

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

**Complaint no. :** 1281 of 2022  
**Complaint filed on:** 28.03.2022  
**Order pronounced on:** 15.05.2025

**Lt. Mr. Ashol Bansal through LRs**

1. Chetan Bansal
2. Karan Bansal
3. Rajeev Banal

All R/o: E-110, Saket, New Delhi- 110017

**Complainants****Versus****1. M/s Anjali Promoters & Developers Pvt. Ltd****2. BPTP limited**Regd. Office for both: M-11, Middle Circle, Cannaught  
Circus, New Delhi**Respondents****CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Shri Mustafa Alam (Advocate)

Shri Harshit Batra (Advocate)

Complainants

Respondents

**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 to the allottee as per the agreement for sale executed inter se them.





**A. Unit and project related details:**

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

S. N.	Particulars	Details
1.	Name of the project	Centra One
2.	Project location	Sector 61, Gurugram
3.	Date of booking application form	03.11.2006 [page no. 29 of the reply]
4.	Date of allotment	10.06.2008 [page no. 33 of the reply]
5.	Unit No.	09-914 [page no. 33 of the reply]
6.	Unit Area	1000 sq. ft. [page no. 33 of the reply]
7.	Date of agreement for sale	Copy annexed but not executed
8.	Possession clause	<b>Clause 2 Possession</b> <i>2.1 The possession of the said premises shall be endeavored to be delivered to the intending purchaser by 31<sup>st</sup> December 2011, however, subject to clause 9 herein and strict adherence to the terms and conditions of this agreement by the intending purchaser. The intending seller shall give notice of possession to the intending purchaser with regard to the date of handing over of possession, and in the event the intending purchaser fails to accept and take the possession of the said premises on such date specified in the notice to the intending purchaser shall be deemed to be custodian of the said</i>

		<p><i>premises from the date indicated in the notice of possession and the said premises shall remain at the risk and cost of the intending purchaser.</i></p> <p><i>(Emphasis supplied)</i></p> <p>[page no. 67 of the reply]</p>
9.	Due date of possession	<p>30.06.2012</p> <p>[Note: Grace period of 6 months is being allowed unconditional]</p>
10.	Total sale consideration	<p>Rs.62,23,056/-</p> <p>[page no. 91 of the reply]</p>
11.	Amount paid by the complainant	<p>Rs.65,73,634 /-</p> <p>[page no. 91 of the reply]</p>
12.	Date of death certificate of the allottee namely Ashok Bansal	<p>11.09.2018</p> <p>(Page no. 16 of the complaint)</p>
13.	Occupation certificate	<p>09.10.2018</p> <p>[page no. 87 of the reply]</p>
14.	Offer of possession for unit no. 014-1415 on 14 <sup>th</sup> floor	<p>17.01.2019</p> <p>[page no. 89 of the reply]</p>
15.	Request for surrender	<p>27.04.2016</p> <p>(Page no. 50 of the complaint)</p>

### B. Facts of the complaint

3. The complainant has made the following submissions: -

- That Lt. Shri Ashok Bansal, (original allottee) had booked a commercial unit in the project of respondent no. 1, namely Centra One situated in Gurgaon and was allotted, unit no. 09-914 in the said





above mentioned project by the respondent no.1. But unfortunately, after making almost the entire payment against each demand notice from the respondent company between 2006 till 2013 the original allottee died on 11.09.2018 with unfulfilled desire to own a commercial space and lead a peaceful retirement age. original allottee is survived by his three legal heirs namely Chetan Bansal, Karan Bansal & Rajeev Bansal (complainants herein).

- b. Mr. Rajeev Bansal, representing the original allottee, has been duly authorised by other two legal heirs to file this complaint on their behalf vide Power of attorney dated 10.09.2021 duly executed in favour of Mr. Rajeev Bansal, hence, competent and empowered to initiate the present complaint and depose before this Hon'ble Tribunal.
- c. Both respondent no.1 and 2 are related companies, operating from a common registered office and engaged in the business of real estate development and construction related activities. The respondents claimed to have made a niche for themselves and reckoned as a dependable builder in the market. Further, the respondents also claimed to have a good name and reputation in the market by virtue of having delivered numerous projects in time to its customers. That upon believing the assurances and representations of the respondent developers, the original allottee decided to book a property with the respondents in anticipation of timely possession of the prospective unit.
- d. The complainant is a law-abiding citizen of the country and his late father i.e. the original allottee had booked the commercial unit in the hope of setting up a small shop for earning regular income peacefully considering his old age at the time of booking.



- e. As per the documents available in the records of the original allottee, a commercial unit bearing No. 09-914, having a super area of 984 sq. ft. (91.416 sq.mt.) was booked by the original allottee for a total consideration of Rs. 63,67,419.19/-.
- f. That initially the original allottee booked a commercial space in the project at Faridabad from respondent no. 2 by paying the initial booking amount of Rs. 11,55,000 /- on 02.11.2006 and Rs. 8,62,500/- on 03.03.2007, by way of cheque issued in favour of the respondent no. 2. original allottee, vide letter dated 21.12.2007, requested for transfer of unit from Faridabad to another project of the respondent no. 2, in Gurgaon and the same was duly acknowledged by the sister concern of the respondent no. 2 company viz. respondent no.1 vide its letter dated 21.12.2007 and the original allottee was allotted a commercial space in Gurgaon.
- g. That in the allotment letter dated 21.12.2007 issued by the respondent no. 1 to the original allottee a demand for 5,77,500 /- was made which was duly paid by the original allottee. Further, the respondent no. 1 specifically mentioned in the foot note of the allotment letter that allotment will be subject to the terms and conditions as mentioned in standard space buyer agreement of the company.
- h. As per the records, all the payments with respect to each of the demand notices issued by the Respondent were made by the original allottee to the respondent no. 1 within stipulated time in anticipation of timely possession of the commercial space. The original allottee had paid a total sum of Rs. 63,67,419.69 /- to the respondents between 2006 to 2013 and the details thereof are as under:





S. No.	Date	Amount	Receipt No./Details
1	02.11.2006	Rs. 11,55,000/-	Cheque No: 159250
2	03.03.2007	Rs. 8,62,500/-	Cheque No: 163379
3	09.01.2008	Rs. 5,77,500/-	Cheque No: 837258
4	28.07.2008	Rs. 8,89,750/-	Cheque No: 855679
5	03.11.2008	Rs. 4,00,000/-	Cheque No: 869520
6	23.12.2009	Rs. 4,70,000/-	Cheque No: 086407
7	27.05.2010	Rs. 3,89,812.50/-	Cheque No: 094475
8	27.12.2010	Rs. 3,99,850/-	Cheque No: 114108
9	11.04.2011	Rs. 2,66,567/-	Cheque No: 117376
10	02.08.2011	Rs. 2,66,567/-	Cheque No: 892342
11	06.09.2011	Rs. 2,66,566/-	Cheque No: 603757
12	21.11.2011	Rs. 2,66,566.19/-	Cheque No: 611470
13	01.05.2013	Rs. 1,56,741/-	Cheque No: 710182
Total		Rs. 63,67,419.19/-	

- i. The respondent no. 1 gave discounts for timely payments by the original allottee at several occasions, which is evident from the receipts issued by the respondent. It is also revealed from the records of the original allottee that after the last payment in the year 2013 by the original allottee, the respondents issued a letter dated 03.05.2013, requesting the original allottee to sign and send an undated addendum to the buyer's agreement already executed between the original allottee and the respondent. The said addendum was duly signed and sent to the respondent by the original allottee via courier on 23.05.2013.
- j. As per the records, the respondent(s) have not raised any further demand of money since 2013, moreover the respondent no. 1 has failed to deliver the possession of the commercial unit even after a lapse of 15 years from the date of booking of the said unit.
- k. The original allottee during his lifetime made several personal visits and telephonic enquiries about the handover of the commercial unit

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but he was rendered with false assurances every time by the representatives of the respondent no.1 and after being fed up with the false assurances of the respondent no.1, the original allottee sent an email on 27.04.2016 through the complainant's email id, thereby requesting for the refund of money paid to the respondents.

- l. Thereafter the original allottee again made a request to the respondent no.1 for the refund of the money though letters sent on 17.06.2016 and on 20.07.2016 respectively. However, the respondent turned a blind eye towards such request and did not respond to any of the request letters for refund.
- m. The Original Allottee left for heavenly abode on 11.09.2018 due to prolonged illness and then ultimately the complainant, on behalf of all other surviving members of the original allottee, sent a letter to the respondent no. 1 on 18.09.2021 intimating about the demise of original allottee and demanding for the refund of the money but till date no money has been refunded by the respondent, therefore, the complainant is constrained to approach this Hon'ble Tribunal as an aggrieved person. Said letter has been duly received by the respondent no.1 on 20.09.2021.
- n. It is pertinent to mention here that the complainant could not find any builder buyer agreement or similar agreement in the records of original allottee against which an undated addendum was executed between the original allottee and the respondent no.1.
- o. After an unjustified delay of almost 15 years from the date of first payment of the said unit, the respondents have failed to honor their commitment of timely possession, which is also in contravention of the settled position of law.



- p. Complainant is aggrieved by the actions of respondent/s and as such the complainant has no other alternative but to seek intervention of this Hon'ble Authority. Further, despite the delay of almost 15 years, the project of the respondent no. 1 & 2 is incomplete and there is no sign of handover of the commercial unit in near future.
- q. In view of the foregoing facts, the complainant has instituted the instant complaint before this Hon'ble Authority.

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

4. The complainant has sought following relief(s):

- i. Direct the respondent to refund the total amount of Rs. 63,67,419/- already paid by the original allottee since the date of deposit, in favour of the legal heirs of the original allottee.
- ii. Direct the respondent to pay interest, as per the Real Estate (Regulations and Development) Rules, 2017 computed on Rs. 63,67,419/- from the date of booking till the actual payment made by the respondent.

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 made the following submissions:

- a. The complainant has no locus standi to file the present complaint. the alleged legal heirs have failed to bring on record any succession certificate to prove that they are the only surviving members of Shri Ashok Bansal. Further, it is submitted that the surviving member certificate annexed as annexure C-2 with the complaint is only as regard payment of the property tax by the alleged 3 legal heirs and







the said document in no way legally reliable to substantiate that there are no other heirs of Shri Ashok Bansal. The complainant has also failed to bring on record whether Sh. Ashok Bansal had died intestate or if there is a will in place. The said fact can only be substantiated on bringing on record a succession certificate. The Indian Succession Act, 1925 defines a succession certificate as a certificate issued by a court to the legal heirs of a deceased to establish the authenticity of the heirs and give them the authority to inherit debts, securities and other assets of the deceased. Thus, in the absence of the same, the alleged legal heirs have no locus standi to file the present complaint.

- b. That the name of respondent no. 2 be deleted from the array of parties. The booking was made by respondent no. 1 and all the transaction made by Sh. Ashok Bansal had been with respondent no. 1; hence, the name of respondent no. 2 be deleted from the array of parties as it is not a necessary party to the present complaint.
- c. That without prejudice to the fact that the alleged heirs have no locus to file the present complaint, it is submitted that the General Power of Attorney filed along with the complaint is only notarised and lacks registration which is mandated by the law of the land under The Registration Act, 1908.
- d. The present complaint is barred by limitation as Article 137 of the first schedule of Limitation Act, 1963 provides for a limitation period for any application for which no period of limitation is provided in any of the Articles in the Schedule to the Limitation Act. As per the said article a period of limitation of 3 years from the date when the right to apply accrues have been provided. It is submitted that the complainants' cause of action arose on 17.01.2019 when the respondent issued offer of possession for unit 014-1415. It is

submitted that the complainant did not raise any issue qua the same and failed to come forward and take possession. It is pertinent to point that more than 3 years have lapsed since then and hence, the present complaint is liable to be dismissed.

- e. The complainant is a defaulter/offender as the complainant has failed to take the possession in terms of offer of possession dated 17.01.2019, the complainant has filed the complaint with a view to wriggle out from their contractual obligations. In this regard it is submitted that the complainant is duty bound to take the possession of the unit within two months of the receipt of the notice for offer of possession. In the present case, the offer of possession was issued way back in 2019 but the complainant has abstained himself from taking the possession for three years. Upon completion of construction and upon getting/ securing occupancy certificate from competent authority, respondent has issued the offer of possession letter on 17.01.2019. The respondent herein is also entitled for holding charges for the three years as the complainant has grossly defaulted in making the payment on time.
- f. In terms of Section 19(10) of Real Estate (Regulation and Development) Act, 2016 the allottee is bound to accept the possession within two months from issuance of occupation certificate. Despite the receipt of occupation certificate on 09.10.2018 the issuance of offer of possession on 17.01.2019, the complainant still did not take possession of the unit in question.
- g. As per the allotment cum demand letter, it was clearly stated that the unit numbering, location and size may change during the course of construction of the project. The same was agreed between the parties as well in terms of the clause 1 and clause 1.2 of the space buyer's







agreement. the unit number and area of the allotted unit was tentative and the complainant was well aware about the change of the unit and had previously agreed to the same.

- h. That without accepting the contents of the complaint, in any manner whatsoever and without prejudice to the above-mentioned contentions, it is submitted that if in the circumstance refund is allowed, it has to after deduction of pass-through charges such as taxes, brokerage and timely payment discount availed by the complainant. That the agreement categorically notes that the taxes, and other charges shall be paid by the complainant only. That the deduction of such charges was also noted by this Hon'ble Authority in complaint no. 1228 of 2021 and 36 others, decided on 10.05.2022. Accordingly, refund, if any, has to be after the deduction of such pass-through charges.
- i. it is a settled principle of law that any delay in handing over of possession comes to an end once the occupation certificate has been received by the developing party and no cause of action remains thereafter. That the respondent has already received the OC on 09.09.2018 and has offered possession of the unit on 17.01.2019. The complainants voluntarily chose not to raise any issue post offer of possession and rather chose to keep quiet for 3 years before approaching this Hon'ble Authority seeking refund. It is also an admitted fact of the complainant vide annexure C-12 of the complaint that the intimation of death of Shri Ashok Bansal was sent to the respondents after a much delay of 3 years. Therefore, the refund if allowed should be from the date of each payment till the date of occupation certificate.

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- j. The complainant never sought refund post receipt of the OOP dated 17.01.2019. Instead, the complainant was ready and willing to take the possession of the unit. The respondent was assisting the complainant in completing all the requisite formalities so that possession could be handed over to the complainant.
- k. That both the parties as per the SBA duly agreed that the respondent shall not be held responsible or liable for any failure or delay in performing any of its obligations or undertakings as provided for in the agreement, if such performance is prevented, delayed or hindered by delay on part of or intervention of statutory authorities like DTCP or the local authorities or any other cause not within the reasonable control of the respondent. In such cases, the period in question shall automatically stand extended for the period of disruption caused by such operation, occurrence or continuation of Force Majeure circumstance.
- l. On 29.05.2008, the respondent applied for grant of approval of building plans from the DTCP. Even after having paid the entire EDC dues in the year 2010 the building plans for the project in question was not released by DTCP. That release/approval of building plan at that point in time was not linked with payment of EDC. Subsequently, on 12.01.2018 the building plan was approved for Centra One. Post approval of the same, the respondent on 21.05.2018, in continuation to its application dated 31.07.2017, again requested DTCP for grant of occupation certificate for its project. It is stated that occupation certificate was duly granted by DTCP on 09.10.2018.
- m. In addition to the above, the project also got delayed due to a complete ban on extraction of ground water for construction by the Central Ground Water Board. On 13.08.2011, the Central Ground Water

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Board declared the entire Gurgaon district as 'notified area' which in turn led to restriction on abstraction of ground water only for drinking / domestic use. Hence, the developer/respondent had to use only treated water for construction and/or to buy water for construction.

n. The reliefs sought by the complainant of the complaint paper-book cannot be granted for being false, baseless, unjustified, highly inflated, beyond the terms of the booking application and beyond the scope and ambit of the RERA Act, 2016.

7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents

**E. Jurisdiction of the Authority**

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

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

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**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. 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.
12. 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."*

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases 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 objections raised by the respondent**

**F.I. Objection regarding legal heirs.**

14. The respondent has contended that, following the demise of the original allottee, the complainants have failed to produce a succession certificate to establish that they are the sole surviving legal heirs of Sh. Ashok Bansal. However, upon perusal of the Memorandum of Partition dated 14.05.2025, it is evident that the complainants are indeed the surviving members and legal heirs of the deceased allottee. Accordingly, the objection raised by the respondent is devoid of merit and stands rendered untenable.

**F.II Objection with regard to mis-joinder/deletion of respondent no. 2 in the present complaint.**

15. While filing the complaint the complainants sought relief against M/s BPTP Limited as respondent no. 2, on failure to fulfil their obligation to complete the project, the complainants approached the authority seeking relief of refund against the allotted unit. A perusal of various documents placed on the record shows that all the transactions were made by the original allottee had been with respondent no. 1 (Anjali Promoters & Developers Ltd.). The respondent no. 2 is neither necessary nor a proper party in the present complaint. It is not disputed that all the demands raised by the respondent no. 1 and all the receipt was issued of

the unit in favor of the complainant was made by the respondent no. 1. Thus, it shows that there is no privity of contract between respondent no. 2 and the complainant and as such the plea of the respondent no. 1 with regard to deletion of name of respondent no. 2 is hereby allowed.

**F.III Objection regarding complaint is barred by limitation.**

16. As far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which she 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.
17. In the present matter, the cause of action arose on 27.04.2016, when the complainant submitted a request for surrender of the allotted unit much after lapse of the promised date of handover of possession making the complainant - allottee entitled for seeking refund in terms of statutory provision under section 18 of Act, 2016. The present complaint was filed on 28.03.2022, i.e., after a period of more than six years from the initial request. However, it is significant to note that despite the complainants' unequivocal communication expressing their intention not to continue with the project, the respondent failed to refund the amount paid. In view of the settled position of law that in cases involving continuing cause of action, the bar of limitation read with above statutory provision of section 18 of the said Act does not apply in the instance case, the present complaint is maintainable and is not barred by limitation.





**F.IV Objection regarding delay due to force majeure circumstances.**

18. The justifications offered by the respondent for the inordinate delay in completion of the project are untenable and do not fall within the ambit of force majeure under the Real Estate (Regulation and Development) Act, 2016. The alleged delay in approval of building plans by DTCP, despite payment of EDC, cannot absolve the respondent of its statutory and contractual obligations. It was the respondent's duty to secure all necessary approvals in a timely manner before launching the project or accepting bookings.
19. Additionally, the restriction on extraction of groundwater imposed by the Central Ground Water Board in 2011 was a known regulatory development and does not constitute an unforeseeable or insurmountable event. The respondent's own admission that alternative water sources were arranged for construction further weakens the claim of force majeure. In absence of any government-issued extension of completion timelines or evidence of proactive measures, the respondent's explanation lacks merit. The delay of nearly a decade in completion of the project is wholly unjustified and hence stands rejected.

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

- G.I Direct the respondent to refund the total amount of Rs. 63,67,419/- already paid by the original allottee since the date of deposit, in favour of the legal heirs of the original allottee.**
- G.II Direct the respondent to pay interest, as per the Real Estate (Regulations and Development) Rules, 2017 computed on Rs. 63,67,419/- from the date of booking till the actual payment made by the respondent.**

20. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
21. The complainants were allotted a unit in the project of respondent "Centra One" at sector 61, Gurgaon vide allotment letter dated 10.06.2008 for a total sum of Rs.62,23,056/- and the complainant

started paying the amount due against the allotted unit and paid a total sum of Rs. 65,73,634/-. The complainants intend to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec.18(1) proviso reads as under:

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

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand of 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."

22. As per clause 2 of the draft agreement provides for handing over of possession and is reproduced below:

*The possession of the said premises shall be endeavoured to be delivered to the intending purchaser by 31<sup>st</sup> December 2011, however, subject to clause 9 herein and strict adherence to the terms and conditions of this agreement by the intending purchaser. The intending seller shall give notice of possession to the intending purchaser with regard to the date of handing over of possession, and in the event the intending purchaser fails to accept and take the possession of the said premises on such date specified in the notice to the intending purchaser shall be deemed to be custodian of the said premises from the date indicated in the notice of possession and the said premises shall remain at the risk and cost of the intending purchaser.*

*(Emphasis Supplied)*

23. On consideration of the above-mentioned clause, 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 draft agreement. By virtue of clause 2 of the draft agreement, the possession of the subject unit was to be delivered by 31.12.2011. The due date determined as 30.06.2012 (31.12.2011 + a grace period of 6 months is



being allowed unconditional) and there is a delay of approx. 10 years on the date of filing of complaint to handover the possession of the allotted unit.

24. The occupation certificate of the buildings/towers where allotted unit of the complainant is situated was obtained on 09.10.2018. However, the possession was offered on 17.01.2019 to the complainant after the request for surrender was made by the complainants. The complainants are seeking refund of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the draft agreement and wished to withdraw from the project.
25. Keeping in view the fact that the allottees/complainants wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of draft agreement or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
26. **Admissibility of refund at prescribed rate of interest:** The complainants intend to withdraw from the project seeking refund amount on the amount already paid by them in respect of the subject unit at the prescribed rate of interest as provided under rule 15 of the rules.

Rule 15 has been reproduced as under:

*Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]*

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

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27. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rule, 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.
28. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 15.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
29. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"*

30. Further in the judgement of Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022. It was observed as under:

*25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional*



*absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*

31. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of allotment letter or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.

#### **H. 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 respondent is directed to refund the entire amount of Rs. 65,73,634/- paid by the complainant along with prescribed rate of interest @ 11.10% p.a. from the date of each payment till the actual date of realization.
  - b. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

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c. The respondent is further directed to not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of the complainant.

33. Complaint stands disposed of.

34. File be consigned to registry.

**Dated: 15.05.2025**



**HARERA**  
**GURUGRAM**

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