

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

**Complaint no.:** 1116 of 2022  
**Date of filing:** 21.03.2022  
**Date of decision:** 02.05.2025

1. Zuleikha Karnik  
2. Maninee Leila Karnik  
R/o: A-18, Pushpanjali Farms, Bijwasan,  
New Delhi-110061  
**Also at:** D-602, Mandar Apartments, Sanjeev Enclave  
Road, 7 Bungalows, Andheri Mumbai-400061.

**Complainants**

**Versus**

M/s VSR Infratech Pvt. Ltd.  
**Regd. office:** Plot no. 14, Ground floor,  
Sector-44, Institutional Area,  
Gurugram, Haryana-122003

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Mr. S.K. Goyal and Mr. Animesh Goyal  
Ms. Shriya Takkar

**Counsels for Complainants**  
**Counsel for 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 allottees as per the agreement for sale executed *inter se*.



**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name of the project	"114 Avenue", Sector-114, Gurugram, Haryana
2.	Project area	2.968 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	72 of 2011 dated 21.07.2011 Valid up to 20.07.2024
5.	RERA Registered/ not registered	53 of 2019 dated 30.09.2019 Valid up to 31.12.2019
	Extension no.	13 of 2020 dated 05.10.2020 Valid up to 31.12.2020
6.	Initial Unit no. in project 114 Avenue	3A-28, 3 <sup>rd</sup> floor admeasuring 500.88 sq. ft. [Page 51 of complaint] 3A-29, 3 <sup>rd</sup> floor admeasuring 500.88 sq. ft. [Page 23 of complaint]
7.	New unit allotted	6A-01, 6 <sup>th</sup> Floor, admeasuring 856.09 sq. ft. [Page 78 of complaint]
8.	Space Buyer's Agreement for changed unit	Not dated [Page 75 of complaint] Although the respondent in its reply para 9 admitted that the BBA was executed on 20.01.2018
9.	Possession clause	<b>32. Possession Time and Compensation</b>



		<i>"That the company shall give possession of the said unit within 36 months of signing of this Agreement or within 36 months from the start of construction of the building whichever is later".</i> [Page 85 of complaint]
10.	Due date of possession	<b>20.07.2021</b> [Note: 20.01.2021+6 months grace period on account of COVID-19] Calculated from date of execution of agreement i.e., 20.01.2018 as date of start of construction of the building is not available
11.	Basic sale consideration	₹46,22,886/- [Page 104 of reply]
12.	Amount paid by the complainants	₹38,18,488/- [Page 218 of reply]
13.	Refund request letter by the complainants	07.08.2019 [Page 114 of complaint]
14.	Occupation certificate	17.02.2021 [Page 211 of reply]
15.	Offer of possession	12.05.2021 [Page 214 of reply]
16.	Intimation of termination/Cancellation	10.02.2022 but no reminder letters have been placed on record. [Page 108 of the complaint and page 216 reply]

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:
  - a. That initially the complainants booked two commercial unit bearing No.3A-28 and 3A-29 both on 3<sup>rd</sup> floor each measuring 500.88 sq. ft. approx. by paying the booking amount. After



sometime when the complainants visited the site of the project, the officials of the respondent asked the complainants to have their units on some other floor on account of some issue in floor plan of the existing units further stating that they would not be able to allot two units of equal size as per the buyer's agreement and offered the complainants to have a commercial unit of bigger size on another floor of the project.

- b. That the complainants have no option but to take another unit in the project on some other floor and accordingly the respondent allotted unit no.6A-01, 6<sup>th</sup> Floor, 114 Avenue, Sector-114, Gurugram and fresh space buyer agreement dated 20.01.2018 was executed between the parties. Though the respondent was obliged to handover the possession of the unit within the time agreed in the earlier space buyer agreements dated 05.05.2012 as the subsequent agreement dated 20.01.2018 was executed under compelling circumstances in lieu earlier agreements after adjusting the total amount of ₹38,18,488/- made in terms of those agreements dated 05.05.2012.
- c. That the respondent instead of completing the project offered the possession of the unit vide letter dated 12.05.2021 without disclosing the fact that the occupation has yet been received or not. When the complainants after receiving the said letter dated 12.05.2021 visited the site on the spot, they were surprised to see that the building was not complete on the spot and lots of work was yet to be completed to make the building inhabitable.
- d. That the complainants visited the office of the respondent and apprised them about all the facts requesting them to refund the



money along with interest, however the officials of the respondent gave evasive replies. The complainants then send a reply dated 09.06.2021 via email in response to letter dated 12.05.2021 sent also by mail dated 13.05.2021 by the respondent.

- e. That vide email dated 09.06.2021, the complainants apprised the respondent that the respondent had already delayed the possession of the unit more than 7 years and therefore the complainants were not ready to take possession of the property. Hence, the complainants asked the respondent to refund the total amount of ₹38,18,488/- along with interest for the delayed period and claimed a sum of ₹60 lacs approx. from the respondent requesting them to pay the said amount, failing which the complainants shall be constrained to file a case.
- f. That however the respondent did not give any reply and again a reminder via email dated 21.06.2021 was sent by the complainants. That the respondent instead of refunding the amount along with interest sent the RERA Certificate via email dated 02.07.2021. That after receiving the mail dated 02.07.2021, the complainants apprised the respondent that had also sent their proposal dated 09.06.2021 via registered post and asked them to refund the amount along with interest and to apprise the complainants about the same.
- g. That the complainants were shocked and surprised when they recently received a totally illegal and unauthorised letter dated 10.02.2022 from the respondent alleging that the respondent had cancelled the unit of the complainants and they would process the





refund after forfeiture of the amount of ₹9,93,308/- from the total deposit of the complainants to the tune of ₹38,18,488/-.

- h. The respondent in fact was liable to refund the total amount of ₹38,18,488/- along with interest as the respondent failed to handover the possession of the unit within the stipulated period and to the knowledge of the complainants, the occupation certificate of the building has not yet been received and the building is not complete for handing over the possession.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s).
- Direct the respondent to refund the total amount paid to them amounting to ₹38,18,488/- along with interest @18% from the date of payment, till actual realization of the said amount.
  - Direct the respondent to pay ₹20,00,000/- as compensation on account of mental harassment.
  - Grant the cost of litigation of ₹ 1,00,000/- in favour of the complainants and against the respondent.
  - Direct the respondent not to create any charge, lien or third-party rights in any manner on the unit till final realization of the amount.
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.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds.
- That the complainants applied for allotment of two units in the project 114 Avenue vide application form. Accordingly, the



complainants were allotted unit bearing no. 3A-29 and 3A-28. The Space Buyers Agreement was executed between the complainants and the respondent on 05.05.2012. The price of each unit in question as per the agreement was ₹ 27,04,752/- plus taxes, levies and other charges. It is submitted that the complainants opted for Construction Linked Payment Plan. All the demands were raised as per the payment plan opted by the complainants. The amount paid in total towards both the units by the complainants was ₹ 38,18,489.58/-. Thereafter, the complainants vide letter dated 20.01.2018 requested for surrender/cancellation of unit No. 3A-29 and 3A-28 and transfer of payment against both the units to a new unit No. 6A-01 in the same project. That as a goodwill gesture, the respondent company acceded to the request of the complainants and the allotment of unit No. 3A-29 and 3A-28. all the payment made by the Complainants towards old units 3A-29 and 3A-28 were transferred to the new unit i.e. 6A-01. Upon cancellation of unit No.s 3A-29 and 3A-28, a unit 6A-01 was allotted to the complainants and a Space Buyer's Agreement dated was executed between the parties for the new unit.

- b. That it is reiterated that the issue so raised in this complaint are not only baseless but also demonstrates an attempt to arm twist the answering respondent into succumbing to the pressure so created by the complainants in filing this complaint before this Forum and seeking the reliefs which the complainants are not entitled to. The respondent has acted in accordance with the terms and conditions of the Space Buyer's Agreement executed between the parties on their own free will.



- c. That the complainants were duly informed about the Schedule of Possession as per clauses 32 of the Space Buyers Agreement entered into between the complainants and respondent. That from the perusal of the above, it is clear that as per the clause 32, the company was to handover the possession of the unit within 36 months (3 years) from the date of signing of the agreement unless there was delay due to a force majeure condition or due to other reasons mentioned in Clause 32.
- d. That as per clause 32 of the Space Buyers Agreement dated 20.01.2018, the respondent was supposed to hand over the possession within a period of 36 months of signing of this Agreement i.e. 20.01.2018 or within 36 months from the date of start of construction of the said building i.e. in the year 2012 whichever is later and the possession date comes out to be 20.01.2021. However, the said timeline was subject to force majeure conditions. Clause 32 of the Space Buyer's Agreement which clearly states that respondent shall be entitled to extension of time for delivery of possession of the said premises if such performance is prevented or delayed due to conditions as mentioned therein. That despite exercising diligence and continuous pursuance of project to be completed, project could not be completed as prescribed for the following reasons:
- That it is pertinent to mention here that the project in question was launched in the year 2010 and is right on the Dwarka expressway, which was supposed to be completed by the State of Haryana by the end of 2012. There being no approach road available, it was initially not possible to make the heavy trucks



carrying construction material to the project site and after a great difficulty and getting some kacha paths developed, materials could be supplied for the project to get completed which took a lot extra time.

- In the year 2012, on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce in the NCR as well as areas around it.
- The respondent faced the problem of sub soil water which persisted for a period of 6 months and hampered excavation and construction work. The problem still persists and we are taking appropriate action to stop the same.
- The respondent faced the labour problem for last 3 years continuously which slowed down the overall progress of the project.
- The contractor of the project stopped working due to his own problems and the progress of project was completely at halt due to stoppage of work at site. It took almost 9 months to resolve the issues with contractor and to remobilize the site.
- There was a stay on construction in furtherance to the direction passed by the Hon'ble NGT.
- That the sudden surge requirement of labour and then sudden removal has created a vacuum for labour in NCR region. That the projects of not only the respondent but also of all the other



Developers have been suffering due to such shortage of labour and has resulted in delays in the projects beyond the control of any of the developers.

- e. That after making sincere efforts despite the force majeure conditions, respondent completed the construction and thereafter applied for the Occupancy Certificate (OC) on 15.07.2020. The OC was received by the respondent on 17.02.2021. After the receipt of the OC, the respondent communicated the same to the complainants and requested the complainants to come forward and clear their dues vide letter dated 12.05.2021.
- f. That on account of the willful breach of the terms of the Allotment and the Space Buyers Agreement by failing to clear the outstanding dues despite repeated requests, the respondent was constrained to issue a termination letter dated 10.02.2022 to the complainants under clause 18 of the SBA and terminate the allotment. The complainants have failed to come forward to clear their dues and hence the allotment of the complainants stands cancelled in terms of clause 18 of the Space Buyer's Agreement. That since the allotment of the unit has been cancelled, the complainants now have no right or lien whatsoever over the said unit. It is submitted that the complainants have till date made a payment of ₹38,18,488/- as raised by the respondent in accordance with the payment plan and in terms of the Space Buyers Agreement. The default of the complainants in making timely payments and complying with other obligations is duly covered under the Space Buyers Agreement, and the cancellation has been in accordance with the same. That the respondent was

constrained to cancel the unit on account of non-payment of the demands as raised by the respondent.

- g. In the present case, the complaint pertains to the alleged delay in delivery possession of the unit along with delayed interest for the alleged delay in delivery of possession and compensation. The complaint has been filed in total disregards to the terms of Space Buyers Agreement executed between parties. The respondent has been acting and performing its obligations as per the agreement and all demands raised by the respondent are as per the Agreement that was willfully signed by the complainants. Thus, the complaint is misconceived and not maintainable.
- h. It is submitted that all the demands raised by the respondent is as per the schedule of payment opted by the complainants. Hence, being totally aware about the payment as per the payment plan, they failed to make timely payments and therefore is a chronic defaulter and is liable to pay interest to the respondent for the delay in payment under section 19 (6) of the Act which states that the complainants are responsible to make necessary payments in the manner and within time as specified in the agreement and in case of default, the complainants are liable to pay interest for delay under Section 19(7) of the Act.
- i. That the complainants themselves have been a chronic defaulter and have delayed in making payments of installments on most of the occasions despite several reminders. It is submitted that the complainants were very well aware that they were under an obligation to make timely payments. That it is submitted that despite receiving various reminders, the complainants have failed



to clear their outstanding dues and perform their contractual obligations. The amount paid by the complainants till date is ₹38,18,488/-. It is further submitted that an amount of ₹27,03,275/- plus interest is still outstanding towards their dues. That the respondent was constrained to cancel the unit on account of non-payment of the demands as raised by the respondent.

7. The complainants & the respondent have filed the written submissions which are taken on record. The authority has considered the same while deliberating upon the relief sought by the complainants. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

8. The authority has complete territorial and 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, 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**



10. 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.*

11. 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. (Supra)*** 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."*

12. So, in view of the provisions of the Act quoted above and authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned 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.

**F. Findings on the objections raised by the respondent**

**F.I. Objection regarding force majeure conditions**

13. The respondent in its reply has stated the reasons for the delay in the construction of the project for kind consideration of the authority to cover the said instance in force majeure clause and grant extension of time for calculating the due date of possession. The respondent stated that the project in question was launched in the year 2010 and is right on the Dwarka expressway, which was supposed to be completed by the State of Haryana by the end of 2012. That the star purpose of launching the project and object of the complainants buying the project was the connectivity of Dwarka expressway which was promised by the State Government to be completed in the year 2012. That it is reiterated that the only approach road to the project is this Dwarka Expressway which is still not complete and is likely to take another year or so. There being no approach road available it was initially not possible to make the heavy trucks carrying construction material to the project site and after



a great difficulty and getting some kacha paths developed, materials could be supplied for the project to get completed which took a lot extra time. Even now, the Govt has not developed and completed the basic infrastructure, despite the fact that EDC/IDC were both deposited with the State Government on time. The Dwarka Expressway was earlier scheduled to be completed by the year 2012, by the State Government of Haryana, but later failed to develop the said road. In the year 2017, NHAI (National Highway Authority of India) joined to complete the Dwarka Expressway, but again both State Government as well as NHAI again missed the deadlines and still the Expressway is incomplete, now likely to be completed by the year 2022, if the deadline is adhered to by these agencies. That in this view of the circumstances as detailed above, the Respondent Developer can by no means be expected to complete a project which does not even have an approach road to be constructed by the State. Thus, the respondent cannot be held accountable for the delay in the project and the State of Haryana and NHAI are responsible, hence answerable for the delay in completing Dwarka expressway, which in turn has caused the delay of the present project. The completion of Dwarka expressway, which in turn affected the completion of the project in question was beyond the control of the respondent. Thus, for just and fair adjudication of this complaint both State of Haryana and NHAI are necessary parties to the present proceedings for the purpose of causing the delay in the project and thus they are jointly and severally liable for the delay of the project and pay compensation to the complainants.

14. Although the term "force majeure" is not defined under the Act, 2016 or the Rules, 2017 but the literal meaning of force majeure includes an



event that cannot be reasonably anticipated or controlled which may include Act of God, orders of court or any stay by government. The authority after due consideration of the facts of the case and the documents placed on record is of the considered view that the said situation cannot be treated as a force majeure as the same cannot be covered under any situation of Act of God or any stay order by court of Govt.

**G. Findings on the relief sought by the complainants.**

**G.I. Direct the Respondent to refund the total amount paid to them amounting to ₹38,18,488/- along with interest @18% from the date of payment, till actual realization of the said amount.**

**G.II. Direct the respondent not to create any charge, lien or third-party rights in any manner on the plot till final realization of the amount.**

15. In the present matter, the complainants were initially allotted 2 units bearing nos. 3A-28 and 3A-29 on 3<sup>rd</sup> floor admeasuring 500.88 sq. ft. each super area at Sector 114, Gurugram in the project "114 Avenue" vide BBA dated 05.05.2012 for a total sale consideration of ₹29,40,166/- each. Thereafter the two units of complainants were merged into one unit in the same project. The new unit bearing no. 6A-01, 6<sup>th</sup> floor, 114 Avenue, Sector 114 was allotted vide agreement dated 20.01.2018 for total sale consideration of ₹46,22,886/-. The complainants have paid an amount of ₹38,18,488/- against the total sale consideration. As per clause 32 of the said agreement, the respondent was obligated to deliver the possession of the unit within 36 months from the date of execution of the agreement or within 36 months from the start of construction of the building whichever is later. The due date of possession is calculated from the date of agreement i.e., 20.01.2018 in absence of the date of construction. The



period of 36 months expired on 20.01.2021. Further, the authority allows 6 months grace period as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Accordingly, the due date of possession comes out to be 20.07.2021. Thereafter, the complainants on 07.08.2019 sent a surrender letter to the respondent i.e., prior to the lapse of due date of possession. However, the respondent instead of refunding the amount paid by the complainants sent an offer of possession dated 12.05.2021 after receiving occupation certificate from the competent Authority on 17.02.2021. Upon non-payment of the outstanding amount, the respondent cancelled the unit of the complainants vide letter dated 10.02.2022. Thereafter, the complainants have filed the present complaint on 21.03.2022 seeking refund of the paid-up amount as per proviso to section 18 (1) of the Act.

***"Section 18: - Return of amount and compensation***

*"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -*

*.....  
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".*

16. The Authority holds that Section 18 provides that the allottee is liable for refund of full amount paid by him if the possession of the allotted unit is not handed over by the promoter in terms of the BBA. In the instant matter, the complainants had requested for refund of paid-up amount on 07.08.2019 prior to the lapse of due date of possession i.e., 20.07.2021. The respondent did not refund any amount to the complainants after considering the surrender request. Therefore, the Authority observes that the complainants allottee are liable for refund





along with interest at prescribed rate after deduction of earnest money.

17. The Hon'ble Apex Court of law in cases of *Maula Bux Vs. Union of India, (1970) 1 SCR 928* and *Sirdar K.B. Ram Chandra Raj Urs Vs. Sarah C. Urs, (2016) 4 SCC 136*, held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.
18. Even keeping in view, the principle laid down by the Hon'ble Apex Court, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, and relevant is reproduced as under: -

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

19. Accordingly, the respondent/builder is directed to refund the amount received by it from the complainants i.e., ₹38,18,488/- along with interest at the rate of 11.10% as prescribed under rule 15 of the Rules, 2017, after deducting 10% of the sale consideration i.e., ₹46,22,886/- from the date of surrender i.e., 07.08.2019 till the actual date of refund





of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G.III. Direct the respondent to pay ₹20,00,000/- as compensation on account of mental harassment.**

**G.IV. Grant the cost of litigation of ₹ 1,00,000/- in favour of the complainants and against the Respondent.**

20. The complainants are also seeking relief w.r.t compensation and litigation expenses. 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 the adjudicating officer has exclusive jurisdiction to deal with the complaints for compensation under sections 12,14,18 and section 19 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72 of the Act. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

#### **H. Directions of the authority**

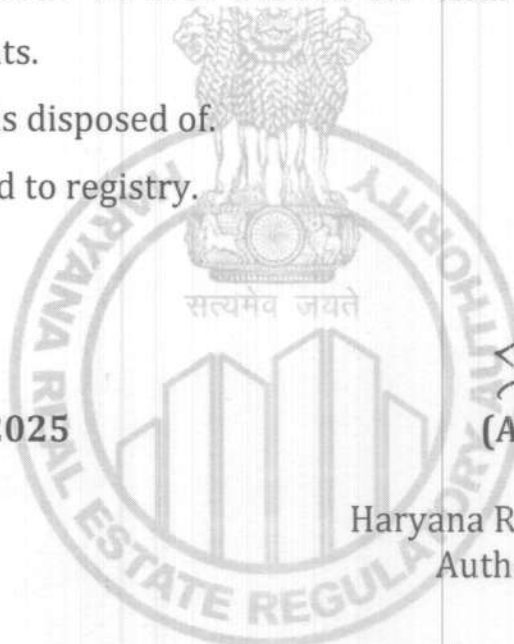
21. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondent is directed to refund the deposited amount i.e. ₹38,18,488/- along with interest at the rate of 11.10% after deducting 10% of the sale consideration i.e., ₹46,22,886/- from the date of surrender i.e., 07.08.2019 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.



- 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.
- c. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.
22. Complaint stands disposed of.
23. File be consigned to registry.

**Dated: 02.05.2025**



  
(Arun Kumar)

Chairman  
Haryana Real Estate Regulatory  
Authority, Gurugram

**HARERA**  
**GURUGRAM**