

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

Complaint no. : 1325 of 2021
Date of filing of : 19.03.2021
complaint:
Date of decision : 18.03.2025

Deepak Bhatia
R/o: C3, Varun CGHS, GH03, Sector-52, Gurugram,
Haryana

Complainant

Versus

1. M/s Reliable Realtech Pvt. Ltd.
2. M/s Decent Realtech Pvt. Ltd.

Both Regd. Office: 34/C-8, Sector-8, Rohini, New
Delhi.

Respondents

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

**Chairman
Member
Member**

APPEARANCE:

Deepak Bhatia
Ms. Sanya Arora (Advocate)

**Complainant in person
Respondents**

ORDER

1. The present complaint dated 19.03.2021 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 provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of 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.	Project name and location	"Antriksh Heights", Sector 84, Gurugram
2.	Project area	23.10 acres
3.	Nature of project	Residential group housing colony
4.	RERA registered/not registered	Not registered
5.	DTPC License no.	123 of 2008 dated 14.06.2008
	Validity status	13.06.2018
	Name of licensee	Reliable Realtech Pvt. Ltd.
6.	Occupation Certificate details	<p>OC received dated 19.05.2016 for tower/block-</p> <ul style="list-style-type: none"> ➤ AF (ground floor to 17th floor) ➤ AG (ground floor to 9th floor) ➤ AH (ground floor to 7th floor) ➤ AI (ground floor to 9th floor) ➤ AJ (ground floor to 9th floor) ➤ AL (ground floor to 18th floor) ➤ EWS (ground floor to 10th floor) <p>OC received dated 14.10.2016 for tower/block-</p> <ul style="list-style-type: none"> ➤ AE (ground + 1ST floor to 19th floor) ➤ AG (10th floor to 19th floor) ➤ AH (8TH floor to 19th floor) ➤ AI (10th floor to 19th floor) ➤ AJ (10th floor to 19th floor) <p>OC received dated 07.02.2020 for tower/block-</p>



		Primary School (Ground floor to 3 rd floor)
7.	Respondent claiming deemed occupation certificate in respect of following towers	<ul style="list-style-type: none"> ➤ Tower AA - 80 Units, ➤ Tower AB - 80 Units, ➤ Tower AC - 74 Units, ➤ Tower AD - 80 Units, ➤ Tower AE - 40 Units Balance, ➤ Tower AK - 71 Units ➤ Tower AM - 160 Units ➤ EWS - 107 Units <p>Convenient shopping, Community center, balance Part of the basement</p>
8.	Occupation Certificate details	<p>OC received dated 21.09.2020 for tower/block-</p> <ul style="list-style-type: none"> ➤ AA (ground floor to 19th floor) ➤ AB (ground floor to 19th floor) ➤ AC (ground floor to 18th floor) ➤ AD (ground floor to 19th floor) ➤ AE (ground floor to 19th floor) ➤ AK (ground floor to 18th floor) ➤ AM (ground floor to 19th floor) ➤ EWS block (ground floor to 10th floor) ➤ 2 no's Convenient Shopping Type- 1 (ground only) <p>Community Building (ground floor to 1st floor)</p>
9.	Unit no.	1805, 18 th floor, Tower/block- AM, Unit measuring 1450 sq. ft. (Page 50 of the complaint)
10.	Date of execution of agreement	30.05.2012 (Page 47 of the complaint)
11.	Date of allotment letter	01.05.2012 (Page 45 of the complaint)



12.	Possession clause	<p><u>12. POSSESSION, RIGHTS AND INTERESTS</u></p> <p><i>The owner shall construct the apartment as early as possible and within 3 years, from the start of construction work unless due to unavoidable circumstances, it is not possible to do so, however, time is not the essence of this Agreement to sell in this regard. If the construction is completed earlier, the possession thereof can be delivered even earlier. The objections of the Allot(s) in this regard are not tenable/ entertain able.</i></p> <p>(Page 55 of the complaint).</p>
13.	Due date of possession	<p>30.05.2015</p> <p>Note: Date of commencement of construction is not given by either of the parties. Thus, the due date of handing over the possession is calculated from the date of execution of the said agreement i.e., 30.05.2012</p>
14.	Total sale consideration	<p>Rs.61,96,000/-</p> <p>(As per estimated cost at page 46 of the complaint)</p>
15.	Total amount paid by the complainant	<p>Rs.59,22,936/-</p> <p>(As per averment of complainant page 21 of the complaint)</p>
16.	Re-issue of final demand cum offer of possession	<p>30.11.2020</p> <p>(Page 8 of the reply)</p>
17	OC/CC	<p>21.09.2020</p>

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - I. That in the year 2012, the respondent through its marketing executives had advertisement done through various medium and means approached the complainant with an offer to invest and buy an apartment in the proposed project of respondent, which the respondent was going to launch the project namely "ANTRIKSH HEIGHTS" at Sector-84, Gurugram (hereinafter referred to as "Said Project"). The respondent had represented to the complainant that the respondent is very the ethical business house in the field of construction of the residential and commercial projects and in case the complainant would invest in the project of respondent then they would deliver the possession of the proposed apartment on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured the complainant that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of the said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by the respondent and assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainant within one week of booking to be made by the complainant. The complainant while relying on the representations and warranties of the respondent and believing those to be true had agreed to the proposal of the respondent to book the residential apartment in the project of respondent.
 - II. That the respondents arranged the visit of its representatives to the complainant, and they also assured the same as assured by the



respondents to the complainant, wherein it was categorically assured and promised by respondents that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would allot the residential apartment in the name of complainant immediately upon the booking. Relying upon those assurances and believing those to be true, the complainant booked a residential apartment bearing No.1805, admeasuring 1450 Sq. ft., in the project Antriksh Heights at Sector84, Gurugram as Basic Sale Price consideration exclusive of tax for purchase at the rate of **Rs.61,96,000/-**, which includes the PLC, IDC, EDC, Car Parking, Membership Fee, power-backup fee, service tax and government taxes along-with the instalments. It was assured and represented to the complainant by respondents that they had already taken the required necessary approvals and sanctions from the concerned authorities and departments to develop and complete the proposed project within time as assured by the respondents. The complainant also signed the application form for the allotment of the aforesaid apartment and the said application form was duly signed and stamped by the respondents.

- III. That in order to lure the complainant into its trap, the respondents had issued an allotment letter dated 01.05.2012, in favour of the complainant.
- IV. That thereafter, respondent started raising the demand of money /instalments from the complainant as per the agreed timelines and complainant as of today had paid a total amount of Rs. 59,51,890/- which is almost 95 per cent of the total sale consideration and no major part is left to be paid by the complainant to the respondents except a



meagre amount of Rs. 2,44,110/-, in other words, the complainant has performed his part of the agreement in letter and spirit.

- V. That as per the agreement, the respondents have been required to hand over the possession of the apartment to the complainant 36 months from the date of execution of the agreement. The agreement was executed on 30.05.2012 and therefore, the date of possession was/is 30.05.2015. The respondent has failed utterly in delivering the possession of the booked apartment to the complainant and has, therefore, miserably defaulted in fulfilling its commitment as per the terms of the agreement.
- VI. The complainant had made timely payments as the instalments became due and were demanded by the respondents.
- VII. The respondent raised various demands for payments from time to time, which were duly paid by the complainant as per the schedule.
- VIII. That from the date of booking and till today, the respondent had raised various demands for the payment of instalments on complainant towards the sale consideration of the said apartment and the complainant has duly paid and satisfied all those demands without any default or delay on his part and has also fulfilled otherwise also his part of obligations but the respondent having fraudulent intention never started construction of the project on earth as agreed by it and sold the aforesaid apartment to the complainant by misrepresentation as the respondent never had any intention to construct any such project as promised by it to the complainant.
- IX. That from the date of booking and till today, the respondent had raised various demands for the payment of instalments on complainant towards the sale consideration of the said apartment and the complainant has duly paid and satisfied all those demands without any



default or delay on his part and has also fulfilled otherwise also his part of obligations but the respondent having fraudulent intention has completed the project and has offered to hand over the possession of the apartment to the complainant but with so much delay and making the complainant face intolerable burdens. The complainant was offered the possession but not as agreed by respondent and the respondent sold the aforesaid apartment to the complainant by misrepresentation.

- X. That the complainant thereafter had tried his level best to reach the representatives of the respondent to seek a satisfactory reply in respect of the said apartment but all in vain. The complainant had also informed the respondents about his financial hardship of paying an average monthly rent of Rs. 32,000/- due to delay in getting possession of the said apartment. The complainant had requested the respondents to deliver his apartment citing the extreme financial and mental pressure he was going through, but the respondents never cared to listen to his grievances and left him with the suffering and pain on account of its default and negligence.
- XI. That the complainant has undergone severe mental harassment due to the negligence on the part of the respondents to deliver his home on time agreed as he was compelled to pay Rs. 32,000/- as monthly rental for the rented accommodation used by them. The complainant had faced all these financial burdens and hardship from his limited income resources, only because of respondent's failure to fulfil their promises and commitments. Failure of commitment on the part of respondents has made the life of the complainant miserable socially as well financially as all his personal financial plans and strategies were based on the date of delivery of possession as agreed by the respondents. Therefore, the respondents have forced the complainant to suffer grave,

severe, and immense mental and financial harassment with no fault on his part. The complainant being a common person just made the mistake of relying on respondent's false and fake promises, which lured him to buy an apartment in the aforesaid residential project of the respondents. The respondents have trapped the complainant in a vicious circle of mental, physical, and financial agony, trauma, and harassment in the name of delivering his dream home within the deadline representing itself as a multinational real estate giant.

- XII. That due to the failure on the part of respondent to deliver the said apartment on time as agreed in the agreement, the complainant was constrained to stay in the rented accommodation by paying monthly rent along with the monthly instalments of home loan taken by him for the aforesaid apartment. The complainant has, therefore, paid **Rs.22,08,000/-** as average rentals @ Rs.32,000/- per month for the rented accommodation for the period of delay i.e., **69 months from May 2015 to February 2021**. The complainant was constrained to pay the aforesaid rental amount solely due to the deficiency in services and negligence on the part of the respondents in delivering said apartment within the timelines as agreed in the agreement. The complainant has suffered this monetary loss just because of the unfair trade practices adopted by the respondents in their business practices with respect to the said apartment.
- XIII. The complainant thereafter had tried his level best to reach the representatives of the respondents to seek a satisfactory reply in respect of the said apartment but all in vain. The complainant had also informed the respondents about his financial hardship and the respondents miserably failed to fulfil their promise and to deliver the possession of his dream home.

- XIV. That none of the respondents even has replied to the correspondence, not limited up-to email and telephonic conversation of the complainant, whenever complainants try to reach the desk of respondents, the respondents and their staff and officials always evaded the complainant on lame excuses.
- XV. As per the ledger, the complainant as of today had paid the total amount of Rs.59,51,890/- to the respondents, which is almost 95 per cent of the total sale consideration and no major part is left to be paid by the complainant to the respondents except a meagre amount of Rs.2,44,110/-.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- I. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.
 - II. Direct the respondent to pay penalty of Rs. 5,00,000/- to the complainant on account of harassment, pain and mental agony sufferings being suffered by the complainant on account of non-delivery of the apartment by the respondents.
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.
- a. That the complainant has concocted stories and needless to mention the entire complaint is nothing but a bundle of white lies worn on affidavit filed by the complainant which is explanatory of the fact that the complainant is a law unto himself and this scant regard of the complainant for the process of law has stopped him so low that he has



gone to the extent of committing the offence of perjury i.e swearing a false affidavit before the Oath Commissioner/Notary Public and submitting the same in the Authority, it is not out of place to mention that the suo-moto action under section 182 IPC , should be taken against the complainant.

- b. That it is submitted that the respondent is a reputed builder of high reputation and integrity and had complied with all the norms prescribed by RERA and other government bodies and has constructed the project fully in all respects and needless to mention the respondent has been able to live upto the stringent tests of the Government Agencies in the matter of obtaining occupancy certificate, and deemed OC as per the provision of Haryana Building Plan Code 2016.
- c. That it is submitted that the Petitioner is trying to mislead this Hon'ble forum by making false averments on affidavit. It is humbly submitted that the Petitioner was entitled to get the interest only on account of having followed a strict financial discipline but Petitioner has till date not cleared the dues of Rs 9,83,897/- of the Petitioner despite Umpteen number of requests made by the Respondent and needless to mention every sham averment is being taken by the petitioner to take undue advantage of his own misconduct and needless to mention the petitioner not only defied the terms of the contract concerning the payment schedule to make him entitled for the said discount but also with the ulterior motives and mensrea did not come forward to take the possession of the said flat despite the fact that the Respondent had the deemed Occupancy Certificate and made number to requests to respondent to take possession of the said flat and clear the outstanding dues but probably the petitioner had an inclination towards frivolous litigation with an apparent intent of creating compelling

circumstances for the respondent and get indirectly what he has not been and is not entitled to get directly.

- d. That it is further submitted that the respondent carried out the construction as per the scheduled manner and there was no delay of whatsoever nature in the completion of the project and it may please be appreciated here that in the property matters time is not the essence of the contract and some minor delays are bound to occur due to supervening circumstances but in the present case there was nor even a minor delay and after the completion of the project the respondent submitted all the requisite documents to the competent authority for issuance of OC on 19/12/016 and due to non-action of the Govt authority the respondent became entitled to the benefit of deemed OC as per the Haryana Building Code 2016, under section 23 (5), deemed occupation certificate has been treated by them in this case, which is reproduced as below:-

"If no communication is received from the Competent authority within 60 days of submitting the application for "Occupation Certificate", the owner is permitted to occupy building considering deemed issuance of "Occupation certificate" and the application Form BR-VIII shall act as "occupation Certificate" However, the competent authority may check the violations made by the owner and take suitable action"

and as such no fault can be assigned to the respondent and needless to mention all the documents of the respondent speak for themselves submitted the application for issue of occupation certificate, the office of DTCP Haryana has intimated vide their latter No. 18670 dated 21.10.2020 that as per serial No. 31 of the enclosure (Page No99 to 107) the office copy of application in this case was received in the office of DTCP Haryana vide dairy No. 31420 dated 19.10.2016, Hence, the allegation is wrong, as stated in the order of RERA



- e. That it is submitted that only purpose of filing this complaint is to bring the respondent to his knees and to succumb to the undue pressure of the complainant and the sole objective of the petitioner is only to forfeit the legitimate amount of the complainant and it is submitted that the respondent seems to have become victim of the approach avoidance conflict i.e he does not wants to take the possession of the flat but at the same time is very keen to avoid his liability which is contrary to the principle of equity and natural justice.
- f. That it is submitted that the complainant has no cause of action against the respondent as the respondent was and is willing to perform his part of contract subject to receipt of balance amount of of **Rs 9,83,897/-** and thus the Petitioner who has come to the court of law is seeking its indulgence is not entitled to any relief It is further submitted that the similar complainant also filed a complaint based on same facts before RERA Haryana which took its cognizance and passed a speaking order on 05/ 11/ 20 directing the respondent to take the possession of the said flat within one month of the letter of offer of possession by the respondent with a rider that if the respondent still fails to take the possession within the said period the respondent is entitled to holding charges as applicable. It is further submitted that respondent again issued an offer letter to the complainant but to no avail and it seems that the only interest of the complainant is to indulge in multiple litigation and avail whatsoever relief by distorting the facts
7. All other averments made in the complaint were denied in toto.
8. 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

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 complainant at a later stage.

13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** 2021-2022(1)RCR(C), 357 and followed 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."

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

F. Findings on the relief sought by the complainants.

- F.I Direct the respondent to refund the amount paid by the complainant.**

15. The complainant states that the due date for handing over of possession for the unit was 30.05.2015 while the complaint was filed by the complainant for refund of the amount deposited on 19.03.2021. the complainant further submitted that the offer of possession allegedly issued on 30.11.2020 was sent on wrong address by the respondent and was finally re-issued to the complainant on 30.07.2021. Therefore, full refund of the amount deposited alongwith prescribed rate of interest may be allowed in terms of judgment of Hon'ble Supreme Court in case of Newtech Promoters and Developers Pvt. Ltd. versus State of U.P.
16. The counsel for the respondent states that the respondent was entitled to deemed occupation certificate for the project as on 19.12.2016 as per Section 4.10(5) of the Haryana Building Code, 2016. This matter has been confirmed by the department of Town and Country Planning vide their RTI reply dated 21.10.2020. A CWP No.16873 of 2020 is also preferred before the Hon'ble High Court for declaring the above deemed occupation certificate w.e.f. 19.12.2016 but without prejudice to the same, the Department has finally granted occupation certificate only on 21.09.2020 wherein the unit of the complainant-allottee is situated. The complaint for seeking refund has been filed only on 19.03.2021 after grant of OC and offer of possession and hence, if refund is to be allowed, the same may be granted only after deduction of 10% earnest money alongwith other statutory taxes.
17. The section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, the allottee wishes to withdraw

from the project and demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.

18. The due date of possession as per agreement for sale as mentioned in the table above is 30.05.2015. The allottees in this case has filed this application/complaint on 19.03.2021 after obtaining of occupation certificate on 21.09.2020 and final demand cum offer of possession on 30.11.2020. As per the section 19(10) every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be. In the present case, the complainants did not take the possession as they had objection to completion of the unit as well as demands which were raised by the respondent. It is pertinent to mention here that the allottee never earlier opted/wished to withdraw from the project even after the due date of possession and only when offer of possession was made and demand for due payment was raised, then only, he filed a complaint before the authority.

19. The right under section 18(1)/19(4) accrues to the allottees on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottees have not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to them, it impliedly means that the allottees tacitly wished to continue with the project. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter

has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottee's interest for the money they have paid to the promoter is protected accordingly and the same was upheld by 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. (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***, 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"

20. 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. This judgement of the Supreme Court of India recognized unqualified right of the allottees and liability of the promoter in case of failure 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. But the complainant-allottee failed to exercise his right although it is unqualified one. The complainant has to demand and make his intentions clear that he wishes to withdraw from the project. Rather tacitly wished to continue with the project and thus made himself entitled to receive interest for every month of delay till handing over of possession. It is

observed by the authority that the allottee invest in the project for obtaining the allotted unit and on delay in completion of the project never wished to withdraw from the project and when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottees in case of failure of promoter to give possession by due date either by way of refund if opted by the allottees or by way of delay possession charges at prescribed rate of interest for every month of delay.

21. The authority has observed that the respondent-builder has sent the final demand cum offer of possession on 30.11.2020, after obtaining occupation certificate on 21.09.2020 but the complainant wants to surrender the unit and refund the amount paid by him . Keeping in view the aforesaid circumstances, that the respondent builder has already offered the possession of the allotted unit after obtaining occupation certificate from the competent authority, and judgment of ***Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. Civil appeal no. 5785 of 2019 decided on 11.01.202***, it is concluded that if allottees still want to withdraw from the project, the paid-up amount shall be refunded after deduction as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides 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"

22. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs. 59,22,936/- after deducting 10% of the sale consideration of Rs.61,96,000/- being earnest money along with an interest @ 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 on the refundable amount, from the date of filing of this complaint i.e., 19.03.2021 requesting for refund of the amount till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid

FII Compensation

23. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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.

G. Directions of the authority

24. 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 is directed to refund to the complainants the paid-up amount i.e. Rs.59,22,936/- after deducting 10% of the sale consideration of Rs.61,96,000/- as earnest money with interest on such balance amount at the prescribed rate i.e., 11.10%, from the date of filing of this complaint i.e., 19.03.2021 till the date of realization of payment.
- 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.
- iii. 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 complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

25. Complaint stands disposed of.

26. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman



(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.03.2025