportunities given by the respondent company to complete the payment and thus, the respondent company could not allot the said unit to any third party, who was willing to book the said unit at a higher price. The complainant has caused the respondent company to incur loss of opportunity & cost, and are thus, liable to indemnify the respondent company towards the same. It is no longer



a res integra that failure on the part of the complainant to perform their contractual obligations disentitles them from any relief. It is a well settled proposition of law that the courts cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract leaving the responsibility of the court to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract rather than metamorphosing the nature of the contract. Thereafter, the complainant is not entitled to get any relief, as has been sought for in this complaint.

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

E. Jurisdiction of the authority:

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

E.I Territorial jurisdiction

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

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

Section 11.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
10. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** "SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022 wherein it has been laid down as under:

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

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

11. 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 amount paid by him.

F. Findings on objections raised by the respondents:

F.1 Objection regarding delay due to force majeure conditions:

12. The respondents have raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as demonetisation, orders/restrictions of the National Green Tribunal, weather conditions in NCR region, non-payment of instalment by different allottees of the project and major spread of Covid-19 across worldwide. The respondents further raised the contention that other factors like demonetisation, govt. schemes and non-payment of instalment by different allottee of the project also contributed in delay in completion of project but all the pleas advanced in this regard are devoid of merit. First of all, as per the possession clause the possession of the unit in question was to be delivered latest by 17.01.2017 which is much prior to the occurrence of COVID-19. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the respondents 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 respondents to refund the entire sum of Rs.2,65,41,600/- along with interest @12% per annum from dates of respective instalments/realization of the sale consideration;

13. The complainant was allotted a unit in the project of respondents "The Esfera" in Sector-37 C, Gurugram vide allotment letter dated 06.06.2013 for a total sum of Rs.3,62,78,765/-. The apartment buyer's agreement was executed on 17.07.2013 and the due date of handing over of possession as per the possession clause of the agreement is 17.01.2017.
14. It is mentioned in the facts of the complaint and the same has been confirmed by the counsel for the complainant vide proceedings of the day dated 23.01.2025 stated that the parties entered into a memorandum of settlement on 06.03.2019 before Hon'ble NCLT vide which the respondent has agreed to offer the possession on or before 30.09.2020 and also to pay the assured return, but the same was never complied by the respondents. Hence, the complainant has filed the present complaint on 28.12.2022 seeking refund of the paid-up amount as the project is far from completion on the date of filing of complaint.
15. The counsel for the complainant filed an application under section 36 on 17.12.2024 has brought to the notice of the authority that the unit has been cancelled on 27.11.2024 and the same has been confirmed by the respondent in its reply to the said application. Now, the question arises before the Authority is that whether the cancellation of the unit of the complainant is valid or not?
16. The respondents in its reply to the said application have mentioned that the unit was cancelled vide cancellation letter dated 27.11.2024 on account of outstanding dues after issuing various reminders and thereafter issued pre-

cancellation notice dated 28.08.2024. The Authority has gone through the documents placed on record and possession clause of the agreement, it was observed that the due date for possession of the unit is 17.01.2017 but the respondents have received the occupation certificate on 12.07.2024 and offered the possession of the unit on 17.07.2024 and the complainant has sought refund of the paid-up amount by way of filing of complaint on 28.12.2022. Moreover, the complainant has paid a considerable amount of Rs.2,65,41,600/- i.e., 73% of the sale consideration of Rs.3,62,78,765/-. Though the payment plan opted by the complainant is construction linked and as per the payment plan, the 95% of the total sale consideration is to be paid subject to construction of the floors and remaining 5% amount has to be paid on notice of offer of possession, but the respondents have failed to complete the unit by the due date of possession and the complainant has sought refund of the paid-up amount by way of filing of complaint on 28.12.2022 which is much after the due date of possession of the unit and way prior to the cancellation of the unit by the respondent on account of non-payment. Thus, in view of the aforementioned facts, the cancellation of the unit stands invalid and the complainant is entitled for full refund of the paid-up amount.

17. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit 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 allottee 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....."

18. 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. (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.

19. 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 application form or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the respondent in respect of the unit with interest at such rate as may be prescribed.
20. **Admissibility of refund along with prescribed rate of interest:** In the present complaint, the complainant intend to withdraw from the project and is 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)

21. The complainant is seeking refund of the amount paid by him with interest at the 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.

22. 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.
23. 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., 13.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10 %.
24. 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;"*

25. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainant is well within his right for seeking refund under section 18(1)(a) of the Act, 2016.
26. The authority hereby directs the respondent to refund the amount received by it i.e., Rs.2,65,41,600/- along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
27. The respondents may deduct an amount paid in lieu of assured return, if any.

G.II To revoke the registration of the said project under Section 7 of the RERA for violating the provisions of the RERA.

G.III Direct the respondents to pay the complainant an amount of Rs.1,00,000/- as a penalty for contravention of the provisions of the RERA Act, 2016, and the HRERA, Rules,2017;

28. The complainant has not clearly identified the violations of the Act, 2016, and its rules by the respondents. Neither it is mentioned in the facts of the complaint nor pressed before the Authority during the proceedings of the

day. Without specific details about the alleged violations, there is no basis for the relief sought. Thus, no direction to this effect.

G.IV To direct the respondents to place on record all statutory approvals and sanctions of the project;

G.V To provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and pending demand if any;

G.VI Direct the respondents to pay a sum of Rs.5,00,000/- to the complainant as escalation costs towards the similar property.

29. The complainant is seeking refund of the paid-up amount along with the interest. As the Authority is allowing the refund of the paid-up amount along with interest as mentioned in para 20, all above sought reliefs by the complainant becomes redundant.

G.VII Direct the respondents to pay a sum of Rs.10,00,000/- to the complainant as damages on account of mental agony, torture, and harassment;

G.VIII Direct the respondents to pay a sum of Rs.10,00,000/- to the complainant as damages on account of deficiency in service on part of the respondent;

30. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. The 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.*, 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. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H.Directions of the Authority:

31. 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 respondents are directed to refund the amount i.e., **Rs.2,65,41,600/-** 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 each payment till the actual date of refund of the amount. Also, the respondents may deduct amount already paid to the complainant-allottee in lieu of assured return, if any after furnishing complete details of such paid-up amount.
 - 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.
 - iii. The respondents are further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
32. Complaint stand disposed of.
33. File be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.02.2025