

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

Complaint no. : 422 of 2024
Date of filing complaint : 15.02.2024
First date of hearing : 03.04.2024
Date of decision : 23.04.2025

1. Ashish Gandhi
2. Geeta Sethi

Both Residents of: - House no. 1046/64,
Jawahar Nagar, Palwal, Haryana- 1221102

Complainants

Versus

M/s Shine Buildcon Private Limited

Registered office: H-334, Ground Floor,
New Rajinder Nagar, New Delhi

Corporate office: Plot No. 281, Udyog
Vihar, Phase-II, Gurugram

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Darshan Sharma (Advocate)

Complainants

Sh. Venket Rao (Advocate)

Respondent

ORDER

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

Sr. No.	Particulars	Details
1.	Name of the project	"70 Grandwalk", Sector 70, Gurugram
2.	Project area	2.893 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	34 of 2012 dated 15.04.2012 valid upto 14.04.2020
5.	Name of licensee	Shine Buildcon
6.	RERA Registered/ not registered	28 of 2017 dated 28.07.2017 valid upto 30.06.2022
7.	Allotment Letter	04.03.2015 (Page no. 20 of reply)
8.	Old Unit no. (as mentioned in allotment letter dated 04.03.2015)	SA-522, 5 th floor (Service Apartment) 695 Sq. Ft. (Super Area) (Page no. 20 of reply)
	Request letter sent by complainant to respondent for swapping of units	01.12.2018 (Page no. 29 of reply)
	Request for swapping units accepted by respondent on	08.12.2018 (Page no. 32 of reply)
9.	New Unit no. (as mentioned in BBA dated 18.07.2019)	SA-620, 6 th floor (Service Apartment) 634 Sq. Ft. (Super Area) (Page no. 28 of complaint)
10.	Date of execution of BBA	18.07.2019 (Page no. 26 of complaint)
11.	Possession clause	Clause 13. POSSESSION AND HOLDING CHARGES "Subject to Force Majeure, as defined herein and further subject to faithful discharge of obligations by the Allottee under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the Total Price/Sale Consideration, taxes, registration charges, stamp duty and

		<p><i>other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to complete construction and shall offer the possession of the said Unit to the Allottee on or before 30th June 2022 as per the schedule of construction approved by the appropriate authority."</i></p> <p>[Emphasis supplied]</p> <p>(As per BBA at page no. 48 of complaint)</p>
12.	Due date of possession	<p>30.12.2022</p> <p>(30.06.2022 + 6 months grace as per HARERA notification no. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic)</p>
13.	Total Sale Consideration	<p>Rs. 47,97,516/-</p> <p>(As per BBA at page no. 35 of complaint)</p>
14.	Amount paid by the complainants	<p>Rs. 17,04,297/-</p> <p>(Statement of accounts dated 23.04.2024 at page 34 of reply)</p>
15.	Occupation certificate	Not Obtained
16.	Offer of Possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions by filing the present complaint as well as written submissions dated 16.04.2025: -
 - a) That being impressed by the advertisement and rosy pictures shown by the respondent through various mode of communication including but not limited to news-papers and pamphlets the complainants came to know that the respondent is developing a commercial complex consisting of retail unit /office space/serviced apartments under the name and style of "70 Grandwalk" in the revenue estate of Village Badshahpur, Sector – 70, Tehsil & District, Gurgaon, Haryana. It was further communicated that the project is RERA registered under registration no. 28 of 2017 dated 28.07.2017.
 - b) That the respondent also made a public offer guaranteeing that the service apartment they offered in their project would include a leasing arrangement

with reputed hotels, ensuring regular income for the unit owners through these arrangements.

- c) That the complainants believing that their offer is genuine applied for allotment of a service apartment unit having super area of 634 sq. ft in the said project by submitting an application along with a cheque no. 278718 dated 24.09.2014 of Rs.3,76,000/- with the respondent. The complainants are coming from middle class background. Thus, they booked the service apartment believing that the offer of the respondent i.e., timely delivery and guaranteed income is genuine and believing everything to be perfect in all manners.
- d) That, the accused persons failed to fulfill their promises and also to deliver the booked service apartment. Instead, there were several instances of continuous changes in the units offered and associated offers.
- e) That finally, after many failed promises and delayed timeline a unit SA-620 in the said project was allotted to complainants and buyer's agreement dated 18.07.2019 was executed. Unfortunately, till date, the possession of the said unit and promises of guaranteed income has not been provided to them.
- f) That the allotment was made for a total sale consideration of Rs. 17,04,297/- from 25.09.2014 to 20.09.2015 in accordance with the respondent payment terms.
- g) That the possession of the unit was to be rendered/handed over by the respondent on or before 14.03.2022, which was further extended to 30.06.2022.
- h) That as and when any member from the family of the complainants enquired about the completion of the construction of the building and delivery of possession, the officials of the respondent became furious upon him and stated that don't tried to cudgel brain as and when the construction of the building will complete, we will inform you.

- i) That the complainants have already paid a sum of Rs. 17,04,297/- to the respondent but till the no offer of possession of the unit is provided.
- j) That the complainants, due to abovementioned reasons, cancelled the booking of the said unit and requested for refund the amount paid by them along with interest. The complainant made several requests and reminders to the respondent for the refund of the booking amount, but the respondent failed to refund the amount paid by the complainant along with interest. The complainants tried to contact the respondent several times but the respondent neither responded nor met with the complainant.
- k) That due to non-performance of its obligations and duties the complainants are going through mental pain and agony. The entire sequential of events leading to the instant complaint establish the malafide intentions of the respondent to defraud the complainants of their hard-earned money. In this hue, it is reverentially submitted that such conduct on the part of the respondent is tantamount to breach of the contractual obligations of the agreement. Ergo, the complainants are entitled to exercise its right conferred by the RERA Act, 2016 under Section 31 read with Section 18 of the Act.
- l) That the complainants wants to withdraw themselves from the project, as the respondent has not fulfilled its obligations provided under the RERA Act, 2016 and therefore, the respondent is obligated to refund the amount paid by the complainants, not to levy any illegal and unfair charges, if any, and to pay the interest.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):
 - I. Direct the respondent to refund the amount paid by complainant along with interest.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds by way of reply dated 18.06.2024 and written arguments dated 08.04.2025:
- That in around the year 2014, the complainants booked a service apartment vide booking application form dated 24.09.2014 by paying a sum of Rs. 3,76,000/- vide cheque bearing no. 278718 dated 24.09.2014 with the respondent drawn on Yes Bank, Huda Market, Gurugram. The complainants on 04.03.2015 were allotted service apartment unit bearing no. SA-620 on 6th floor at project 70 Grandwalk, Sector 70, Gurugram, Haryana, having tentative super area of 634 Sq. ft. (carpet area 269 Sq. ft.) in the said project for a total sale consideration of Rs. 47,97,516/-. The complainants have no right to claim more than the amount for delayed possession as agreed between the parties as per Clause 13 (ii) of the buyer's agreement dated 12.05.2015.
 - That upon allotment, the respondent on 08.08.2015 raised a demand of Rs. 3,82,250 to the complainant payable towards EDC/IDC. The complainants were required to pay the same before 20.09.2015. However, the complainants failed to make the said payment. For the reason of not having received the said payment, the respondent was constrained to issue further reminders dated 10.10.2015, 31.03.2016 and 05.05.2016 to the complainants. However, the complainants did not pay any heed to the reminders and emails and further chose not to make timely payment within the specific period as and when demanded by the respondent as per the agreed terms.
 - Thereafter, several meetings were held between the complainants and the respondent regarding the pending dues, however, the complainants never expressed their intention of making the payment towards pending dues. Later, the complainants started creating disputes regarding the unit allotted to them and started asking for refund or assured return @ 12% p.a.

- d. That the complainants again put forth their baseless allegations vide email dated 09.11.2016 with regard to the allotted unit bearing no. SA-522, 5th floor, in the commercial complex of the said project. The complainants asked the respondent for refund of their amount and/or provide assured return over the paid amount.
- e. That the respondent vide email dated 29.11.2016 replied to the allegations made against the respondent wherein every query or concern raised by the complainants through email dated 09.11.2016 was specifically answered. Further, the complainant instead of coming ahead to execute the agreement had stated that the possession of their unit has been delayed which was completely false and incorrect on account of the complainants. Further, the complainants had also requested for refund of the amount paid which was duly replied by the respondent by apprising the complainants about the policy for return of deposited amount. Further, the respondent also denied the unlawful demand of the complainants to shift their unit to a new plan of 12% assured return. However, the respondent requested the complainants to come to their office to settle the disputes among them.
- f. That various meetings were held between the complainants and the respondent to settle the issues. The complainants after taking considerable time vide letter dated 01.12.2018 requested the respondent to change their unit bearing no. SA-522, 5th floor admeasuring super area 695 Sq. ft. with the alternate unit bearing no. SA-620, 6th floor admeasuring 634 sq. ft. situated in the same project.
- g. That the complainants further agreed and undertook under the said letter that the complainants shall not raise any issue or not to initiate any action or proceeding against the company or its employees or directors for the said units No. SA-522, 5th floor or SA-620, 6th floor in future. The relevant part of the letter is reproduced herein for ready reference:

*"We undertake that all the legal notices sent by us to your company/employees/directors of company for the breach of contract, cheating, breach of trust, falsification of accounts & misappropriation of property with respect to above said unit No. SA-522, Fifth Floor at project 70 Grandwalk, Sector-70, Gurugram, Haryana have been withdrawn by us and now there is no dispute, claim, interest, legal case, suit against your company/employee/directors of company with respect of unit No. SA-522, Fifth Floor and **we further undertake not to raise any issue or not to initiate any action or proceedings against the company or its employees or directors for the said units No. SA-522, Fifth Floor or SA-620, Sixth Floor in future also.**"*

Therefore, in terms of the said letter, the complainants are not entitled to file any complaint pertaining to the unit in question since the complainant have already waived off their rights vide the letter dated 01.12.2018.

- h. That as per the Doctrine of Waiver *"a party for whom certain statutory rights are granted, such party can waive those rights if no public interest is involved."* The complainants have waived off their right to claim interest for delay in handing over of possession. Hence, the present complaint is infructuous as the complainants have already waived off their rights and concealed the same in the present complaint.
- i. That the respondent, being a customer centric company, accepted the request of the complainants for swapping their unit in the same project. In furtherance to the said request, the respondent vide letter dated 08.12.2018 titled *"Swapping of Unit booked at Project 70 Grandwalk, Sector-70, Gurugram"* changed the unit and allotted a new unit no. SA-620, 6th floor admeasuring area 634 sq. ft. in the same project. The sale consideration as was agreed between the parties for the said unit was Rs. 43,91,050/- plus other charges against which the complainant has paid only an amount of Rs. 16,60,750/-.
- j. That the respondent issued allotment letter dated 17.04.2019 in favor of the complainants wherein they were allotted unit no. SA-620, 6th floor admeasuring area 634 sq. ft. in the project for the agreed sale consideration. On 18.07.2019, a buyer's agreement was executed between the complainants

and the respondent for the said unit having basic sale price of Rs. 43,91,050/- plus all other charges mentioned and agreed by the complainants under the agreement.

- k. That as per clause 13 (i) of the agreement, the respondent was under obligation to handover possession of the unit on or before 30.06.2022, subject to force majeure circumstances or the circumstances which are beyond the control of the company or timely payment of instalments by the complainants. It is to note herein that the project was delayed due to the circumstances which were beyond the control of the respondent and further due to delay in making the payment by the complainant's, therefore, committed date is entitled to be extended automatically. It is also submitted that as the development of the project was affected due to the covid-19, and accordingly, the respondent is entitled for a further extension first covid lockdown of 6 months in due date of possession which comes out to be 30.12.2022.
- l. That the respondent was committed to complete the development of the project and handover the possession with the proposed timelines. The developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
- m. That the development of project of the respondent was also adversely affected due to various directions of National Green Tribunal or statutory authorities, etc. The various dates which affected the constructions of the project have been detailed as under:



Sr. No.	COURTS, AUTHORITIES ETC. / DATE OF ORDER	TITLE	DURATION OF BAN
1.	National Green Tribunal /08.11.2016 & 10.11.2016	Vardhman Kaushik Vs. Union of India	08.11.2016 – 16.11.2016 (8 days)
2.	National Green Tribunal /09.11.2017	Vardhman Kaushik Vs. Union of India	09.11.2017 – Ban was lifted after 10 days (10 days)
3.	National Green Tribunal /18.12.2017	Vardhman Kaushik Vs. Union of India	18.12.2017 – 08.01.2018 (22 days)
4.	Delhi Pollution Control Committee (DPCC), Department of Environment, Government of NCT of Delhi /14.06.2018	Order/Notification dated 14.06.2018	14.06.2018 – 17.06.2018 (3 days)
5.	Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)-EPCA	Press Note – 29.10.2018 and later extended till 12.11.2018	01.11.2018-12.11.2018 (11 days)
6.	Hon'ble Supreme Court/ 23.12.2018	3 days Construction ban in Delhi/NCR	24.12.2018 – 26.12.2018 (3 days)
7.	Central Pollution Control Board		26.10.2019 – 30.10.2019 (5 days)
8.	Environment Pollution (Prevention & Control Authority)-EPCA- Dr. Bhure Lal, Chairman	Complete Ban	01.11.2019 – 05.11.2019 (5 days)
9.	Supreme Court – 04.11.2019	M. C. Mehta Vs. Union Of India W.P. (c) 13029/1985	04.11.2019 – 14.02.2020 (3 months 11 days)
10.	Ministry of Housing & Urban Affair, Government of India – Covid-19 Lockdown 2020	Notification dated 28.05.2020	Complete 9 months extension with effect from 25.03.2020 (9 months)
11.	Covid-19 Lockdown 2021		8 weeks
TOTAL			1.4 years (approx.)

- n. As per the calculations, the date to offer possession has to be extended by approximately 1.4 years. Subsequently in June, 2021, removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of project. Despite, facing shortage in workforce, materials and transportation, the respondent

managed to continue with the construction work. The respondent also had to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the Project.

- o. That the complainants have always delayed the payment towards the total sale consideration despite numerous reminders and agreeing for the same under the agreement. It is to mention here that the complainants Rs. 17,04,297/- against the agreed sale consideration of Rs. 47,97,516/- plus other charges. The complainants have always been in breach of the terms and conditions of the agreement. Under clause 7.1 of the agreement, the complainants have agreed to make the payment as per the agreed payment schedule, however, the complainants miserably failed to adhere with the terms of the agreement.
- p. Further, in terms of clause 19 of the agreement, it was agreed between the parties that the time is an essence of the agreement and therefore, both the parties are strictly required to adhere the timelines agreed and committed under the agreement. It was agreed by the complainants that they will adhere to the timelines as agreed under the payment schedule and shall make timely payment which directly impacts the timely execution of the project.
- q. That after the lapse of almost 4 years, the complainants further sent a legal notice dated 02.12.2023 to the respondent for demand of refund of advance amount along with 24% with interest.
- r. That the complainants herein, have suppressed the above stated facts and have raised this complaint under reply upon baseless, vague, wrong grounds and have mislead this Hon'ble Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this Hon'ble Authority and in the interest of justice.

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 based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the authority:

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

9. 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 the entire Gurugram District for all purposes 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

11. 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.

12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

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

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent:

F.I Objections regarding force Majeure.

14. The respondent-promoter has raised the contention that the construction of the unit of the complainants has been delayed due to force majeure circumstances such as orders passed by the Hon'ble NGT, Environment

Protection Control Authority, and Hon'ble Supreme Court. The pleas of the respondent advanced in this regard are devoid of merit. The orders passed were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons.

15. The respondent-promoter also raised the contention that, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region and the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period and other similar orders during the winter period 2017-2019. A complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labours left the site and they went to their native villages and look out for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction realized after long period of it. It is pertinent to mention here that flat buyer's agreement was executed between the parties on 12.05.2015 and as per the terms and conditions of the said agreement the due date of handing over of possession comes 12.05.2019 which is way before the abovementioned orders. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

16. Further, the respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. Further, the authority has gone through the possession clause of the agreement and observed that

the respondent-developer proposes to handover the possession of the allotted unit by August 2021. As per **HARERA notification no. 9/3-2020 dated 26.05.2020**, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 30.06.2022 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 30.12.2022.

G. Findings on relief sought by the complainants.

G.I Direct the respondent to refund the amount paid by complainant along with interest.

17. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same 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 the 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 13 of the buyer's agreement dated 18.07.2019 provides the time period of handing over possession and the same is reproduced below:

Clause 13. POSSESSION AND HOLDING CHARGES

"Subject to Force Majeure, as defined herein and further subject to faithful discharge of obligations by the Allottee under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the Total Price/Sale Consideration, taxes, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to complete construction and shall offer the possession of the said Unit to the Allottee on or before 30th June 2022 as per the schedule of construction approved by the appropriate authority."

[Emphasis supplied]

19. As per clause 13 of the builder buyer agreement dated 18.07.2019 the unit was to be offered on or before 30.06.2022 to the complainant-allottee. As per clause 13 of the builder buyer agreement the due date of possession comes out to be 30.12.2022 subject to grace period of 6 months in lieu of Covid-19. 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 she 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....."

20. It has come on record that the complainants have paid an amount of Rs.17,04,297/- against the sale consideration of Rs.47,97,516/-. However,

the complainants contended that the due date of possession has been lapsed, and no occupation certificate has been obtained against the said project by the respondent. Hence, in case if allottee wish to withdraw from the project, the respondent is liable on demand to return amount received by it with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of buyer's agreement. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357** 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**, it was 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."

21. 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) of the Act. 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 allottees, as the allottees 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.

22. There has been an inordinate delay in the project which cannot be condoned. Thus, in such a situation, the complainants cannot be compelled to take possession of the unit as he is well within his right to seek refund of the paid-up amount. This is without prejudice to any other remedy available to the allottee(s) including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under Sections 71 and 72 read with Section 31(1) of the Act of 2016.

23. **Admissibility of refund along with prescribed rate of interest:** Section 18 of the Act read with Rule 15 of the Rules, 2017 provide that in case the allottees intend to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under Rule 15 of the Rules, *ibid*. 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."

24. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.

25. 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., 23.04.2025

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

26. The definition of term "interest" as defined under Section 2(za)(ii) of the act provides that the interest payable by the promoter to the allottee shall be from the date the promoter received the amount. 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—

.....
(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,

27. Therefore, The authority hereby directs the promoter to return the amount received by it i.e., Rs.17,04,297/- 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 Rules, *ibid*.

H. Directions issued by the Authority:

28. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

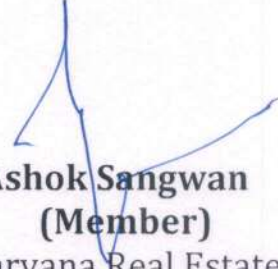
- I. The respondent/promoter is directed to refund the entire amount i.e., Rs.17,04,297/- received by it from the complainants along with interest at the rate of 11.10% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017 from the date of each payment till its realization.

II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

29. Complaint stands disposed of.

30. File be consigned to the Registry.

Dated: 23.04.2025



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



HARERA
GURUGRAM