

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

Complaint no.: 5428 of 2023
Date of decision: 05.03.2025

1. Rajinder Singh
 2. Romit Kaur
- Both R/o:-** WW-42, Ground Floor,
Malibu Town, Gururam.

Complainants

Versus

M/s Bestech India Pvt Ltd.
Registered Office at: Bestech House Plot-51,
Bhagwan Mahaveer Marg, Sector-44,
Gurugram, Haryana-122002.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Vatsal Sharma (Advocate)

Complainants

Ishaan Dang (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Park View Ananda", Sector-81 Gurugram
2.	Project area	29.7 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	112 of 2008 dated 31.05.2008 valid up to 30.05.2025 55 of 2009 dated 27.08.2009 valid up to 26.08.2024
5.	Name of licensee	Sh. Braham Parkash-Satya Parkash-Laxmi Narain Ss/o Maha Ram and others
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	Villa no.-V-10, Ground floor (As on page no. 38 of complaint)
8.	Unit measuring	5480sq.ft. [Super-area] (As on page no. 38 of complaint)
9.	Date of allotment letter	21.07.2012 (As on page no. 30 of complaint)
10.	Date of execution of apartment buyer agreement	13.02.2014 (As on page no. 39 of complaint)
11.	Possession clause	3. Possession a). Offer of possession: That subject to terms of this clause and subject to the APARTMENT ALLOTTEE(S) having complied with

		<p>all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the Developer, the Developer proposes to hand over the possession of the APARTMENT within a period of thirty (36) months (excluding a grace period of 6 months) from the date of approval of building plans or date of signing of this Agreement whichever is later. It is however understood between the parties that the possession of various Blocks/Towers comprised in the Complex as also the various common facilities planned therein shall be ready & completed in phases and will be handed over to the allottees of different Blocks/Towers as and when completed and in a phased manner.</p>
12.	Due date of possession	13.08.2017 [Calculated 36 months from the date of agreement + 6 months grace period]
13.	Total consideration	Rs.3,32,80,280/- (As on page no. 31 of complaint)
14.	Total amount paid by the complainants	Rs.3,32,80,280/-
15.	Occupation certificate /Completion certificate	07.08.2015 (As on page no. 100 of reply)
16.	Offer of possession	29.08.2015 (As on page no. 102 of reply)

B. Facts of the complaint:

3. The complainants made the following submissions in the complaint.
 - I. That the respondent, M/s Bestech India Pvt. Ltd. is a company duly formed under the provisions of the Indian Companies Act, 1956 and is dealing in real estate business of constructing residential projects.
 - II. That the respondent through its authorized representative and executives approached the complainants and informed that they have all the requisite permissions and inclined to construct a residential complex namely "Park View Ananda, Sector 81, Gurugram" situated in the revenue estate of Sector- 81, Tehsil & District Gurugram.
 - III. That the authorized representative of the respondent lured the complainants to book the unit in the project by using lucrative claims viz. purported project. The respondent induced the complainants and lured them to book a residential unit in the project. That in good faith and interest upon, the complainants showed interest in the proposal and booked a residential unit for the total sale consideration of Rs.3,32,80,280/-.
 - IV. That the respondent collected Rs.3,32,80,280/- against the total sale consideration as per the payment plan. Despite having paid the payment against the total consideration amount, the respondent has failed to handover possession of the unit till date.
 - V. At the time of purchasing the unit, the complainants were assured that the possession of the unit would be handed over by November 2015 but till date, the project (villa) is not complete and is not at par with what was promised. The complainants had paid more

than Rs. 3 crores based on the promises made in the brochure. While the respondent is asking the complainants to take possession of the property which is full of structural defects and with substandard quality products.

- VI. That the complainants have multiple times requested the respondent to either complete the project (villa) or to refund the amount with interest. Since November 2015, the complainants have been writings mails and requesting the respondent's office regularly but no solution has been provided by the respondent. Rather since 2016, they have started raising Common Area Maintenance (CAM) and Common Area Electricity (CAE) bills. The respondent not only refused to provide possession as per the promised structure quality but also declined to complete as per the promised quality.
- VII. That the promoter has failed to fulfil its obligation and duties under section-11 of the Act *ibid*. Also, the respondent is liable to compensate the complainant under section-18(1) of the Act. It is pertinent to mention that section 19 of the Act safeguards the right of the complainants and therein the complainants have approached the Authority.
- VIII. That as per section 18 of the RERA Act 2016, the promoter is liable to refund the entire payment by the allottees of a unit along with prescribed rate of interest, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.
- IX. That the complainants are entitled to get refund of the entire amount paid along with interest at the prescribed rate from the date of payment till the realization of money under section 18 &

19(4) of Act. The complainants are also entitled for any other relief which they are found entitled by the Adjudicating Officer.

C. Relief sought by the complainants:

4. The complainants have filed the present compliant for seeking following reliefs:
 - i. Direct the respondent to refund the entire deposited amount along with interest from the various dates of deposit till the entire amount is refunded to the complainants.
 - ii. Direct the respondent to pay delay in refund to recompense for the loss or injury as there has been delay in refund which has resulted in loss or injury of over Rs.8,00,000/-.
 - iii. Direct the respondent to refund the amount alongwith an interest for harassment both mental on account of mental agony, hardship and trauma for not adhering to sub section C of the Buyer's Agreement for repayment to complainant upon delay in compensation, also holding the respondent guilty of indulging into unfair practices.
 - iv. Direct the respondent to pay for the loss from the date on which the breach took place.
 - v. Direct the respondent to pay litigation fees incurred by the complainant of an amount of Rs.1,00,000/-
5. On the date of hearing, the Authority explained to the respondent /promoter about the contravention 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 respondent:

6. The respondent has contested the present complaint on the following grounds:

- I. That the present complaint is not maintainable in law or on facts. The provisions of the Act, 2016 are not applicable to the project in question. The occupation certificate in respect of the apartment/tower in question was received on 07.08.2015, i.e. well before the notification of the Haryana Real Estate Regulation and Development Rules 2017. The offer of possession was also made on 19.08.2015 and possession was offered to the complainants on 29.08.2015, before RERA came into force. Thus, the project in question is not an "Ongoing Project" under Rule 2(1)(o) of the Rules. This Authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.
- II. That the complaint is barred by limitation and liable to be dismissed on this ground as well. Possession of the unit was offered to the complainants in accordance with the Buyer's Agreement on 29.08.2015. The complainants refrained from making payment of balance amounts and from taking possession of the unit on false and specious pretexts. The complaint has been filed after a delay of more than 7 years and is liable to be dismissed at the very threshold.
- III. That the complainants had approached the respondent and evinced an interest in purchasing a residential unit in the duly licensed residential project promoted and developed by the respondent known as "Park View Ananda" located in Sector 81, Gurgaon, Haryana. Prior to making the booking, the complainants made elaborate and detailed enquiries with regard to the nature of sanctions/permissions obtained by the respondent for the purpose of undertaking the development/implementation of the project.

- IV. That vide allotment letter dated 21.07.2012, the complainants were allotted villa bearing no. 10, admeasuring 5480 sq. ft. of super area (approx.) in the project. The complainants had opted for a payment plan that was partly construction linked and, the complainants have undertaken to pay the instalments as and when demanded by the respondent. The payment plan was appended along with the allotment letter reflecting the total sale consideration payable by the complainants to be Rs.3,32,80,280/-
- V. That the Buyer's Agreement was forwarded on 03.08.2012 to the complainants for execution. However, the complainants delayed the execution of the Buyer's Agreement for reasons known to themselves. That eventually, the Buyer's Agreement was executed by the complainants on 13.02.2014.
- VI. That the complainants were extremely irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc., calling upon them to make payment of the outstanding amounts. The occupation certificate was received by the respondent on 07.08.2015. Upon receipt of the same, possession of the unit was offered to the complainants on 29.08.2015.
- VII. That instead of taking possession, the complainants addressed false and frivolous communication to the respondent alleging poor quality of work in the unit and demanding compensation for alleged delay in offering possession. The respondent duly rectified the shortcomings as pointed out by the complainants and informed the complainants by email dated 30.04.2016 that all the works in the villa stood completed and that the same was ready for possession in all respects. The complainants were called upon to collect the possession letter, execute the maintenance agreement and also to provide a fresh NOC from the ICICI Bank which

holds a lien over the villa for possession and registration process. However, the complainants continued to address frivolous correspondence and avoided taking possession of the villa on various pretexts. The complainants conveyed to the respondent that they did not have sufficient funds to make payment of the balance amounts, maintenance dues and were therefore looking for a purchaser for the same.

- VIII. It is pertinent to mention herein that due to the inordinate delay by the complainants in making payment of sale consideration and other amounts, under the Buyer's Agreement the complainants are liable to pay interest on delayed payments in accordance with Clause 1.2(k) of the buyer's agreement. The falsity of the allegations levelled by the complainants is borne out by the fact that other villas in the project having the same specifications and flooring as the villa allotted to the complainants have already been occupied by the respective owners and no complaints have been received by the respondent in this regard.
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 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.1 Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram

District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

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 complainants 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. 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."

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 refund amount.

F. Findings on the objections raised by the respondent

F.1 Whether the complaint is barred by limitation?

12. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim that the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable

time period for a litigant to initiate litigation to press his rights under normal circumstances.

13. In the present compliant, the cause of action is ongoing, as the respondent has neither cancelled the unit nor refunded the amount paid by the complainants till date. Although the complainants filed the present complaint on 21.11.2023, which is over seven years from the date of offer of possession, the cause of action continues due to the respondent's retention of the complainants' payments without refund. Therefore, the present complaint is not barred by the limitation period.

G. Findings on the reliefs sought by the complainants

F.I. Direct the respondent to refund the entire deposited amount along with interest from the various dates of deposit till the entire amount is refunded to the complainants.

14. In the present complaint, the complainants intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

15. The complainants made an application for provisional allotment of a villa/unit in the project " Park View Ananda" situated at Sector-81, Gurugram. An allotment letter was issued in favour of the complainants on 21.07.2012 and the complainants were allotted a villa bearing no. V-10 on ground floor, admeasuring 5480 sq.ft. of super-area in the project of the respondent.
16. The Apartment Buyer's Agreement has been executed between the complainants and respondent on 13.02.2014. As per clause 3 (a) of the apartment buyer agreement dated 13.02.2014, the possession of the villa was to be handed over to the complainants within a period of 36 months from the date of approval of building plans or the date of signing of the agreement , whichever is later excluding a grace period of 6 months. The due date for handing over possession of the unit has been calculated from the date of agreement plus a grace period of six months is also granted to the respondent, being unqualified.
17. Therefore, the due date for handing over the possession of the unit comes out to be 13.08.2017. The respondent has obtained the occupation certificate from the competent Authority in respect of the said project on 07.08.2015. The complainants had paid a sum of Rs.3,32,80,280 /- out of the sale consideration of Rs.3,32,80,280/-.
18. The complainants submitted that they visited the project site several times and discovered that the unit was not completed. The complainants highlighted their concern through mails and telephonic conversations, regarding the inadequate work characterized by the substandard quality, marked by visible cracks on the floor and on the

walls which questions the strength of the building as the villa is full of structural defects. Despite approaching the respondent, the respondent deliberately ignored the requests of the complainants and the complainants received no clear and concrete response.

19. The counsel for the respondent submitted that after receiving the Occupation Certificate on 07.08.2015, the respondent offered possession of the unit to the complainants on 29.08.2015. Through the offer of possession letter dated 29.08.2015, the complainants were requested to pay the outstanding amount and complete the required formalities and documentation to enable the respondent to hand over possession of the unit. However, instead of taking possession, the complainants raised concerns about the alleged poor quality of work in the unit and demanded compensation for the purported delay in offering possession. The respondent promptly addressed the issues raised by the complainants and, via email dated 30.04.2016, informed them that all work in the unit had been completed and it was ready for possession. The complainants were asked to collect the possession letter, execute the maintenance agreement, and provide a fresh NOC from ICICI Bank, which holds a lien over the unit. The complainants informed the respondent that they did not have sufficient funds to pay the remaining balance and were therefore seeking a purchaser for the unit. Since the complainants have been unable to find a suitable purchaser, they have resorted to making false and fabricated allegations against the respondent.
20. Further, section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the

date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, the allottee wishes to withdraw from the project and demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.

21. After taking into consideration, the documents on record and the submissions made by the parties, the Authority observes that the respondent obtained the Occupation Certificate for the complainants' unit on 07.08.2015. The due date for possession, as per the buyer's agreement, was 13.08.2017, and the respondent obtained the Occupation Certificate well before the stipulated date. The Occupation Certificate was obtained on 07.08.2015, and the offer of possession was extended on 29.08.2015. The complainants did not express any intention to withdraw from the project prior to the offer of possession. It was only when the offer of possession was made and the demand for payment was raised that the complainants expressed their desire to withdraw, citing certain concerns regarding the materials used in the unit and specific finishing defects. The right under section 18(1)/19(4) accrues to the allottee on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The promoter has already invested in the project to complete it and offered possession of the allotted unit much before the due date of offer of possession.
22. 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.

23. In case the allottee wishes to withdraw from the project, the promoter is liable on demand to return the amount received by it with interest at the prescribed rate if it fails to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale. The words liable on demand need to be understood in the sense that the allottee has to make intentions clear to withdraw from the project and a positive action on his part to demand return of the amount with prescribed rate of interest if he has not made any such demand prior to receiving occupation certificate and unit is ready then he impliedly agrees to continue with the project.
24. On pursual of the Agreement, the Authority observes that as per clause 1.2(g) of the agreement executed between the complainants and the respondent, the earnest money has been mentioned as 20% of the sale price. The Authority after taking into consideration the scenario prior to the enactment of the Act, 2016 as well as the judgements passed by *Hon'ble National Consumer Disputes Redressal Commission* and *the Hon'ble Supreme Court of India*, has already prescribed vide Regulations, 11(5) of 2018 that ***the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate*** i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer. Therefore, in view of the

above, the forfeiture of 10% of the sale consideration/cost of the property can only be made as been held in ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal Commissions in ***CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in ***CC/2766/2017*** in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022***, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

25. In the present case, the unit was allotted to the complainant vide buyer's agreement dated 13.02.2014 and the due date for handing over for possession was 13.08.2017. The Occupation Certificate was received on 07.08.2015 and offer of possession was made on 29.08.2015. As per the record available, the Authority observes that after the offer of possession was made, the complainants visited the project site and noticed certain deficiencies in respect to the

workmanship and the material used in the unit. The complainants have duly complained about the quality of the woodwork and the flooring. The complainants have reported the same through e-mail to the respondent and the respondent undertook to do the needful. Vide email dated 04.04.2016, the respondent informed the complainants that the villa is ready since January 2016 and requested the complainants to co-ordinate with the facility incharge Mr. Munish Sehgal for the inspection and handing over of the same. Again on 09.05.2016, the complainants emailed the respondent and complained about the flooring of the unit. Time and again the requests were made and the respondent promptly addressed the issues raised by the complainants. The complainants have never requested to withdraw from the project prior to filing of the complaint, thus, the complainants have surrendered the unit by filing the present complaint. Therefore, in this case, refund can only be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under: -

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer"

26. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is liable to refund the paid-up amount of Rs.3,32,80,280/- after deducting 10% of the sale consideration of Rs.3,32,80,280/- being earnest money along with an interest @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 on the refundable amount, from the date of surrender i.e., 21.11.2023 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II. Direct the respondent to pay delay in refund to recompense for the loss or injury as there has been delay in refund which has resulted in loss or injury of over Rs.8,00,000/-.

F.III. Direct the respondent to refund the amount at an interest for harassment both mental on account of mental agony, hardship and trauma for not adhering to sub section C of Buyer Agreement for repayment to complainant upon delay in compensation, also holding the respondent guilty of indulging into unfair practices.

F.IV Direct the respondent to pay for the loss from the date on which the breach took place.

F.V. Direct the respondent to pay litigation fees incurred by the complainant of an amount Rs.1,00,000/-

27. The complainants are seeking the above mentioned reliefs w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)* has held that an allottee is entitled to claim compensation and 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 and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive

jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation

G. Directions of the Authority:

28. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act.

- i. The respondent/promoter is directed to refund the paid-up amount of Rs.3,32,80,280/-, after deducting 10% of the sale consideration being earnest money along with interest on such balance amount at the rate of 11.10% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of surrender i.e., 21.11.2023 till its actual realization.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

29. Complaint stands disposed of.

30. File be consigned to the registry.

Dated: 05.03.2025



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram