



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

Complaint no. : 1853 of 2024
Complaint filed on : 29.04.2024
Date of order : 13.12.2024

1. Mr. Vishal Prashar
2. Ms. Komal Parashar
Both R/o: - H. No. 1447, Sector 15, Panchkula,
Haryana - 134113

Complainants

Versus

1. M/s Bright Buildtech Pvt. Ltd.
Registered Office at: - Ace studio, 7th floor, Plot no.
01B, Greater Noida Expressway, Sector - 126, Noida,
Uttar Pradesh - 201303
2. M/s Ace Mega Structures Pvt. Ltd.
Registered Office at: - 8th Floor, Plot no. 1B, Greater
Noida Expressway, Sector - 126, Noida, Uttar Pradesh -
201303

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Harshit Batra (Advocates)
Sh. Nitin Harsh Gupta (Advocate)

Complainants
Respondents

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 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the





Act or the Rules and regulations made there under or to the 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 in the following tabular form:

S.no.	Particulars	Details
1	Name of the project	"Woodview Residences", Sector-89, Gurugram, Haryana.
2	Nature of project	Residential Plotted colony
3	Project area	114.506 acres
4	RERA registered/not registered	Registered vide registration no.-34 of 2020. Dated -06.10.2020 valid upto 15.07.2023
5	DTPC License no.	59 of 2013 dated 16.07.2013 valid upto 15.07.2021
6	Name of licensee	Orris Land and Housing Pvt. Ltd. And 42 others
7	Allotment letter	11.02.2015 (As date mentioned in Buyer's agreement at page no. 25 of complaint)
8	Unit no.	B-89-SF, second floor (As on page no.25 of complaint)
9	Unit area admeasuring	1090 sq.ft. [Super-area] (As on page no. 25 of complaint)
10	Date of Buyer agreement (For Bare Shell floor)	12.08.2015 [Page 24 of complaint]
11	Possession clause	5. POSSESSION OF DWELLING UNIT 5.1 "...The company shall endeavor to complete the construction of the Building Block in which the Dwelling Unit is situated within 36 months with the grace period of 6 (six) months from the date of issuance Allotment Letter provided that all amounts due and payable by the Buyer has been paid to the Company in timely manner. The Company shall be entitled to



		<i>reasonable extension of time for the possession of the Dwelling Unit in the event of any default or negligence attributed to the Buyer's fulfillment of terms & conditions of this Agreement."</i> [Page 30 of complaint]
12	Due date of possession	11.08.2018 [Grace period is allowed being unqualified]
13	Total sale consideration	Rs.78,34,525/- (As per payment plan at page no. 43 of complaint)
14	Amount paid by the complainants	Rs.43,81,295/- [As confirmed by respondent at page 4 of reply]
15	Occupation certificate	Not obtained
16	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have pleaded the complaint on the following facts:

- i. That, at the outset, it is imperative to note that the project, namely Woodview Residence was primarily constructed and developed by the respondent No. 1 but due to change in the management and control of the project, the name of the project is now changed to "Ace Palm Floors" which is being developed and constructed by respondent no. 2.
- ii. That the respondent no.1 and his representatives approached the complainants and allured them to purchase a unit in the project of the complainant by assuring them that the project will have all kinds of amenities like Imported marble flooring, nursing and high school, 2 acres clubhouse, landscaped terrace, etc.



- iii. That the complainant, while searching for a residential unit were allured by the false gimmicks and advertisements issued by the respondent no.1 with respect to the project and decided to book a unit in the project of the respondent and hence had applied for the same. That, thereafter, a unit bearing no. B-89-SF, 2nd floor admeasuring super area of 1090 sq. ft. was allotted to the complainants vide allotment letter dated 11.02.2015.
- iv. That after allotting the unit to the complainant, the complainant contacted the respondent for the execution of the builder buyer agreement, but the respondent did not pay any heed to such requests of the complainant and delayed the execution of the builder buyer agreement. That the malafide intentions of the respondent are crystal clear from the fact that the respondent willfully delayed the execution of builder buyer agreement in favor of the complainants in order to delay/push the due date of possession of the unit.
- v. That almost after 6 months of the allotment of the unit in favour of the complainant, the builder buyer agreement dated 12.08.2015 was executed between the parties. It is pertinent to mention at this stage that the clauses of the agreement dated 12.08.2015 were substantively unfair, harsh, arbitrary and one-sided. That complainants had objected to the same, upon which, the respondent threatened the complainants that in case of non-execution of the agreement, the entire amount paid will be forfeited. That pressurized by the extreme unfair trade practice of the respondent and since the respondent had already extracted an exorbitant sum of Rs.22,00,000/- from the complainants before the

execution of the agreement, the complainants had no other option than to sign on the dotted lines.

- vi. That at this stage, it is pertinent to highlight that incorporation of such one-sided clauses does not take away the balance of equities. That as per the clause 5.1 of the agreement executed between the parties, the due date of handing over the possession of the unit was 36 months from the date of issuance of allotment letter. As the allotment letter for the unit was issued on 11.02.2015, the due date of offer of possession shall be commuted from the same.
- vii. That the complainants were entitled to the possession of the unit till 11.08.2018 but the respondents failed to provide the same and due to such delay in providing the possession of the unit to the complainants, the complainants contacted the representatives of the respondent and visited the site of the project in order to know the actual status of the construction of the project but to no avail. That the respondents failed to provide any updates with regards to the status of the project and therefore, the complainants have lost faith in the project and the respondent.
- viii. That till date, a substantial sum of Rs.43,81,295.55/- has already been paid by the complainants to the respondent. That the respondent had not obtained occupation certificate for the said project till date even after a delay of more than 6 years and no possession of the unit has been offered till date. The respondent has miserably failed to stand up to the duties and obligations casted upon them by the Act, the rules and regulations thereunder, and the agreement. That the complainants cannot, in any manner, foresee the delivery of possession and having waited for a substantial amount of time, has lost faith in the bonafide conduct

of the respondent. The complainants stand well within his rights in claiming the refund as they cannot be expected to wait indefinitely.

C. Relief sought by the complainants:

4. The complainants have sought the following reliefs:
 - a. Direct the respondents to refund the entire amount paid by the complainants at the prescribed rate @MCLR+2% from due date of payment till actual realization.

D. Reply by the respondents.

5. The respondents have contested the complaint on the following grounds:
 - i. That the respondent no. 1 & 2 are the companies engaged in the business of construction and development of real estate projects. The present complaint is also not maintainable because it has sought reliefs which ordinarily cannot be sought in the proceedings of this nature, where the only grievance of the allottee is delay in the handing over of the possession. That project in question has been delayed on account of various unenforceable circumstances, which were beyond the control of the answering respondents, however the project development took its pace when the situation normalized after Covid-19.
 - ii. The respondent no.1 (Bright Buildtech Pvt. Ltd.) is developing the project namely 'Woodview Residences' (now known as "ACE Palm Floors") on its share in the project land measuring 101.081 acres situated at revenue estate of village Hayatpur, Sector-89 and 90, Gurugram ('said project').
 - iii. The respondent no.2, i.e., M/s. Ace Mega Structures Private Limited ("Ace") has been appointed as the 'development manager' for development, construction, sales and marketing of the project vide

'development management agreement' dated 23.05.2019 for construction, sales and competition of the project with the objective of ensuring expeditious development of the project and to provide professionally proficient customer-care interaction. Respondent no.1 had informed complainant about the same. Therefore, the captioned complaint is liable to be dismissed qua respondent no.2. The role and responsibility of "ACE" is restricted to managing and supervising the construction and development of the said project and to ensure timely completion. The status of "ACE" is purely that of a service provider who shall receive a fee as consideration for providing project management and development services to the respondent no. 1.

- iv. The complainant on his own free will and volition had approached the respondent no. 1 for allotment of 'unit' in said project and initially submitted application form for booking the dwelling unit in the said project. Upon submission of the application form for allotment of the Unit, the respondent allotted to the complainants, a unit bearing no. B-89, SF ('unit'). The allotment letter also contained the details of the payment plan and the particulars of the unit allotted to the complaint in the said project. The total consideration of the unit agreed was Rs.78,34,525.80/-.
- v. The builder buyer agreement in respect of the said unit was executed on 12.08.2015 and the complainant has till date paid an amount of Rs.43,81,295.55/-, however still a major portion of the amount is due and payable by the complainant and the complainant has defaulted in payment despite requests from the respondent no.1.



- vi. That, the complainant has defaulted in payment of the instalments due, as per the payment plan. Therefore, one of the reasons for the delay in the project is also on account of non-payment of dues by the allottees, which has hampered the development. As per the terms of the agreement, the unit of the complainant was to be completed within a period of 36 months plus 6 months grace from the date of execution of the builder buyer agreement. Although the period 42 months for completion of the construction had elapsed, however due to unforeseen circumstances beyond the control of the respondent, the project could not be completed on time.
- vii. That the respondent no.1 has bonafide reasons to state that project of the has been reasonably delayed. It is pertinent to mention here that the reasons for delay in project are stoppage of construction activities in NCR region by the orders of Court, non-availability of construction material and labour, implementation of nationwide 'lockdown' to contain the spread of 'Covid-19', etc. Moreover, all these situations and adverse conditions is 'force majeure' circumstance which is beyond the control of the respondents.
- viii. It is further submitted that the complainant is well aware of the fact that respondent no. 1 has appointed 'ACE' as the Development Manager for construction and completion of the said project. The respondent no. 1 had informed the complainant about the appointment of the "development manager" who is responsible for all activities including the construction and sales of the project as per the development management agreement (DMA) dated 23.05.2019.
- ix. Furthermore, it is pertinent to state that the said project of the respondent no.1 is reasonably delayed because of 'force majeure'



situation which is beyond the control of the respondents. However, despite all odds, still, the respondent along with the development manger 'Ace' is making all efforts to complete the construction work at project site at full pace and is expecting to handover the possession very soon.

- x. Due to the exponential increase in the cases of 'Covid-19', the Central Govt. had imposed nationwide 'lockdown' w.e.f. 25.03.2020 which has been extended till 30.06.2020, resultantly, the same has caused serious impact on the economy posing difficult challenges for everyone. It is pertinent to mention that prior, to this unprecedented situation of pandemic 'Covid-19', the respondent along with the development manager had been carrying out the construction of the project at full pace and was expecting to deliver the units to the buyers by the end of year 2020, however, due to the sudden outbreak of the pandemic and closure of economic activities, the respondent no.1 had to stop the construction work during the 'lockdown'.
- xi. That the construction at site was never stopped and hence, there is no basis of such allegations, as made in the complaint. It is submitted that whenever the construction activity has stopped at the project site, it is due to the above-said reasons of 'force-majeure' which are beyond the control of the respondents, therefore, the demands of the complainants shall not be entertained. It is submitted herein that the respondent no.1 is attempting to make best efforts to complete the remaining construction works and to give possession of the 'Unit' to the allottees as soon as possible.

- xii. That the complainant had applied for the allotment of the 'dwelling unit' as investment and not for personal use, which fact is abundantly clear and evident from the conduct of the complainant. It is submitted that the complainant has invested in the unit with intent to have monetary gains by way of reselling the unit to a higher bidder at an appreciated value. Thus, in view of the constant precedents upheld by various Real Estate Regulatory Authorities across the country, the present complaint is not maintainable wherein, it is held unanimously that the Investors of real estate projects are not entitled to relief from Authority.
- xiii. It is submitted that the instant complaint is not maintainable keeping in view the facts, circumstances and law relating thereto. It is further submitted that the complainant has failed to produce any evidence or specific averments worth its salt to prove its claims. Moreover, there is no quantification of claims as sought for by the complainant under Prayer clause, therefore the instant complaint is liable to be dismissed at the threshold.
6. Copies of all the 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.
- E. Jurisdiction of the authority**
7. The Authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.
- E.I. Territorial jurisdiction**
8. 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

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

Section 11

.....

(4) The promoter shall-

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

10. 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.
11. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the **Hon'ble Apex Court in Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others** SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

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



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

12. 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 respondents:

F.I Objection regarding delay in completion of construction of project due to force majeure conditions.

13. The respondents raised the contention that the construction of the project was delayed due to force majeure conditions such as the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19 pandemic among others, but all the pleas advanced in this regard are devoid of merit.
14. As buyer's agreement was executed on 12.08.2015, the due date of handing over of possession is calculated as per possession clause 5.1 of buyer's agreement which states that the company shall endeavour to complete the construction of the Building Block in which the Dwelling Unit is situated within 36 months with the grace period of 6 (six) months from the date of issuance allotment letter. The Allotment letter was issued on 11.02.2015, therefore due date comes out to be 11.08.2018. The events such as and various orders by NGT in view of



weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than six years and even some happening after due date of handing over of possession. There is nothing on record that the respondents have even made an application for grant of occupation certificate. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Thus, the promoter-respondents cannot be granted any leniency for aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

15. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 has observed that:

69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

16. The respondents were liable to complete the construction of the project and the possession of the said unit was to be handed over by 11.08.2018 and the respondents are claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself ✓



and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants.

G.I. Direct the respondents to refund the entire amount paid by the complainants at the prescribed rate @MCLR+2% from due date of payment till actual realization.

17. In the present complaint, the complainants intend to withdraw from the project and are seeking refund of the amount paid by them in respect of subject unit along with interest. 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."

18. Clause 5 of the BBA dated 12.08.2015 provides for the handing over of possession and is reproduced below for the reference:

"5. POSSESSION OF DWELLING UNIT

5.1 "...The company shall endeavour to complete the construction of the Building Block in which the Dwelling Unit is situated within 36 months with the grace period of 6 (six) months from the date of issuance Allotment Letter provided that all amounts due and payable by the Buyer has been paid to the Company in timely manner. The Company shall be entitled to reasonable extension of time for the possession of the Dwelling Unit in the event of any default or negligence attributed to the Buyer's fulfillment of terms & conditions of this Agreement."



19. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 36 months with the grace period of 6 (six) months from the date of issuance allotment letter. The period of 36 months expired on 11.02.2018. Since in the present matter the BBA incorporates unqualified reason for grace period /extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be 11.08.2018.
20. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them 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.
21. 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.
22. 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., 13.12.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

4. 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;"*
23. In the present case, the complainants booked a unit with the respondents in its project "Woodview Residences" now known as "ACE Palm Floors" situated in Sector-89 and 90, Gurugram, Haryana. The complainants were allotted a unit bearing no. B-89-SF, second floor, admeasuring 1090 sq. ft. of super-area vide allotment letter dated 11.02.2015 and subsequently, builder buyer agreement was executed between the parties on 12.08.2015. As per possession clause 5.1 of buyer's agreement which states that the company shall endeavour to complete the construction of the building block in which the dwelling unit is situated within 36 months with the grace period of 6 (six) months from the date of issuance allotment Letter. The Allotment letter was issued on 11.02.2015, therefore due date comes out to be 11.08.2018.
24. It is pertinent to mention over here that even after a passage of more than 9 years neither the occupation certificate has been obtained by the



competent authority nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoter. The Authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. Further, the Authority observes that there is no document placed on record from which it can be ascertained that whether the respondents have applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

25. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in *Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.*

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

26. The Hon'ble Supreme Court of India in the cases *of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022. observed as under:



“25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

27. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to pay the allottees, as they wish ~~es~~ to withdraw from the project, without prejudice to any other remedy available, to return the amount received in respect of the unit with interest at such rate as may be prescribed.
28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents are established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the



amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

29. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondents are directed to refund the amount of Rs.43,81,295/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. as prescribed under section 18 (1) of the Act, 2016 read with rule 15 of the rules from the date of each payment till the date of realization.
- 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 the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainants-allottees.

30. Complaint stands disposed of.

31. File be consigned to registry.


Ashok Sangwan
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram

Dated: 13.12.2024