

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

Complaint no.	:	4051 of 2023
Date of filing:		05.09.2023
Date of decision	:	15.04.2025

Manju Gupta Regd. Address: 656, Sector 4, Urban Estate, Gurugram	Complainant
Versus	
1. M/s Ansal Housing Ltd. (Formerly Known as M/s Ansal Housing & Construction Ltd.) Regd. office: 606, 6 th floor, Indraprakash, 21, Barakhamba Road, New Delhi-110001 2. M/s Ish Kripa Properties Pvt. Ltd. Regd. Address: 168-169, Amar Colony, Lajpat Nagar, New Delhi-110001	Respondents

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Sh. Pranav Verma (Advocate)
Sh. Amandeep Kadyan (Advocate)
None

**Counsel for Complainant
Counsel for Respondent no. 1
Counsel for Respondent no. 2**

ORDER

- 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 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Estella", Sector 103, Gurugram.
2.	Total area of the project	15.743 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	17 of 2011 dated 08.03.2011 valid up to 07.03.2015
5.	Name of licensee	Rattan Singh and 9 others
6.	Registered/not registered	Extension granted vide no.- 09 of 2019, dated:25.11.2019 Valid till:17.08.2020 (Validity of registration has expired)
7.	Unit no.	K-0505 [pg. 22 of complaint]
8.	Area of the unit	1255 sq. ft. [pg. 22 of complaint]
9.	Date of transfer of unit in name of complainant	27.07.2011 [pg. 19 of complaint]
10.	Date of Allotment letter in name of complainant	15.09.2011 [pg. 22 of complaint]
11.	Date of BBA in name of complainant	02.05.2012



		[pg. 43 of complaint]
12.	Possession clause	<p>30.</p> <p><i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 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 36 months as above in offering the possession of the unit."</i></p> <p>(Emphasis supplied)</p> <p>[pg. 54 of complaint]</p>
13.	Due date of possession	<p>02.11.2015</p> <p>(Note: 36 months from date of agreement i.e., 02.05.2012 as date of start of construction is not known + 6 months grace period allowed being unqualified)</p>
14.	Sale consideration as per BBA at page 63 of complaint.	₹44,41,400/-
15.	Total amount paid by the complainant as per sum of receipts	₹38,19,377/-
16.	Offer of possession	Not offered
17.	Occupation certificate	Not obtained

B. Facts of the complaint

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



- a. That respondent no.1 and 2 are the developer/builder and landowners of the project respectively that the respondents had launched a new residential project called "ESTELLA" in Sector 103 Gurugram, Haryana & had published many advertisements for the project to attract the public at large.
- b. That the complainant in the present case is a subsequent allottee who has stepped into the shoes of the original allottee, by executing a fresh builder buyer agreement. That the complainant on 26.07.2011, had applied to purchase a flat in the respondent's project named "Estella" situated in Sector 103, Gurugram, Haryana. That the complainant vide application for change in right to purchase property purchased a unit in the respondent's project from the original allottees namely Richard James & Sabina Richard for a consideration of ₹6,30,000/-. That on 27.07.2011, the complainant received a letter from the respondent no. 1, acknowledging the transfer of the unit in the complainant's name, and by crediting the amount paid by the complainant in her name i.e., ₹6,30,000/- That further on 29.07.2011, the complainant received a letter from the respondent no.1, confirming the allotment in the abovementioned project and allotting the complainant, a customer code and mentioning the details of the unit purchased.
- c. That vide allotment letter dated 15.09.2011, the complainant and the respondents entered into an allotment arrangement, wherein the respondents have duly acknowledged the allotment of a unit in the respondent's project of the complainant. That the complainant had booked a 2BHK, type 1 flat, bearing unit no. K-0505, having

super area of 1255 sq. ft. @ ₹2,800/- per sq. ft., having a total sale consideration of ₹36,77,150/-, including preferred location charges of ₹1,63,150/-.

- d. That on 02.05.2012, the complainant and the respondents entered into a flat buyer's agreement (hereinafter referred as "FBA") for the above-mentioned flat bearing no. K-0505. That as per the flat buyer's agreement dated 02.05.2012, the complainant had opted for construction linked plan of payment and as per the FBA. Under para 30 of the FBA, the possession of the unit was to be handed over within 36 months years, thereon from the date of execution of the flat buyer's agreement, i.e., by 02.05.2015, further grace period of 6 months was also kept in the provision which makes the due date of possession including 6 months of grace period to be 02.11.2015. That it is further submitted, that the respondent under clause 21 of the FBA, stated the complainant shall also be liable to pay an additional amount of Rs. 2,50,000/- for one covered parking space in the project.
- e. That the complainant from the date of application for change in right to purchase property, i.e., 24.06.2011, has on various dates till 07.03.2017 made payments in favour of the respondents. That the complainant in total has paid an amount of ₹44,49,377 /-. That all the payments, made by the complainant on various dates were duly acknowledged by the respondents vide payment receipts.
- f. That the Complainants had approached the Respondents time and again seeking the information and status of the project and date of offer of possession of the said premises. After repeated reminders the Respondents assured that they will handover of possession

soon. Yet no such offer has been made till now. Moreover, the Respondents represented and assured that they will hand over the possession very soon. It is pertinent to note that no offer of possession has been made till date despite all obligations and payments being met with by the Complainants in time as and were demanded by the Respondents.

- g. That the possession is delayed by more than Seven years. Despite facing serious hardship on account of the delay, the Complainants wish to withdraw from the project and shall be allowed to withdraw from the respondent's project, along with interest on payments made by the complainant as prescribed under the Act. That the Complainants have complied with all the terms and conditions of the Flat Buyers Agreement but the Respondents failed to meet up with their part of the Contractual Obligations and thus are liable to get refund of the amount paid by the complainants to the respondents. It is pertinent to mention here that the Complainants did not default in any payment from the very beginning till now but the Respondents have not honoured their part of commitment.
- h. The Respondents have charged interest @ 24% p.a. compounded quarterly for each small delay in payment which has been also been promptly paid. The ABA as per clause 35 provides for payment of Rs. 5/- per square feet per month on super area for delayed handing over of the flat but it may be noted that this is grossly inadequate and one-sided condition which has encouraged the Respondents to delay the handover of flat. Till date no amount has been paid back to the Complainants and the Respondents are

enjoying the hard-earned money of the complainants for nearly past more than five plus years. Moreover, in the present project the respondents have charged the complainant on Super Built up Area whereas as per the New Act the Basic sale Price is liable to be paid on the Carpet Area Only. This is a clear and blatant violation of the provisions, rules and object of the Act.

- i. That it is again pertinent to mention here that the respondent has yet to register their project, "ESTELLA" with the RERA authority. The registration of the project is mandatory under Section 3 of Real Estate (Regulation and Development) Act, 2016 within the stipulated time period, which the respondent has failed to do. That it is pertinent to mention here that as respondent has not registered its project, "ESTELLA" with the concerned authority within the stipulated time period prescribed under the Central Act. Therefore, under Section 59 of Real Estate (Regulation and Development) Act, 2016, for Noncompliance with the said Act and for such violation, penalty must be imposed on respondent.
- j. That the respondent is misusing their position and imposing unfair terms on the Complainant and have committed an unfair trade practice. Respondent and their employees are attempting to cheat and defraud the Complainant, out of his hard-earned money by engaging in dishonest conduct and unfair trade practices.
- k. That for the purpose of the clarity it is stated herein that in the column of registered mobile no and registered email id, the complainants give their express consent so as to specify/state the email id and mobile no of the lawyer who has been engaged by the present complainants and any communication made to such email

id/mobile number will be deemed to be an express communication to the complainants themselves as the complainants want to shorten the process of communication.

- I. That it is humbly submitted that the Complainants have suffered great losses in terms of loss of rental income, opportunity to own and enjoy a home in Gurugram, burden of bank E.M.I.'s against the undelivered unit etc. The Complainants have not been able to buy another flat in Gurugram as majority of their life's hard-earned money is stuck in this project. That the complainant is a single mother, who was widowed after the death of her husband, 11 years ago. That the complainant has been single handedly handling her financial expenses, which includes the medical expenses of the complainant. The complainants continue to travel from pillar to post to safeguard their hard-earned money in seek of justice. The Respondent is liable to compensate the Complainants for its above acts and deeds causing loss of time, opportunity and resources of the Complainants Due to the malpractices of the respondents, the complainants suffered greatly on account of mental & physical agony, harassment and litigation charges. Thus, due to such hardship faced by the complainants by the act and misconduct of the respondents, the complainants reserve their right to file and pursue a case for compensation before Adjudicating officer. The complainant is a senior citizen and suffering from many old age ailments. She recently had to undergo a knee replacement surgery and thus took significant expenditures. She is merely surviving on the nominal savings and could not take any more burden thus want a relief at the earliest.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. To get a refund of the paid money along with prescribed interest from the date of payment till date of refund (as per section 11 (4), 12, 18 & 19(4) of the Real Estate (Regulation and Development) Act, 2016).
 - b. Restrain the respondent from cancelling the said unit.
 - c. Direct the respondent to charge on carpet area.
 - d. To get the litigation cost of Rs. 1,00,000/-.
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 no. 1.

6. The respondent no. 1 has contested the complaint on the following grounds.
 - a. That the complainants had approached the answering Respondent for booking a flat no. K 0505 in an upcoming project Estella, Sector 103, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 02.05.2012 was signed between the parties.
 - b. 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 answering Respondent was in the year 2012. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that

Parliament would not make the operation of a statute retrospective in effect.

- c. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage of his own wrong.
- d. 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 2023 and the cause of action accrue on 02.05.2016 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
- e. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2012 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 35 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.
- f. That the complaint itself discloses that the said project does not have a RERA approval and is not registered. It is submitted that if

- the said averment in the complaint is taken to be true, the Hon'ble Authority does not have the jurisdiction to decide the complaint.
- g. That the Respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging the foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the Respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the Complainant.
- h. That the answering Respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the answering Respondent. It is further submitted that 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.
- i. Similarly, the complaint itself reveals that the correspondence from the Answering 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.
- j. That the answering respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted 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.
 - k. That the answering Respondent has clearly provided in clause 35 the consequences that follow from delayed possession. It is submitted that the Complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram.
 - l. That the answering Respondent has not appreciated the fact that the downward spiral in property prices has propelled him to file a complaint before the HRERA, Gurugram.
7. 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.
8. The authority issued a notice of the complaint to the respondent no. 2 by speed post and also on the given email address which was duly served. The delivery reports have been placed in the file. Despite service of notice, the respondent no. 2 has preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to struck off



the defence of respondent no. 2 and decide the complaint ex-parte against the respondent no. 2.

E. Jurisdiction of the authority

9. The authority has complete territorial and 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 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

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) 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.

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 complainants at a later stage.

F. Findings on the relief sought by the complainants.

F. I. Direct the respondent to refund a sum of ₹4,15,534/- along with interest.

13. In the present matter the complainant was allotted unit bearing no. K-0505, admeasuring 1255 sq. ft. respectively in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder. A buyer's agreement was executed between the complainant and respondent no. 1 wherein respondent no. 2 was the confirming party on 02.05.2012. As per clause 30 of both the BBA, respondent no. 1 was obligated to complete the construction of the project and hand over the possession of the subject unit within 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The occupation certificate for the project has not yet been obtained from the competent authority.
14. The authority is of the view that the builder buyer's agreement were signed by the complainants and the respondent no. 1. The respondent no. 2 is a confirming party to that BBA. In the builder buyer agreement it was specifically mentioned that respondent no. 2(land owner) and respondent no. 1(developer) entered into an agreement whereby the development and marketing of the project was to be done by the respondent no. 1 in terms of the license/permissions granted by the DTCP, Haryana. It is relevant to refer the definition of the term

'Promoter' under the section 2(zk) of the Real Estate (Regulation and Development) Act, 2016.

"2. Definitions.-

(zk) "promoter" means

a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

xxxxxxx"

15. The authority observes that landowner is covered by the definition of promoter under sub clause (i) or (ii) of section 2(zk). A person who constructs or causes to be constructed a building or apartments is a promoter if such building or apartments are meant for the purpose of selling to other persons. Similarly, a person who develops land into a project i.e., land into plots is a promoter in respect of the fact that whether or not the person also constructs structures on any of the plots. It is clear that a person develops land into plots or constructs building or apartment for the purpose of sale is a promoter. The words, "causes to be constructed" in definition of promoter is capable of covering the landowner, in respect of construction of apartments and buildings. There may be a situation where the landowner may not himself develops land into plots or constructs building or apartment himself, but he causes it to be constructed or developed through someone else. Hence, the landowner is expressly covered under the definition of promoter under Section 2 (zk) sub clause (i) and (ii).

16. In view of the above, the liability under provisions of Section 18(1) of the Act & Rules read with builder buyer agreement shall be borne by both the respondents jointly and severally.
17. The complainant intends to withdraw from the project and is seeking refund of the amount paid along with interest on the amount paid. Section 18 is produced below for the 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. - 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 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. Clause 30 of the builder buyer agreement (in short, agreement) 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 36 months from the date of execution of the agreement or within 36 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 36 months as above in offering the possession of the unit."



19. **Due date of possession and admissibility of grace period:** As per clause 30 of the agreement, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. Further, grace period of 6 months is sought. The date of start of construction is not known. Therefore, the due date is calculated from date of execution of builder buyer agreement i.e., 02.05.2012. The period of 36 months ends on 02.05.2015. As far as grace period of 6 months is concerned the same is allowed being unqualified. Accordingly, the due date of possession comes out to be 02.11.2015.

20. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them 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]

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."

21. 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.

22. 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., 15.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
23. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

*Explanation. —For the purpose of this clause—
the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

24. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 30 of the agreement executed between the parties on 02.05.2012, the respondent was obligated to deliver the subject unit by 02.11.2015.

25. It is pertinent to mention over here that even after a passage of more than 10 years neither the occupation certificate 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 him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that till date the respondent has not obtained occupation certificate/part occupation certificate from the competent authority. In view of the above-mentioned facts, the allottee intends 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.

26. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

27. Further, the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. observed as under:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed"

28. 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 is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
29. 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 them 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. Restrain the respondent from cancelling the said unit.

G.III. Direct the respondent to charge on carpet area

30. In view of the findings above the said relief stands redundant.

G.IV. Direct the respondent to pay a sum of ₹1,00,000/- as litigation cost.

31. The complainant is also seeking relief w.r.t 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 an allottee is entitled to claim compensation & 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 & 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 & legal expenses.

G. Directions of the authority

32. 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 respondents/promoters jointly and severally are directed to refund the amount of ₹38,19,377/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. as prescribed under rule 15 of the rules from the date of each payment till the date of refund of the deposited amount.
- b. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.



c. The respondents are further directed not to create any third-party rights against the subject unit before the 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.

33. Complaint stands disposed of.

34. File be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.04.2025

HARERA
GURUGRAM