

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

Complaint no.:	1073 of 2023
Date of filing of complaint:	16.03.2023
First date of hearing:	24.08.2023
Order pronounced on:	06.03.2025

Abhijit Datta
Through SPA Antra Khurana
R/o: #349, Narmada Apartments,
Alaknanda, New Delhi-110019

Complainant**Versus**

1. M/S RMS Estates Private Limited
2. M/s Agrante Reality Limited,
Both having office at: 522-524, 5th Floor, DLF
Tower-A, Jasola, New Delhi-110044
3. ICICI Bank Limited
Corporate office at: ICICI Bank Tower, Bandra-
Kurla Complex, Mumbai-400051

Respondents**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Sh. Ashish Budhiraja (Advocate)
Sh. Naman Vir Singh Sodhi (Advocate)
Sh. Dharmender Sehrawat (Advocate)

Complainant**Respondent no. 1 & 2****Respondent no. 3****ORDER**

1. The present complaint dated 16.03.2023 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 and location of the project	"BEETHOVEN'S 8", Sector-107, Harsaru, Gurugram
2.	Nature of the project	Group Housing Complex
3.	Project area	18.0625 acres
4.	RERA Registration	Unregistered
5.	Unit no. and floor no.	Harmony-I K/E/1605 and 16 th floor (As per page no. 31 of the complaint)
6.	Unit area admeasuring	2261 sq. ft. (Super area) (As per page no. 31 of the complaint)
7.	Tri-partite agreement	18.08.2014 (As per page no. 51 of the complaint)
8.	Date of execution of agreement for sale	18.08.2014 (As per page no. 22 of the complaint)
9.	Possession clause	35 Handing over of possession <i>That the exclusive vacant possession of the apartment shall be handed over by the vendor to the vendee within 42 month after the vendee shall make full and final payment in accordance with the terms of this agreement.</i> (As per page no. 42 of the complaint)
10.	Due date of possession	18.02.2018 (As confirmed by the counsel for the complainant in his written submissions)
11.	Total sale consideration	Rs.1,62,29,715/- (As per payment plan on page no. 46 of the complaint)



12.	Amount paid by the complainant	Rs.64,80,673/- (Rs.15,70,000/- as per receipt information on page no. 20-21 and Rs.49,10,673/- as per loan account statement issued by ICICI bank on page no. 72 of the complaint)
13.	Amount paid by the respondent towards pre-EMI	Rs.24,93,321/- (As per page no. 2 of the reply)
14.	Occupation Certificate/ completion certificate	Not received
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - I. That the representatives of respondents no.1 and 2 approached the complainant and impressed upon the complainant that they are best in class developer and is developing a residential project namely Beethoven's 8 in sector 107, Gurugram. Due to high pitched offers of the respondent no.1 and 2, the complainant was lured to purchase a residential apartment. Relying on the promise and undertakings given by the respondents, the complainant filed an application for booking a residential apartment admeasuring super area 2261 sq. feet at Beethoven's 8, Sector-107, Gurugram for total sale consideration of Rs.1,62,29,715/- which includes BSP, car parking, IFMS, Club Membership, PLC etc. including taxes and paid an amount of Rs.8,00,000/- and Rs.7,70,000/- to the respondent no.1 and 2, duly acknowledged by the respondent no. 2 vide receipt dated 23.06.2014 and 01.07.2014 respectively and the allotment of a unit bearing no. Harmony IK/E/1605, 16th floor admeasuring 2261 sq. ft. was issued.
 - II. That subsequently, the respondent no.1 and 2 issued various demand invoices/letters for the payment towards the booked apartment and



- accordingly the amount was paid by the complainant and acknowledged by the respondents.
- III. That on 18.08.2014, the complainant and respondent no. 1 executed an agreement to sale/apartment buyers' agreement in respect of afore-mentioned unit. As per the agreement dated 18.08.2014, the total sale consideration was Rs.1,62,29,715/- with car parking and the payment was to be made in accordance with the subvention scheme plan as specified in the agreement.
- IV. That as per clause 35 of the agreement to sale, the respondent no.1 and 2 had agreed to deliver the possession of the flat within 42 months from the date of execution of agreement and according to that the flat has to be delivered till 18.02.2018.
- V. That as per the letter issued by the respondent no. 1 to the complainant, respondent no.1 undertake to pay Pre-EMI post subvention period on the loan amount charged by respondent no.3 till the offer of possession of the apartment. It is pertinent to mention here that respondent no.1 had failed to fulfill the promise as per the said letter and the burden of paying pre-EMI's to respondent no.3 has been shifted upon complainant. Therefore, due to the above act of the respondents, the complainant had suffered financial loss. That a tripartite agreement dated 18.08.2014, was also executed between the Complainant and respondent no.1 and 3.
- VI. That the complainant having dream of its own apartment in NCR signed the agreement in the hope that the unit will be delivered within time on or before 2018. The complainant was also handed over one detailed payment plan which was subvention plan. It is unfortunate that the dream of owning a unit of the complainant was shattered due to dishonest, unethical attitude of the respondents.

- VII. That at the time of execution of the above said agreement of the apartment the complainant had objected towards the highly titled and one-sided clauses of the agreement, however, the respondents, turned down the concerns of the complainant and curtly informed that the terms and conditions in the agreement are standard clauses and thus, no change can be made. A bare perusal of the agreement reveals that the terms and conditions imposed on the complainant were totally biased in so far as the disparity between the bargaining power and status of the parties, tilted the scale in the favour of the respondents. Furthermore, since the respondents, were in dominant position, they fabricated the agreement according to their whims and fancies. That it pertinent to mention here that as per the tripartite agreement dated 18.08.2014, burden of paying the Pre-EMI's was upon respondent no.1 but respondent has failed to pay the same and burden has been shifted upon the complainant. Now respondent no. 3, despite of repeated request and reminders from the complainant is demanding the Pre-EMI's from complainant rather than the respondent no.1. It is important to mention here that respondent no.3 is well aware of the fact and clauses of the tripartite agreement dated 18.08.2014 but respondent no.3 instead of raising the demands from respondent no.1 is demanding the same from the complainant. That moreover the complainant is bearing the burden of the bounced EMIS charges which is being done at the hands of respondent no.3 by regularly deducting the EMIs from the complainant instead of knocking the doors of respondent no.1.
- VIII. That as per the demands raised by respondent no.1. and 2, the complainant had paid a sum of Rs.15,70,000/- and total amount disbursed by the ICICI Bank i.e., respondent no.3 as per the account

statement is Rs.49,10,673/-. The total sale consideration paid by the complainant to the respondent no. 1 and 2 is Rs.64,80,673/-. That respondent no.3 had to make payment to respondent no.1 and 2 as per the tripartite agreement dated 18.08.2014.

- IX. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainant approached the respondents and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- X. That the respondents despite having made multiple tall representations to the complainant, the respondents have chosen deliberately not to act and fulfill the promises and have given a cold shoulder to the grievances raised by the cheated allottees. The respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, agreement to sale and the different advertisements released from time to time. Further, such acts of the respondents are illegal and against the spirit of Act of 2016 and Rules, 2017. The respondents have played a fraud upon the complainant and have cheated him fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated

period. The respondents had further malafidely failed to implement the tripartite agreement executed with the complainant. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondents is filing the present complaint. The complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for residential purposes. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. The respondents are guilty of deficiency in service. The present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondents in sale of their unit and the provisions allied to it.

- XI. That the complainant regularly visited the site but was surprised to see that construction was very slow. It appears that respondents have played fraud upon the complainant. Even the respondents themselves were not aware that by what time possession would be granted. Also the respondents constructed the basic structure which was linked to the payments and majority of payments were made too early. However, subsequent to this there has been very little progress in construction of the project. The structure was being erected at great speed since the structure alone was related to the vast majority of the payments in the subvention scheme plan. This shows that respondents mala-fide and dishonest motive and intention to cheat and defraud the complainant.
- XII. That despite receiving of all payments of all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant,

- the respondents have failed to deliver the possession of the allotted apartment to the complainant within stipulated period.
- XIII. That it could be seen that the construction of the project in which the complainant's flat was booked with a promise by the respondent to deliver the unit/apartment by February, 2018, the construction stood halted and no progress could be seen on the project and it was not completed within time for the reasons best known to the respondent; which clearly shows that ulterior motive of the respondents to extract money from the innocent people fraudulently.
- XIV. That the complainant visited the office of respondent company several times and made several telephonic requests to the officials of the respondent company seeking refund, however, the respondent's officials kept on delaying the matter on one pretext or the other and despite waiting for a sufficiently long time, the respondent company has failed to refund the amount of complainant.
- XV. That the housing project in which the complainant had invested huge amount of hard earned money has not been delivered to him in time and despite a delay of about 5 years. As a right provided to a consumer under the domains of different statutes of law the complainant visited the builders office several times, send the builder endless reminders telephonically and also via several e-mails inquiring about the reason of the delay in the completion of the project but to the utter shock and dismay of the complainant neither of the queries of the complainant were ever entertained and no conclusive and satisfactory reply ever came from the builders end which the builders was duty bound to provide.
- XVI. That cause of action to file the present complaint firstly accrued when the respondent no.1 stop paying the pre-EMIS to respondent no.3, as



per the terms of tripartite agreement, without any reason and rhyme. The cause of action further accrued when the respondent no.1 and 2 failed to deliver the possession of the unit in question in time as agreed. The cause of action further accrued on each and every date when the complainant requested the respondent and not forcing the complainant to pay the same as the agreed terms of the bookings, but respondents, always avoided the same till date of filling the present complaint. The cause of action is of continuing one.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondents no.1 and 2 to refund the amount of Rs.64,80,673/- taken by the respondents from the complainant with interest @ 10.35% up to the date of payment, in the interest of justice.
 - ii. Pass an order in favour of the complainant and against the respondents thereby declaring that the complainant is not entitled to pay the Pre-EMIS/EMIS to respondent no.3 as the same was to be after the possession of the unit.
 - iii. Pass an order for restraining the respondent no.3 and all other persons acting for and on its behalf from demanding the Pre-EMIS from the complainant.
 - iv. Pass an order for restraining the respondent no.3, from charging any penal interest in any form from the complainant.
 - v. Direct the respondent to pay account of damages to the tune of Rs.10,00,000/- in favour of the complainant for illegally threatening and for causing mental agony & harassment to complainant.
 - vi. Direct the respondent no.1 and 2 to compensate the complainant for the bounced EMI charges that is suffering due to act by respondent no.3 of debiting the EMI from the account of complainant.

- vii. Direct the respondent no. 1 & 2 to refund the amount paid by the complainant to the complainant with interest and amount paid by the respondent no.3 be returned to respondent no. 3 by respondent no.1 and 2.
- viii. In alternate if the authority passes an order of refund of the whole amount to the complainant, the respondent no.3 be restrained from charging the EMI from the complainant till the actual realization of the payment by the respondent no.1 and 2 to the complainant.
- ix. Direct the respondents not to charge / demand anything that is not a part of the agreement to sell nor charge / demand anything that is outside the scope of Act of 2016 nor anything that is illegal, unethical and against the norms of Act of 2016.
5. The authority issued a notice dated 28.03.2023 of the complaint to the respondent no. 3 by speed post and also on the given email address at customer.care@icicibank.com. The delivery reports have been placed in the file. The counsel for the respondent no. 3 neither put in appearance on 24.08.2023 and 12.10.2023 nor filed reply to the complaint within the stipulated period. Despite a lapse of more than 10 months since the notice has been issued to the respondent to file reply, it failed to file the reply. It shows that the respondent no. 3 was intentionally delaying by avoiding filing of written reply. Therefore, in view of above, the defence of the respondent was struck off on 04.01.2024.

D. Reply by the respondent no. 1 and 2:

6. The respondents have contested the complaint on the following grounds:
1. That the respondent no. 1 is no longer identified as M/s RMS Estates Pvt. Ltd. and it had got its name changed to M/s Agrante Developers Pvt. Ltd. The respondent no.2 arrayed herein is a sister company of the respondent





no.1 and in no manner can be construed to be a promoter for the project in question and thus is liable to be deleted as a respondent.

- II. The present reply is being filed and verified on behalf of the respondent no.1 by Sh. Satish Kumar who is the authorized representative of the respondent company authorized vide board resolution dated 11.10.2023.
- III. That at the outset the answering respondent submits that it has not demanded or is in receipt of more than 40% of the total sale consideration of the proposed apartment from any allottee and is undertaking the cost of construction from its own pocket. The promoter is taking all measures to complete the project with procuring necessary approvals from the competent authority.
- IV. That the complainant has filed the present complaint seeking refund of amount deposited in lieu of unit booked in "Beethoven's 8" project. The complainant has availed subvention scheme and financed the consideration amount from ICICI bank and an amount of Rs.49,10,673/- was disbursed by ICICI bank to respondent no.1 on behalf of the complainant.
- V. That the respondent, as per the mutual understanding with the complainant, has been duly complying and paying the pre-EMI on the disbursed amount to the bank regularly. There is a slight default in payment of the said pre-EMI/ interest till date and the respondent undertakes to remit the same till possession is offered to the complainant. The respondent has paid an amount of Rs.24,93,321/- towards pre-EMI.
- VI. That the tower in which the complainant had booked the unit is not ready owing to certain force majeure circumstances. However, Tower-H & J are ready and the construction of a building structure comprising fourteen floors is completed. The necessary electrical wiring and works pertaining to plumbing and sanitation are also ready. The promoter would be in a position in all probability to offer possession of the flats in Tower-H in 8-

9 months from the date of filing of the present reply. The promoter has incurred and utilized his own funds and loan towards construction of the project and if the complaints pertaining to refunds are entertained at this stage it would jeopardize the fate of the project which would consequently hamper the valuable rights of the other allottees of the project. The promoter is in the process of applying for occupation certificate for Tower- H. The promoter is willing to adjust for the interest components as computed for delay in offering possession towards the balance sale consideration of the complainant as the promoter will offer possession in Tower-H to the complainant.

- VII. That the promoter is willing to adjust and give allotment and possession of the unit to the complainant in the said H or J towers where the construction is now 90% completed and the promoter would be able to deliver the unit in 8-9 months from the date of filing of the present reply.
- VIII. That the statement of objects, reasons and preamble of the Act makes it manifestly clear that it is not only the interest of the consumers of the real estate sector which the Act seeks to protect and safeguard but also the promotion of the real estate with a view to ensure sale of plot, apartment etc. Therefore, this Hon'ble Authority should consider the said objective especially considering preceding paragraphs. The Hon'ble Authority is empowered not only to monitor the projects but also to ensure their timely completion where projects are held up or stopped and to take steps so the same are completed in time and in the interest of the allottees who are awaiting possessions of the units in the project. It is not out of place to mention here that due to pending registration of the project with the Hon'ble Authority the Promoter since the implementation of the Act was unable to raise funds from its existing customers nor it could raise finance by selling



unsold inventory. The shortage of funds to enable rapid construction had been a determining factor for the delay as it slowed down the pace of construction considerably. It is reiterated that the Promoter is undertaking costs of constructions from its own pockets and is not demanding anything from the allottees, an act which is unprecedented by any other real estate company and it is now for this Authority to balance the interest of the consumers and the promoters harmoniously to achieve the maximum good and benefits.

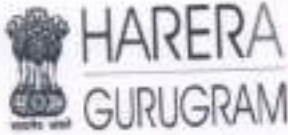
- IX. That the bona-fide of the promoter can be further gathered by the fact that the promoter is running post to pillar and has filed a representation before Financial Commissioner (Haryana) seeking a bifurcation of the license in two parts for two projects respectively and pursuing the same sincerely. It is pertinent to mention that only after renewal of license the promoter will be competent to obtain RERA registration. The promoter has undertaken every possible measure in his armor to salvage the project and complete the same.
- X. That the promoter has filed for HRERA registration vide order letter dated 09.08.2018 of its project on the said land which was to be with the applicant as per the agreement. The fate of the application is dubious and is still pending as the aforesaid license has lapsed and not existing anymore as on date.
- XI. That due to non-registration with HRERA the promoter is unable to sell its proposed units in its project. More particularly the applicant is crippled financially as no demand can be raised by the promoter from its existing members. It is to be kindly considered by this Hon'ble Authority that the promoter has accordingly not raised a single demand from its members and has not collected more than 40% of total sale consideration of a unit from any of its members. On the

contrary, the promoter has undertaken the tedious task of completing the construction of the project from its own finances and loans so as to offer possession and is also remitting the interests on subvention scheme on behalf of customers so as to protect them from further loss.

- XII. That, it would be of high importance to mention one similar complaint filed with this Hon'ble Authority wherein similar issues were being adjudicated. The Hon'ble Authority had the opportunity to deal with similar complex issues faced by developers in respect of the licensed land wherein the original licensee had further sub-divided the land for development purposes on the basis of collaboration agreements. This Hon'ble Authority in complaint no. 826/2018, 1402/2018, 1343/2018, 1344/2018 had passed common orders. The issues in these complaints were similar to the applicant's issues.
- XIII. That the crisis of COVID-19 pandemic has also given a blow to smooth working of the promoter. It is pertinent to mention here that during the lockdown imposed by the Central Government, the workforce at the project site left for their homes and there was a complete halt in the work which added to further delay. It was after sincere efforts of the promoter that the workforce could be again mobilized and presently the works are being carried out at the site.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

A



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

E.I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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.

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainant at a later stage.

10. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*" SCC Online SC 1044 decided on 11.11.2021 and followed in *M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:

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

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court 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 relief sought by the complainant:

- F.I Direct the respondents no.1 and 2 to refund the amount of Rs.64,80,673/- taken by the respondents from the complainant with interest @ 10.35% up to the date of payment, in the interest of justice.
- F.II Pass an order in favour of the complainant and against the respondents thereby declaring that the complainant is not

entitled to pay the Pre-EMIS/EMIS to respondent no.3 as the same was to be after the possession of the unit.

F.III Pass an order for restraining the respondent no.3 and all other persons acting for and on its behalf from demanding the Pre-EMIS from the complainant.

12. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
13. In the present complaint, the complainant intend to withdraw from the project and is seeking return of the amount paid by him 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)

14. Clause 35 of the agreement provides for handing over of possession and is reproduced below:

35. Handing over of possession

That the exclusive vacant possession of the apartment shall be handed over by the vendor to the vendee within 42 months after the vendee shall make full and final payment in accordance with the terms of this agreement.

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of

terms and conditions of this agreement and application, and the complainant not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the agreement for sale by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

16. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund of the amount paid by him at the prescribed rate of interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.



17. 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.
18. 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., 06.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
19. 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;"*
20. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 35 read with clause 18(a) of the agreement dated 18.08.2014, the possession of the subject apartment was to be delivered within a period of 42 months after full and final payment in accordance with the terms of agreement shall be made

12

by the complainant-allottee. The due date is calculated 42 months from date of buyer's agreement (in the absence of allotment letter) i.e., 18.08.2014. Accordingly, the due date of possession comes out to be 18.02.2018 and the same has been confirmed by the counsel for the complainant in his written submissions dated 09.10.2024. It is pertinent to mention over here that even after a passage of more than 10.6 years (i.e., from the date of BBA till date) neither the construction is complete 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 allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid almost 40% of total consideration till 2016. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Moreover, the Engineering Officer of the Authority has visited the project site and as per the report submitted by the Engineering Officer it was brought to the notice of the Authority that the unit of the complainant exists in Tower-K and the respondent-promoter has constructed only basement of Tower-K and that too approximately 7-8 years ago and since then the work at the site has been stopped. In view of the above-mentioned facts, the allottee intends to withdraw from the project and is well within the right to do the same in view of section 18(1) of the Act, 2016.

21. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/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....."

22. Further, 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."

23. 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 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 the allottee, as he wishes 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.

24. The authority observes vide proceedings of the day dated 06.03.2025 that the complainant allottee has availed a loan of Rs.49,10,673/- from the ICICI bank as confirmed by the respondent in para no. 4 of the reply and the respondent was directed firstly to clear the loan amount disbursed by the bank and pay the remaining amount to the complainant while refunding the paid-up amount of Rs.64,80,673/-.
25. The authority hereby directs the respondent to refund the amount received by it i.e., Rs.64,80,673/- along with interest on such balance amount at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. The respondent may deduct the amount already paid towards pre-EMI i.e., Rs.24,93,321/- from the above refundable amount.

F.IV Direct the respondent to pay account of damages to the tune of Rs.10,00,000/- in favour of the complainant for illegally threatening and for causing mental agony & harassment to complainant.

F.V Direct the respondent no.1 and 2 to compensate the complainant for the bounced EMI charges that is suffering due to act by respondent no.3 of debiting the EMI from the account of complainant.

26. The above-mentioned relief sought by the complainants are being taken together being inter-connected.

27. 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.

F.VI Pass an order for restraining the respondent no.3, from charging any penal interest in any form from the complainant.

F.VII Direct the respondent no. 1 & 2 to refund the amount paid by the complainant to the complainant with interest and amount paid by the respondent no.3 be returned to respondent no. 3 by respondent no.1 and 2.

F.VIII In alternate if the authority passes an order of refund of the whole amount to the complainant, the respondent no.3 be restrained from charging the EMI from the complainant till the actual realization of the payment by the respondent no.1 and 2 to the complainant.

F.IX Direct the respondents not to charge / demand anything that is not a part of the agreement to sell nor charge / demand anything that is outside the scope of Act of 2016 nor anything that is illegal, unethical and against the norms of Act of 2016.

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

G. Directions of the Authority:

30. 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 entire amount of Rs.64,80,673/- received by him from the complainant-allottee (along with interest on such balance amount 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 deposited amount. The respondent may deduct the amount already paid towards pre-EMI i.e., Rs.24,93,321/- from the above refundable amount.

- ii. Out of total amount so assessed, the amount paid by the bank/payee be refunded first in the account of bank and the balance amount along with interest if any will be refunded to the complainant
- iii. 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.
- iv. 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.

30. Complaint stands disposed of.

31. File be consigned to the registry.

HARERA
GURUGRAM


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.03.2025