

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

Date of order: 16.05.2025

NAME OF THE BUILDER		ANSAL HOUSING AND CONSTRUCTIONS LTD.	
PROJECT NAME		"ANSAL TOWNWALK"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/6893/2022	Aditi Garg V/s Ansal Housing and Constructions Ltd.	Sh. Vaibhav Kaushik (Advocate) Sh. Amandeep Kadyan (Advocate)
2.	CR/6897/2022	Aditi Garg V/s Ansal Housing and Constructions Ltd.	Sh. Vaibhav Kaushik (Advocate) Sh. Amandeep Kadyan (Advocate)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of the 2 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ansal Townwalk" being developed by the same



respondent/promoter i.e., M/s Ansal Housing and Constructions Ltd. The terms and conditions of the buyer's agreement against the allotted units in the project of the respondent/builder and fulcrum of the issues involved in all the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Ansal Townwalk" situated in Sector 104, Gurugram, Haryana.	
Project Area	2.1 Acres	
DTCP License No.	103 of 2012 dated 01.10.2012 valid upto 30.09.2016	
RERA Registered	Not registered	
Possession Clause: -		
30. The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."		
Due date of possession: - 03.03.2018		
Occupation certificate: - Not obtained		

Sr. No	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Status of Possession	Total sale consideration and amount paid





1.	CR/6893/2022 Aditi Garg V/S Ansal Housing and Constructions Ltd. DOF: 31.10.2022 Reply Filed On; 24.02.2023	Shop-079 485.18 sq. ft. (Page no. 30 of the complaint)	03.03.2014 (Page no. 27 of the complaint)	03.03.2018 (42 months from date of agreement i.e., 03.03.2014 as date of start of construction is not known + 6 months grace period allowed being unqualified)	TSC: - Rs. 48,03,282/- AP: - Rs. 44,89,765/-
2.	CR/6897/2022 Aditi Garg V/S Ansal Housing and Constructions Ltd. DOF: 31.10.2022 Reply Filed On; 24.02.2023	Shop-126 488.67 sq. ft. (Page no. 28 of the complaint)	03.03.2014 (Page no. 25 of the complaint)	03.03.2018 (42 months from date of agreement i.e., 03.03.2014 as date of start of construction is not known + 6 months grace period allowed being unqualified)	TSC: - Rs. 31,67,193/- AP: - Rs. 30,02,993/-
Abbreviation		Full form			
DOF		Date of filing complaint			
TSC		Total Sale consideration			
AP		Amount paid by the allottee(s)			

4. The aforesaid complaints were filed against the promoter on account of violation of the buyer's agreement against the allotted units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of refund the entire paid-up amount along with interest and compensation.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/6893/2022 case titled as Aditi Garg V/s Ansal Housing and Constructions Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire paid-up amount along with interest and others.

A. Project and unit related details

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

CR/6893/2022 case titled as Aditi Garg V/s Ansal Housing and Constructions Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Townwalk", Sector 104, Gurugram.
2.	Total area of the project	2.1 acres
3.	Nature of the project	Commercial project
4.	DTCP license no.	103 of 2012 dated 01.10.2012 valid up to 30.09.2016
5.	Name of licensee	Jagrati Realtors Pvt. Ltd.

6.	Registered/not registered	Not Registered
7.	Unit no.	SHOP-079 [pg. 30 of complaint]
8.	Area of the unit	485.18 sq. ft. [pg. 30 of complaint]
9.	Date of execution of buyer's agreement	03.03.2014 [pg. 27 of complaint]
10.	Possession clause	<p>Clause 30.</p> <p><i>30. The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.</i></p> <p>(Emphasis supplied) [pg. 35 of complaint]</p>
11.	Due date of possession	03.03.2018 (Note: 42 months from date of agreement i.e., 03.03.2014 as date of start of construction is not known + 6 months grace period allowed being unqualified)
12.	Basic sale consideration as per BBA on page 30 of complaint.	₹ 48,03,282/-

13.	Total amount paid by the complainant as alleged by the complainant	₹ 44,89,765/-
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- I. That the complainant Aditi Garg w/o Vineet Garg booked a shop bearing no. 079 in their project Ansal Townwalk, Sector-104, Gurugram by filling the application form dated 01.04.2013 which is also mentioned in the buyers' agreement dated 03.03.2014.
 - II. That the complainant has paid an entire amount which has been on the one hand being used and utilized by the respondent, by avoiding to handover the actual physical possession of the unit even after delay of almost five years after the due date i.e. 02.09.2017 and on the other hand have neither rectified the same nor returned the amount with interest and penalty as the same is being illegally retained without any valid authority to retain the same.
 - III. That on the basis of assurances and representations made by the respondent who boasted of the project in relation to its location, clarity of title documents, strict observance to scheduled timelines of completion and quality of construction and other amenities and similar assurances made in their public advertisements also, the complainant was persuaded by the respondent to purchase the shop in the said project and accordingly, the claimant tendered various amounts.

- IV. That the amounts were to be tendered for a construction linked plan after execution of the agreement to sell but the respondent initially delayed the same and after having entered into a 16 pages detailed Buyers' agreement to sell but did not carry out the construction as per the construction linked time schedule of construction despite having received the payments as per the schedule. The respondent maintained hostile attitude after initial assurances to do the needful shortly.
- V. That the respondent did not handover the actual physical possession of the allotted unit up to 02.09.2017 i.e. within 42 months of the buyer's agreement dated 03.03.2014. That the respondent has threatened to cancel the sale agreement and to forfeit the entire money of the complainant which is being used and utilized by the respondent for the past over almost 8 years.
- VI. That the complainant has made huge payments to the respondent but the respondent has failed to comply with their obligation of providing the unit for which the agreement was entered into by them. The respondent is acting in most despotic and horrendous manner, which amounts to unfair trade practice as well as such act is against the settled principle of law and natural justice.
- VII. That being aggrieved with the unabated acts of unwarranted harassment and exploitation by the respondent, the complainant does not want to continue with the said project and wants to withdraw from the said project and wants to get refund of his amount paid to the respondent along with interest and compensation.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)

- a. Direct the respondent to refund the entire paid-up amount along with interest at the prescribed rate.
 - b. Direct the respondent to pay litigation expenses to the tune of Rs. 2,20,000/- to the complainant.
 - c. To impose penalty upon respondent under section 60 of RERA Act for wilfully committing default.
 - d. To recommend criminal action against respondent for criminal offence of cheating, fraud and criminal breach of trust under section 420, 406 & 409 of IPC.
 - e. To initiate enquiry under section 35 of the Act.
10. On the date of hearing, the authority explained to the respondent /promoter on the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

11. The respondent contested the complaint on the following grounds: -
- I. That the complainant had approached the respondent for booking a shop no. 079 in an upcoming project Ansal Townwalk, Sector 104, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 03.03.2014 was signed between the parties.
 - II. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainant and the respondent was in the year 2014. The regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. The Parliament would not make the operation of a statute retrospective in effect.

- III. That even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has admittedly filed the complaint in the year 2022 and the cause of action accrue on 03.03.2018 as per the complaint itself.
- IV. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2014 without coercion or any duress cannot be called in question today. The builder buyer agreement provides for a penalty in the event of a delay in giving possession. The clause 36 of the said agreement provides for Rs. 5/ sq foot per month on super area for any delay in offering possession of the unit as mentioned in clause 30 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the Hon'ble Commission in order to alter the penalty clause by virtue of this complaint more than 10 years after it was agreed upon by both parties.
- V. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. The permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondent in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainant.
- VI. That the delay has been occasioned on account of things beyond the control of the respondent. The builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said

clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process.

- VII. Similarly, the complainant itself reveals that the correspondence from the respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.
- VIII. That clause 31 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.
12. 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

13. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

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

Section 11

.....

(4) The promoter shall-

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

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.

16. 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.

F. Findings on the objections raised by the respondent

F.I. Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

17. The respondent has contended that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements

will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

- "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....."
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."
18. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the

offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

19. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

F.II Objection regarding force majeure conditions:

20. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and demonetization. In the present matter the buyer's agreement was executed on dated 03.03.2014 and as per the possession clause 30 of the buyer's agreement the respondent-developer proposes to handover the possession of the allotted unit within a period of 42 months from the date of execution of agreement or from the date of obtaining all



the required sanctions and approval necessary for commencement of construction, whichever is later. Further there shall be a grace period of 6 months above the period of 42 months. In the present case, the date of obtaining all the required sanctions and approval is not available on records therefore, due date is calculated from the date of execution of buyer's agreement i.e., 03.03.2014 so, the due date of subject unit comes out to be 03.03.2018 including the grace period of 6 months as it is unqualified. The events such as various orders by Punjab and Haryana High Court and demonetization were for a shorter duration of time and were not continuous as there is a delay of more than six years. Even today no occupation certificate has been received by the respondent. Therefore, said plea of the respondent is null and void. As far as delay in construction due to outbreak of Covid-19 is concerned, the lockdown came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant.

G.I. Direct the respondent to refund the entire paid-up amount along with interest at the prescribed rate.

21. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her 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)

22. Clause 30 of the buyer's agreement dated 03.03.2014 provides for handing over of possession and is reproduced below:

30. "The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."

23. **Due date of handing over possession and admissibility of grace period:** As per clause 30 of the buyer's agreement, the respondent-developer proposes to handover the possession of the allotted unit within a period of 42 months from the date of execution of agreement or from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. Further there shall be

a grace period of 6 months above the period of 42 months. In the present case, the date of obtaining all the required sanctions and approval is not available on records therefore, due date is calculated from the date of execution of buyer's agreement i.e., 03.03.2014 so, the due date of subject unit comes out to be 03.03.2018 including the grace period of 6 months as it is unqualified. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate till date.

- 24. Admissibility of refund along with prescribed rate of interest:** The complainant intends to withdraw from the project and is seeking refund of the amount paid by her 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.

- 25.** The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
- 26.** Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on

date i.e., 16.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

27. On consideration of the documents available on record as well as submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 30 of the buyer's agreement dated 03.03.2014 executed between the parties, the respondent-developer proposes to handover the possession of the allotted unit within a period of 42 months from the date of execution of agreement or from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. Further there shall be a grace period of 6 months above the period of 42 months. In the present case, the date of obtaining all the required sanctions and approval is not available on records therefore, due date is calculated from the date of execution of buyer's agreement i.e., 03.03.2014 so, the due date of subject unit comes out to be 03.03.2018 including the grace period of 6 months as it is unqualified.

28. Keeping in view the fact that the complainant/allottees wish to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

29. The due date of possession as per agreement for sale as mentioned in the table above is 03.03.2018. The authority has further, observes that even after a passage of more than 6 years till date neither the construction is complete nor the offer of possession of the allotted unit has been made to

the allottee 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 her and for which she has paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document place 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. In view of the above-mentioned fact, the allottees intend to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

30. 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 they have 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....."

31. 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:

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."*
32. 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 allottees, as the allottees wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
33. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by her at the prescribed rate of interest i.e., @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of

each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. II Direct the respondent to pay litigation expenses to the tune of Rs. 2,20,000/- to the complainant.

34. The complainant is seeking above mentioned relief w.r.t. compensation.

Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation and litigation charges 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 and litigation expense 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. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation and litigation expenses.

G.III To impose penalty upon respondent under section 60 of RERA Act for wilfully committing default.

G.IV. To recommend criminal action against respondent for criminal offence of cheating, fraud and criminal breach of trust under section 420, 406 & 409 of IPC.

G.V. To initiate enquiry under section 35 of the Act.

35. The above-mentioned relief sought by the complainant was not pressed by the complainant's counsel during the arguments in the passage of hearing. The authority is of the view that the complainant's counsel does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

H. Directions of the authority

36. 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 received by it from the complainant(s) in both the cases, along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- 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.

37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

38. Complaint stands disposed of.

39. File be consigned to registry.

Dated: 16.05.2025

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