

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

Complaint no.: 3478 of 2024
Date of filing: 14.08.2024
Date of order: 15.05.2025

Samir Sharma HUF
R/o F-052, Phase-1, DLF Capital Greens, Zakhira, Delhi-
110015.

Complainant

Versus

M/s Ansal Phalak Infrastructure Private Limited
(Now known as M/s New Look Builders and Developers
Private Limited)

Regd. Office at: 1202, Antriksh Bhawan, 16, Kasturba
Gandhi Marg, New Delhi-110001.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Manmeet Singh Jamwal (Advocate)

Shri Deeptanshu Jain (Advocate)

Complainant
Respondent

ORDER

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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. The particulars of the project, the amount of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"Versalia", Badshahpur, Sector 67-A, Gurugram
2.	Nature of the project	Residential Colony
3.	DTCP license No.	81 of 2013 dated 19.09.2013
4.	RERA registration	154 of 2017 dated 28.08.2017
5.	Application Form	23.01.2015 (As mentioned in BBA at page 21 of complaint)
6.	Unit no.	SF-3258 (As mentioned in per page 21 & 24 of complaint)
7.	Unit area	1818 sq. ft. (As mentioned in per page 21 & 24 of complaint)
8.	Allotment Letter	17.02.2015 (As per page 48 of complaint)
9.	Date of execution of flat buyer agreement [with M/s Ansal Phalak Infrastructure Private Limited]	17.02.2015 (As per page 52 of complaint)
10.	Possession clause	5. Possession of Floor 5.1 Subject to Clause 5.2 infra and further subject to all the buyers of the Floors in the Residential Colony making timely payment, the Company shall endeavor to complete the development of Residential Colony and the Floor as far as possible within 36 months with an extended period of (6) six months from the date of execution of this Floor buyer agreement subject to the receipt of requisite building /revised building plans/ other approvals & permissions from the concerned authorities, as well as Force Majeure Conditions as defined in the

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		<i>agreement and subject to fulfilment of the Terms and Conditions of the Allotment, Certificate & Agreement including but</i> (Page 31 of complaint)
11.	Due date of possession	17.08.2018 (Note: the due date of possessions is calculated 36 months from the date of execution of BBA + grace period of 6 months is being granted unconditionally)
12.	Basic sale consideration	Rs. 98,73,500/- (As mentioned in para 25 of BBA at page 25 of complaint)
13.	Amount paid against the allotted unit [to M/s Ansal Phalak Infrastructure Private Limited]	Rs. 90,00,000/- (As per receipts at page 16-17 & 57-62 of complaint)
14.	Occupation Certificate	Not Obtained
15.	Offer of Possession	Not Offered

B. Facts of the complaint:

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

- That the complainant is aggrieved, inter-alia, by the respondent on account of excessive delay in handing over the possession of the unit no.SF-3258 admeasuring 1818 sq. ft. in the residential real estate project known as "Versalia" at Sector – 67A, Gurugram – 122002 and the respondent breach of the terms of flat buyer's agreement dated 17.02.2015 by not providing the possession of the unit within the time agreed for i.e. till 18.02.2018 under the agreement.
- That the respondent claims themselves to be renowned promoters & developers having vast experience in construction field and real estate. The respondent further represented it's focus on timely completion of its project and adhering to delivery schedules, thus offering customers the best value for money.

- iii. Hence in 2015, the complainant on aforesaid luring and boastful representations by the respondent and based on such representations and assurances, and inter-alia, about its sound financial base and vast experience/expertise in delivering time bound projects, the complainant got convinced to apply in respondent's project, hence in January 2015 after deliberations with the respondent applied for independent residential floor. The basic sale consideration of the unit was Rs.98,73,500/- exclusive EDC, IDC for the unit. Apart from the BSP, the complainant was also liable to pay charges such as EDC, IDC etc. Hence the total charges were Rs.1,04,18,900/- . It was further assured that the possession of the said unit will be handed over within 36 months from the date of signing of the agreement i.e. on or by 18.02.2018.
- iv. That on being assured from the respondent, the complainant made a payment of Rs.15,00,000/- receipt of which was acknowledged by the respondent vide receipt no.3946 for the unit of the cheque no. 473173 dated 23.01.2015 issued on Syndicate Bank On 08.07.2010. Hence below are the details of the payments made by the complainant to the respondent against which the respondent issued its receipt from time to time:

S.N.	Receipt no. & date	Amount
1.	Receipt no. 3946 dt. 31.01.2015	15,00,000
2.	Receipt no. 3960 dt. 06.02.2015	10,00,000
3.	Receipt no. 4094 dt. 29.04.2015	15,00,000
4.	Receipt no. 4119 dt. 16.05.2015	15,00,000
5.	Receipt no. 4134 dt. 28.05.2015	10,00,000
6.	Receipt no. 4135 dt. 28.05.2015	10,00,000
7.	Receipt no. 4154 dt. 16.06.2015	15,00,000
		90,00,000

- v. On 17.02.2015, after the complainant had made a payment of Rs.25,00,000/- i.e. around 1/4th of total charges the respondent executed the agreement.
- vi. On 15.06.2015, the respondent issued reminder notice for the unit wherein against a total dues then of Rs.90,12,979/- while acknowledging receipt of

Rs.75,00,000/- demanded a sum of Rs.15,12,979/- to be paid by 25.06.2015. Though vide respondent's receipt no.4154 dated 16.06.2015, the respondent acknowledged receipt of the said outstanding amount of Rs.15,12,979/-.

- vii. The complainant kept making payments to the respondent from time to time as and when the same were demanded. The complainant from time to time kept seeking the status of the handover and was informed that the construction was under process and the same would be handed over as and when the same is complete.
- viii. That on 31.03.2020, M/s Ansal Phalak Infrastructure Pvt. Ltd. ceased as a subsidiary of M/s Ansal Properties and Infrastructure Limited in terms of an Arbitral Award. Vide an agreement business undertaking of "Versalia" Project of M/s Ansal Phalak Infrastructure Pvt. Ltd. was transferred on a slump sale basis to New Look Builders and Developers w.e.f. 31.03.2020.
- ix. That, the aforesaid undue and unjustified delay has resulted into huge financial loss, unwarranted harassment and mental agony to the complainant and amounts to gross negligence, deficiency in service and unfair trade practice rendering the respondent liable for civil as well as penal consequences. The act and conduct of the respondent and its officials in cajoling the innocent customers by making boastful representations and assurances as regards the capacity and expertise of the respondent in delivering time bound project, to fleece their hard-earned money is not only unfair trade practice /malpractice rather the same amounts to playing fraud upon them. That owing to the default and the false assurances on the part of the respondent, the gullible complainant has suffered mental agony and have incurred unexpected and unwarranted expenses including rental costs and other miscellaneous expenses due to the default on the part of the respondent.

12



- x. That, the respondent manifestly and intentionally captured the arbitrary, oppressive and unjustifiable terms in the agreement, only to inure to the benefit of the respondent and totally avoided the interest of the complainant. Such terms are vague and contrary to the provisions of the law. The terms of the agreement spell out the clear intention of the respondent as the said agreement was drafted, keeping in mind, the interest of the respondent only. Hence considering the oppressive, arbitrary, unfair terms and conditions of the agreement, the complainant seeks indulgence of this Authority to grant the reliefs claimed by the complainant. Considering the delay in handing over of the possession and non-refund of the excess amount with the respondent, the complainant is approaching this Authority seeking the respective prayers.
- xi. The complainant reserves the right to alter, amend etc. in any manner whatsoever pleadings, ground as deemed fit necessary and proper.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- a. The respondent be directed to hand over possession of the unit immediately without any further delay.
 - b. The respondent be directed to pay interest as provided under the extant Act / Rules @ +2% of the SBI's highest MCLR from the due date of offer for possession i.e. 18.02.2018 till the date possession of the unit is handed over to the complainant for the delay in handing over possession of the unit.
 - c. Seek compliance of other obligations under the Act/ rules/ regulations and the agreement to sell.
 - d. Any other relief as this Authority may deem fit and appropriate in the facts and circumstances of the present case.
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) (a) of the Act to plead guilty or not to plead guilty.

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D. Reply by the respondent:

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

- i. That the respondent denies each and every assertion, averment, statement, allegation made in the complaint filed by the complainant as false, frivolous, misrepresented, mischievous and vexatious, except for those which are matter of record or are specifically admitted hereinunder.
- ii. That the complainant through the complaint under reply has prayed for directions against the respondent to pay him delay possession charges for delay in handing over the possession of the unit no. 3258, second floor in the project "Verselia" and the directions to handover the possession of the unit.
- iii. The complainant has attempted to mislead this Authority by misrepresenting the facts & circumstance of the instant case.
- iv. That the complainant approached the respondent seeking high yielding opportunity for investment purposes. Accordingly, they filed the application for allotment of the unit in the project with the respondent.
- v. Thereafter, the unit was allotted to the complainant in terms of floor buyer agreement dated 17.02.2015. That FBA contains the details of terms and conditions of a commercial transaction between the parties. That as per clause no. 3.1 of the FBA, the unit was allotted to the complainants for a basic sale consideration of Rs.98,73,500/- i.e. excluding the external development charges, preferential location charges, maintenance charges, taxes, etc.
- vi. That in terms of clause no. 5.1 of FBA, respondent undertook to complete the construction of the unit and to deliver its possession to the complainants within a period of 42 (36+6) months from the date of execution of FBA i.e. 17.08.2018.
- vii. The complainant has arrayed "Ansal Phalak Infrastructure Pvt. Ltd." as the respondent in the present Complaint. However, the name of "Ansal Phalak Infrastructure Pvt. Ltd." was changed to "New Look Builders and Developers

Pvt. Ltd." on 23.10.2020. Therefore, prayer sought by the complainants cannot be allowed. Hence, the present complaint is not maintainable for misjoinder of parties and same is liable to be dismissed with exemplary cost upon the complainants for the aforesaid reason alone.

- viii. The respondent was incorporated under the provisions of Companies Act, 1956 in year 2010 by two promoter entities namely Ansal Properties and Infrastructure Ltd and Caliber Properties Pvt. Ltd. with the sole purpose for development, construction and execution of a township on a minimum of 141 acres of developable and licensable land being a part of the Property located at Sector 67 and Sector 67 A, Gurugram.
- ix. Subsequent to the incorporation of the respondent the promoters took investment from several investors for the purpose of development, construction and execution of a township on a minimum of 141 acres of developable and licensable land being a part of the property located at Sector 67 and Sector 67 A, Gurugram. That the promoters on behalf of the respondent had undertaken to repay the said investments as per the terms set out in respective investment agreements executed with the investors. However, the promoters had failed to fulfil their obligations in terms of the said investment agreements.
- x. That the promoters being in control of the respondent had mis-appropriated the assets of the respondent for their personal gain at the cost of investors, including but not limited to allottee(s) who had invested in the projects of the respondent from 2011 to 2019 to construct their respective units/ flats/ apartment/ plots after taking approvals from the respective government and statutory authorities.
- xi. In order to claim their lawful right under the investment agreements, the investors-initiated arbitration proceedings against the promoters and the

respondent. The arbitration proceedings were conducted before Retd. Justice K.S. Gupta, Sole Arbitrator.

- xii. During the pendency of said arbitration proceedings, the parties to the arbitration proceedings i.e. the promoters of respondent, investors and respondent reached a settlement and recorded the terms of settlement in master settlement agreement dated 24.12.2019.
- xiii. At the foremost, in order to protect the rights of the Investors of the respondent, including the rights of allottee's of different project, it was agreed between the parties that the management of the respondent would be changed and as such the promoters would not be in any manner managing the respondent and as such the investors would be managing the respondent. Further it was agreed between the parties that pursuant to the fulfilment of the conditions of the MSA, the Investors would become major shareholder of the respondent.
- xiv. It was further agreed that promoters shall keep the respondent fully indemnified against any and all past liabilities, claims, obligations, losses, damages, penalties, actions, judgements, suits, claims against the company.
- xv. Since, under the management of promoter no. 1, the respondent had defaulted in its responsibilities towards the allottee's, and also under of the MSA, the promoter no. 1 undertook to complete the constructions of the respective projects and settle any claim of the allottees or pay the decretal amount towards the award passed by any court/ tribunal.
- xvi. The promoters had also undertaken to indemnify the respondent under clause 3.1 of the MSA against any liabilities arising out of action/ decisions taken before the nominee of the investors are appointed on the board of the respondent. The promoters had also undertaken to indemnify the respondent against any in relation to the first project land including but not limited to the claims of the allottees/customers.

- xvii. Pertinently in terms of clause 1.2 and 4.5 of the MSA, the promoter no. 1 had undertaken to settle all pending litigation matters in relation to the customers of the project lands, wherein the company or the first promoter are parties, pending at NCLT, NCDRC or any other court/forum.
- xviii. The aforesaid facts were duly acknowledged and recorded by this Authority in the registration order dated 30.05.2022 and Arbitration Award dated 19.05.2023 passed by Retd. Justice K.S. Gupta, Sole Arbitrator.
- xix. The fact that it is APIL who is responsible for development and construction of the unit and the project where the unit in the captioned complaint is situated is evident from the para 41, 42 and 43 of the Order dated 30.05.2022 passed by this Authority.
- xx. In view of aforesaid facts, it is Ansal Properties and Infrastructure Ltd. who was in control of the respondent from year 2011 to 2019 and due to its actions/ omissions its investors including the complainant suffered significant losses. Subsequently, through master settlement agreement dated 24.12.2019, the promoter no.1 had agreed to construct the project and to settle all the claims of its investors including the complainant and indemnify the respondent in case of any loss caused due to claim of any other person such as complainant.
- xxi. In light of the aforesaid facts and submissions made, it is submitted that Ansal Properties and Infrastructure Ltd. is a necessary party for adjudication of the captioned complaint as the same is liable for delay in constructing the project and payment of compensation to the complainant for delay in handing over the unit. Furthermore, the respondent is not a necessary party to the captioned complaint as same neither allotted the said Unit to the complainant (allotment was done under management of APIL) nor the same is now liable to construct the said Unit or pay any compensation to the complainant. Therefore, the complaint is not maintainable qua the

respondent. Moreover, the prayer sought by the complainants in the complaint is not maintainable before the Authority as the complainants have not impleaded Ansal Properties and Infrastructure Ltd. a party to the complaint, who is a necessary party to the complaint in the capacity of license holder and Registration Certificate dated 30.05.2022 of the project. Hence, the complaint is liable to be dismissed in limine for mis-joinder and non-joinder of necessary parties.

- xxii. Without prejudice to above, it is submitted that the respondent is not in the position to handover the possession of the unit to the complainants as the construction of the unit has not been completed by Ansal Properties and Infrastructure Pvt. Ltd. till date. Accordingly, it is most humbly prayed before this Authority to direct the Ansal Properties and Infrastructure Pvt. Ltd. to complete the construction of the Unit and pay delay possession compensation to the complainants. In alternate, the Authority may direct Ansal Properties and Infrastructure Pvt. Ltd. to refund the amount along with interest, which was deposited by complainant towards the unit and syphoned by erstwhile promoters of respondent into Ansal Properties and Infrastructure Pvt. Ltd.
- xxiii. In view of aforesaid facts, it is respectfully submitted that the complaint has been filed without any legally justifiable cause of action and is rendered liable to be dismissed with exemplary costs.
7. All other averments made in complaint are denied in toto.
8. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.
- E. Jurisdiction of the authority**
9. 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

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. 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.

F. Findings on objections raised by the respondent:

F.I. Objection regarding maintainability of complaint.

13. The respondent-promoter has raised the contention that the present complaint is not maintainable, due to mis-joinder of M/s Ansal Phalak



Infrastructure Private Limited (now known as M/s New look Builders and Developers Private Limited) and non-joinder of M/s Ansal Properties and Infrastructure Limited of necessary party.

14. While filing the complaint the complainant sought relief against M/s Ansal Phalak Infrastructure Private Limited (now known as M/s New look Builders and Developers Private Limited) being the developer of the project. On failure to fulfil their obligation to complete the project by the due date, the complainant approached the Authority seeking relief to immediately handover the possession failing which to refund the amount received against the allotted unit.
15. After perusal of various documents placed on the record shows that respondent i.e., M/s Ansal Phalak Infrastructure Private Limited (now known as M/s New look Builders and Developers Private Limited) is a group company of M/s Ansal Properties and Infrastructure Limited. It is not disputed that the allotment of the unit in favour of the complainant was made by the respondent i.e., M/s Ansal Phalak Infrastructure Private Limited (now known as M/s New look Builders and Developers Private Limited) though it is group company of M/s Ansal Properties and Infrastructure Limited. The buyer's agreement with regard to the allotted unit was also executed between the complainant and respondent. Even after allotment and buyer's agreement, demands for various payments were also raised against the allotted unit by the respondent only and received by it only. Thus, it shows that there is no privity of contract between M/s Ansal Properties and Infrastructure Limited and the complainant and as such the plea of the respondent with regard to mis-joinder and non-joinder are devoid of merits and thus, would be justified to not to be required to implead in present complaint and it is well settled principle that a person cannot take benefit of its own wrongs.

G. Findings on the relief sought by the complainant.

- G.I. Direct the respondent to hand over possession of the unit immediately without any further delay.
- G.II. Direct the respondent to pay interest as provided under the extant Act / Rules @ +2% of the SBI's highest MCLR from the due date of offer for possession i.e. 18.02.2018 till the date possession of the unit is handed over to the complainant for the delay in handing over possession of the unit.
- G.III. Direct the respondent to adhere and comply other obligations under the Act/ rules/ regulations and the agreement to sell.
- G.IV. Any other relief as this Authority may deem fit and appropriate in the facts and circumstances of the present case.

16. The above-mentioned reliefs sought by the complainant are taken together as the findings in one relief will definitely affect the result of the other relief and the same are being interconnected.

17. Upon consideration of documents available on record and submissions made by both parties. The Authority observes that the complainant has allotted a unit bearing no. SF-3258 having super area 1818 sq. ft. vide allotment letter dated 17.02.2015. Thereafter, a flat buyer agreement was executed on 17.02.2015 between complainant and respondent for the allotted unit for sale consideration of Rs.98,73,500/- against which the complainant has paid Rs.90,00,000/- to the respondent herein. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges at prescribed rate of interest on amount already paid by him, as provided under the proviso to Section 18(1) of the Act. Sec 18(1) proviso 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: -
in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
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*

14

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)

18. As per clause 5.1 of the floor buyer agreement dated 17.02.2015 the unit was to be offered within a period of 36 months with an extended period of 6 months from the date of execution of this floor buyer agreement with the complainant-allottee. Therefore, the due date of possession comes out to be 17.08.2018 (inclusive of 6 months of grace period, being unconditional). The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/ promoter.
19. The respondent has contended that as per Master Settlement Agreement dated 24.12.2019 executed between the respondent, M/s Ansal Properties and Infrastructure Limited and 5 others, the respondent herein is unable to deliver the possession of the allotted unit, as the said plot is no more available with the respondent. Further submits that no other alternative unit is available with the respondent.
20. Furthermore, during the proceedings dated 15.05.2025, the counsel for the complainant has place on record a copy of email dated 18.03.2025, vide which the complainant has expressed his will that in case the possession of the allotted unit cannot be handed over, the complainant intends to withdraw from the project and seeks complete refund of the paid-up amount. Hence, in the instant case, due to non-availability of the allotted unit and alternative unit with the respondent herein now, the complainant/allottee wish to withdraw from the project. Therefore, 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.

21. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends 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. 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."

22. 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.

23. 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., 15.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

24. 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, ...

25. There has been an inordinate delay in the project which cannot be condoned and due to non-availability of the allotted unit or any alternative. Thus, in such a situation, the complainant cannot be compelled to wait endlessly and he is well within right to seek refund of the paid-up amount.

26. 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."

27. Therefore, 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. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the allotted unit with interest at such rate as may be prescribed.

28. Therefore, the Authority hereby directs the respondent to return the amount received by it i.e., Rs.90,00,000/- 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 of the authority

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

- a. The respondent is directed to refund the entire amount i.e., Rs.90,00,000/- 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.
- b. 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.

30. Complaint as well as application, if any, stands disposed off accordingly.

31. File be consigned to the registry.

Dated: 15.05.2025

V. I 
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram