

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

Complaint no.:	4419 of 2023
Date of filing of complaint:	29.09.2023
First date of hearing:	11.01.2024
Date of order:	16.01.2025

Sh. Rajesh Kumar

R/o: Bashirpur (281), Mahendargarh,
Haryana-123001

Complainant

Versus

Elan Buildcon Pvt. Ltd.

Regd. Office at: 3rd floor, Golf View
Corporate tower, Golf Course Road, Sector-
42, Gurugram-122001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Sanjeev Kumar Sharma(Advocate)

Complainant

Sh. Ishaan Dang (Advocate)

Respondent

ORDER

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1. The present 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 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 allottee 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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project and location	"Elan Tower Centre", Sector 67, Village Badshahpur, Gurugram.
2.	Project area	5.91875 Acres
3.	Project type	Commercial Complex
4.	DTCP License	84 of 2012 dated 28.08.2012
	valid up to	27.08.2024
	Licensee name	Khanna Developers Pvt. Ltd. and 2 others
5.	RERA Registered/ not registered	Registered vide no. 190 of 2017 dated 14.09.2017 valid up to 13.09.2023
6.	Unit no.	KIOSK-0326, 3 rd Floor. (As per page no. 19 of the complaint)
7.	Unit area admeasuring	305 sq. ft. (super area) (As per page no. 19 of the complaint)
8.	Revised unit area	194 sq. ft. (Super area) (As per page no. 90 of the reply) (Note: Area has been reduced to 194 sq. ft. from 305 sq. ft.)
9.	Allotment letter	05.04.2017 (As per page no. 35 of the reply)
10.	Date of apartment buyer's agreement	23.08.2017 (As per page no. 16 of the complaint)
11.	Possession clause	11 (a). Schedule for possession of the said unit: <i>The Developer based on its project planning and estimates and subject to all exceptions endeavours to complete construction of the said Building/said unit within a period</i>

		<p><i>of 36 months from the date of this agreement with an extension of further 12 months unless there shall be delay or failure due to government department delay or due to any circumstances beyond the power and control of the Developer or Force Majeure conditions including but not limited to reasons mentioned in.....</i></p> <p>(As per page no. 30 of the complaint)</p>
12.	Due date of possession	<p>23.08.2021</p> <p>(Note: Due date to be calculated 36 months from the date of execution of buyer's agreement i.e., 23.08.2017 plus grace period of 12 months)</p>
13.	Total sale consideration	<p>Rs.25,05,194/-</p> <p>(As per payment plan on page no. 47 of the complaint)</p>
14.	Revised total sale consideration	<p>Rs.15,93,468/-</p> <p>(As per page no. 117 of the reply)</p> <p>(Note: Total sale consideration has been reduced to 15,93,468/- from Rs.25,05,194/- due to decrease in super area of the unit)</p>
15.	Amount paid by the complainant (Mentioned by the complainant in written submissions dated 21.11.2024)	<p>Rs.17,47,665/-</p> <p>(As per receipt information on page no. 118 of the reply)</p>
16.	Payment Plan	<p>Fixed Monthly Income</p> <p>(As per page no. 22 of the complaint)</p>
17.	Pre-cancellation letter	<p>14.11.2019</p> <p>(As per page no. 83 of the reply)</p>
18.	Offer of possession for fit out	<p>18.09.2020</p> <p>(As per page no. 90 of the reply)</p>

19.	Occupation certificate	09.03.2021 (As per page no. 100 of the reply)
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B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

I. That up on representation made by the respondent and advertisement to construct a commercial unit/restaurant/office space project namely called as "Elan Tower Centre" piece and parcel of land admeasuring 2 acres located/situated in the revenue estate in sector-67, Village Badshahpur, Gurugram, Haryana for which the respondent has obtained license dated 28.08.2012 bearing no. 84 of 2012 and the developer have already obtained building plans duly approved vide Memo No. ZP-1081/AD(RA)/2016/11530 dated 08.06.2016 from DTCP/DTP.

II. That the complainant booked a commercial unit no. K10SK-0326 on Food Court (3rd Floor) and super area approx. 305 sq. ft. and the allottee paid the application amount of Rs.50,000/- on 24.05.2016 to the respondent/builder.

III. The builder buyer's agreement was executed between the parties on 23.08.2017, wherein the total sale consideration of Rs.25,05,194/- of the said unit has been provided to the complainant. As per the builder buyer's agreement, the possession of the unit in question was to be handed over within 36 months from the date of the said agreement with a grace period of 12 months as provided under clause11(a) of the agreement the possession was to be handed over lastly by August, 2021. The allottee paid an amount of Rs.17,30,000/- till 10.05.2022 to the respondent, when as demanded by the builder/respondent.

IV. That as per the buyer's agreement the possession of the unit in question was to be handed over lastly by 22.08.2021, however at that



time the construction of the project was far from completion. The builder/respondent has issued a letter of offer of possession for fit-outs on 18.08.2020 to the complainant without getting occupation certificate and decreased the super area of unit from 305 sq. ft. to 194 sq. ft.

- V. That since the respondent had failed to offer possession of the unit in question, the complainant while exercising his right has approached the Hon'ble Authority seeking refund of his money along with interest as all the requests made by the complainant have gone to the deaf ears of the respondent.
- VI. That the complainant also reserves her right to file separate complaint for compensation as and when required before the appropriate forum/ authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to refund the entire amount of Rs.17,47,665/- (mentioned in written submissions dated 21.11.2024) along with interest from the date of actual payments made.
 - ii. Penalty be levied u/s of the Act of 2016 on builder for contraventions of the act.
 - iii. Direct the respondents to pay Rs.1,50,000/- as legal expenses.

D. Reply by the respondent:

5. The respondent has contested the complaint on the following grounds:
- I. That the present complaint is not maintainable in law or on facts. The complainant has no locus standi or cause of action to file the present complaint.

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- II. That the complainant is estopped from filing the present complaint by his own acts, conduct and acquiescence.
- III. That the present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.
- IV. That the present complaint is barred by limitation. The complainant has not come before this Hon'ble Authority with clean hands and have concealed the real and true facts, which are set out in the succeeding paras of the present reply.
- V. That the complainant through property dealer/broker -Geetanjali Homestate Private Limited , had approached the respondent for booking of a unit in the commercial project, "Elan Town Centre" located in Sector 67, Village Badshahpur, Gurgaon-Sohna Road, Gurugram. The complainant had approached the respondent after conducting extensive and independent investigations with regard to all aspects of the project and proceeded to book the unit after being fully satisfied with all aspects of the project including but not limited to the capability of the respondent to undertake development of the project. The complainant opted for a special down payment plan.
- VI. That unit no. Kiosk-326, admeasuring approximately 305 sq. ft. located on the third floor of the project with total sale consideration of Rs.25,05,194/-plus other charges payable at the time of offer of possession was provisionally allotted in favour of the complainant vide allotment letter dated 05.04.2017. The buyer's agreement was

willingly and consciously executed on 23.08.2017 by the complainant after duly accepting the terms and conditions thereof.

- VII. That in terms of the payment plan applicable to him, the complainant had agreed and undertaken to make payment of 45% of the basic sale price at the time of booking, 100% of the EDC/IDC and 100% of the PLC within 6 months from the date of booking, 55% of the basic sale price on super structure/top roof slab and on offer of possession, IFMS charges, 100% car parking usage rights (if any), stamp duty, registration charges, administrative charges and other charges payable as set out in the buyer's agreement. However, the complainant was irregular in making payment as per the applicable payment plan and hence the respondent was constrained to issue reminders calling upon the complainant to make payment.
- VIII. That in view of continuing defaults by the complainant, the respondent issued pre-cancellation letter dated 14.11.2019 whereby last and final opportunity was given to the complainant to clear his outstanding dues along with interest as specified in the said letter. Since the complainant did not clear his dues, reminders dated 12.02.2020 and 26.05.2020 were issued to the complainant.
- IX. That the respondent, in the meanwhile completed construction and applied for the occupation certificate with respect to the said project on 20.03.2020. The complainant was informed about the application made by the respondent for issuance of the occupation certificate by letter dated 15.06.2020.
- X. That the complainant was offered possession of the unit for fit outs vide letter dated 18.09.2020 and was also informed about the final super area of the unit which is 194 sq ft. The complainant was called upon to clear his dues as per the statement of account forming part of

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the said letter and take possession of the unit for fit outs. Since the complainant failed to come forward to take possession of the unit after clearing his outstanding dues, several reminders for possession were issued to him.

- XI. That in the meanwhile, the respondent has been granted occupation certificate on 09.03.2021 by Town and Country Planning Department Haryana. The complainant by letter dated 23.03.2021 was informed about receipt of occupation certificate from the competent authority. The complainant was further informed that as a gesture of goodwill, the respondent had decided not to charge any Common Area Maintenance charges for a period of three months from the date of obtaining the occupation certificate, i.e. up to 08.06.2021.
- XII. That further reminders were sent calling upon the complainant to clear his outstanding dues as per the payment plan. Pre cancellation letter dated 05.04.2022 and reminders were sent to the complainant by the respondent as the complainant did not come forward to clear his dues. Eventually, the complainant made part payment of the balance sale consideration amounting to Rs.4,50,000/- vide cheque dated 10.05.2022. Pertinently, the said payment was made after the complainant was informed about the decrease in super area of the unit. The complainant never raised any objections under clause 10 of the buyer's agreement to the decrease in super area. Although under no obligation to do so, the respondent as a gesture of goodwill has proceeded to waive the accrued interest on delayed payments.
- XIII. That the complainant had visited the office of the respondent and enquired about the decrease in super area of the unit and his outstanding dues towards the unit in question. The complainant has always been conscious and aware that the building plans of the

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project were tentative (clause 1.4 and 1.5 of the buyer's agreement) and subject to change. The complainant was conscious and aware that the super area of the unit was tentative and that the same for subject to final determination only after completion of construction, as set out in Annexure II, clauses 1.2, 1.6, 1.7, 1.8, 9 and 10 of the buyer's agreement . The complainant has also agreed to make additional payment in the event of increase in super area and to accept refund in the event of decrease insuper area of the unit. Pertinently, the complainant never raised any objections within 30 days from the date of intimation of change in super area, as provided under clause 10 of the buyer's agreement.

XIV. That the respondent drew attention of the complainant to the aforesaid clauses of the buyer's agreement. It was duly explained to the complainant that the change in super area of the unit was in accordance with the agreed terms and conditions as set out in the buyer's agreement executed by the parties. The respondent also proposed offering of an alternative unit in accordance with clause 1.5 of the buyer's agreement. However, the complainant duly accepted the explanation provided by the respondent and indicated his willingness to proceed with the present allotment and also undertook to take possession of the unit in a short span of time. On the basis of the willingness expressed by the complainant to take possession of the unit, the respondent waived off balance amount payable by the complainant towards sale consideration as well as accrued interest. The complainant also addressed an email dated 22.02.2023 requesting possession of the unit.

XV. That the respondent called upon the complainant to visit the office of the respondent to complete the documentation and take possession

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of the unit and make payment towards registration of the unit. The complainant was also called upon to pay Common Area Maintenance charges with effect from 3 months after the date of receipt of the occupation certificate. However, the complainant has refused to pay CAM charges and has instead filed the present false and frivolous complaint.

XVI. That the complainant has agreed and undertaken to make payment of CAM charges in accordance with clauses 16, 17 and 18 of the buyer's agreement and Section 19(6) of Act of 2016. Every allottee, after receipt of occupation certificate, in the project is bound to make payment of CAM charges so that the common areas and services in the project can be maintained and no allottee can avoid this obligation even if possession of the unit is not taken.

XVII. That the respondent has duly fulfilled its obligations in terms of the agreement between the parties and also under Act of 2016. There is no default or lapse in so far as the respondent is concerned. The complaint filed by the complainant is baseless and nothing but an afterthought. The false and frivolous complaint is liable to be dismissed with costs.

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

E. Jurisdiction of the authority:

7. 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

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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, 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;

Section 34-Functions of the Authority:

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

8. 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.
9. 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."

10. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by the complainant.

F. Findings on objections raised by the respondent:

F.I Objection regarding the complaint being barred by estoppel.

11. The respondent has raised an objection that the instant complaint is barred by estoppel as the reduction in area of the unit was informed to the complainant while offering the possession for fit-out on 18.09.2020. The occupation certificate was obtained on 09.03.2021, thereafter several reminders were issued to the complainant for taking possession of the unit admeasuring 194 sq. ft. and payment for outstanding dues but



the complainant never come forward to pay the outstanding dues and take the possession.

12. The Authority observed that the complainant has paid an amount of Rs.17,47,665/- against the total sale consideration of Rs.25,05,194/- as per the allotment letter as well as the buyer's agreement dated 23.08.2017. The respondent raised demands time to time for payment of outstanding dues but the complainant never paid the said outstanding dues. On offer of possession for fit-out issued by the respondent on 18.09.2020, the complainant got to know that the area of the unit has been reduced to 194 sq. ft. from the originally allotted unit of 305 sq. ft. for a revised total sale consideration of Rs.15,93,468/-. As per the clause 10 of the buyer's agreement, alteration or modification in the area of the unit is permissible up to 15% only, but the respondent has reduced the area of the unit by 36% which is beyond the agreed limit.
13. In the present case, the complainant expressed his interest to withdraw from the project by way of filing this complaint for refund of the paid-up amount as the unit offered by the respondent vide offer of possession for fit-out does not serve the purpose of the complainant. The provisions of section 18 read with section 14 of the Act of 2016 provides that if the promoter-builder fails to complete the project in terms of the sanctioned layout plans or as per the terms and conditions of the buyer's agreement executed between the parties, and the allottee does not intend to continue with the project, he shall be paid, by the promoter, the entire paid-up amount along with interest at the prescribed rate of interest. In the instant complaint, the respondent has not refunded the amount paid by the complainant till date, thus the complainant is seeking refund of entire amount along with prescribed rate of interest as statutory right of the complainant-allottee as per the provisions of section 18 of the Act of

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2016. Therefore, in view of the agreed terms and conditions duly agreed between the parties and the provisions of the Act of 2016, the contention of the respondent stands rejected.

F.II Objection regarding the complaint barred by Limitation Act, 1963.

13. Another contention of the respondent is that the complaint is barred by limitation as the offer of possession was made on 18.09.2020 and the complainant has failed to exercise his rights within the prescribed timeframe. The Authority observes that the offer of possession made in September 2020 was not a valid offer of possession as the occupation certificate was obtained on 09.03.2021. The Authority in **complaint no. 4031 of 2019 titled as "Varun Gupta Vs. Emaar MGF Land Limited"** has clarified that a valid offer of possession constitutes three components which are elaborated below:

- a. *The possession must be offered after obtaining an occupation certificate/completion certificate.*
- b. *The subject unit must be in a habitable condition.*
- c. *Possession should not be accompanied by unreasonable additional demands.*

14. In the present case, the essential condition for a valid offer of possession has not been met. The occupation certificate for the project in which the subject unit is located was issued by the competent authority on 09.03.2021. However, the respondent had offered possession for the fit-out of the allotted unit prior to obtaining this certificate, specifically on 18.09.2020. Consequently, this offer does not constitute a valid offer of possession and the cause of action is continuing till such obligation of offering the possession of the unit is fulfilled by the promoter-builder. In the present case, no valid offer of possession has been made till date after obtaining occupation certificate. Even if we consider, the cause of action arises from the date of obtaining occupation certificate i.e., 09.03.2021, the period of limitation has come to end on 09.03.2024,



however, the present complaint which was filed on 05.06.2023 is well within the limitation. Thus, the contention of promoter that the complaint is time barred by proviso of Limitation Act stands rejected.

G. Findings on relief sought by the complainant:

G.I Direct the respondent to refund the entire amount i.e., Rs.17,47,665/- to the complainant at the prescribed rate of interest from the date of respective payments till its complete realization

15. The complainant was allotted a unit in the project of respondent "Elan Town Centre", in Sector 67, Gurugram for a total sum of Rs.25,05,194/-. An apartment buyer's agreement dated 23.08.2017 was executed between the parties and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.17,47,665/(as per the applicant ledger issued by the respondent).
16. As per clause 11(a) of the buyer's agreement dated 23.08.2017, the due date of handing over of possession is to be calculated 36 months from the date of execution of buyer's agreement i.e., 23.08.2017 plus grace period of 12 months. Therefore, the due date of possession becomes 23.08.2021.
17. The respondent has made an offer of possession for fit-out on 18.09.2020 by which the complainant get to know that the area of the allotted unit has been reduced to 194 sq. ft. from 305 sq. ft. and also the total sale consideration has been reduced to Rs.15,93,468/-. Thus, the offer of possession made by the respondent stands invalid as the offer was made before obtaining the occupation certificate.
18. The occupation certificate was obtained on 09.03.2021 and the respondent has issued certain reminders to pay the outstanding dues and take possession of the unit with revised area of 194 sq. ft.
19. The counsel for the complainant vide proceedings of the day dated 14.11.2024 stated that the initially the unit allotted to the complainant admeasures 305 sq. ft. but the same was reduced to 194 sq. ft. which does



not serve purpose of the complainant-allottee and hence seeking refund of the paid-up amount along with interest. However, the counsel for the respondent stated that there was a provision for change in area as per BBA and the respondent has reduced the price too accordingly.

20. The Authority has gone through the clause 10 of buyer's agreement dated 23.08.2017 which provides that area of the unit is tentative and can be increased or decreased later on. The relevant portion of clause 10 of the buyer's agreement is reproduced below for ready reference:

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"In case of any alteration/modifications resulting in change in the super area of the said unit any time prior to and upon the grant of occupation certificate is \pm 15%, the developer shall intimate in writing to the allottee(s) the changes thereof and the resultant change, if any, in the total consideration of the said unit to be paid by the allottee(s) and the allottee(s) agrees to deliver to the developer written consent or objections to the changes within thirty(30) days from the date of dispatch by the developer. In case the allottee(s) does not send his written consent, the allottee(s) shall be deemed to have given unconditional consent to all such alterations/modifications and for payments, if any, to be paid in consequence thereof....."

21. On consideration of the afore-mentioned facts and clause of buyer's agreement, it can be said that an increase or decrease in super area is permissible up to 15% only, but in the instant complaint the respondent has decreased the area by 36%. Thus, it can be said that the promoter has failed to provide the unit allotted to the complainant by way of allotment letter and buyer's agreement.
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 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 apartment buyer's agreement 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 him in respect of the unit with interest at such rate as may be prescribed.

23. **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 section 18(1) of the Act. Sec. 18(1) 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)

24. 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.

25. 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.

27. 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;"*

28. 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., 16.01.2025 is **11.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **9.10%**.

29. The authority after considering the facts stated by the complainant and the counsel for the respondent and also 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 on account of failure to complete and offer the possession of the unit as per the area and specifications in terms of builder buyer's agreement executed between the parties on 23.08.2017.

30. The authority hereby directs the respondents/promoter to return the amount i.e., Rs.17,47,665/- received by them respectively 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%) 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*.

G.II Penalty be levied u/s of the Act of 2016 on builder for contraventions of the act.

31. No material evidence has been placed on record w.r.t defaults of respondent-builder. Neither it is mentioned in the facts of the complaint nor pressed before the Authority during the proceedings of the day. Thus, no direction to this effect.

G.III Direct the respondent to pay an amount of Rs.1,50,000/- to the complainant as legal expenses.

32. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation 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 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.

H. Directions of the Authority:

33. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent /promoter is directed to refund the amount i.e., **Rs.17,47,665/-** received by him respectively 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.

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- 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 respondent is 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.
34. Complaint stands disposed of.
35. File be consigned to the registry.



(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.01.2025

HARERA
GURUGRAM