

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

Date of order: 08.07.2025

NAME OF THE BUILDER		PARKWOOD INFRASTRUCTURE PVT. LTD.	
PROJECT NAME		"PARKWOOD WESTEND"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/3212/2023	Ameet Katyal and Renu Katyal V/s Parkwood Infrastructure Pvt. Ltd. & L&T Housing Finance Ltd.	Milind Modi for Complainants and Venkat Rao and Ajay Yadav for Respondent no.1 & 2 respectively
2.	CR/3213/2023	Ameet Katyal and Renu Katyal V/s Parkwood Infrastructure Pvt. Ltd. & L&T Housing Finance Ltd.	Milind Modi for Complainants and Venkat Rao and Ajay Yadav for Respondent no.1 & 2 respectively
3.	CR/3214/2023	Ameet Katyal and Renu Katyal V/s Parkwood Infrastructure Pvt. Ltd.	Milind Modi for Complainants and Venkat Rao for Respondent
4.	CR/3215/2023	Ameet Katyal and Renu Katyal V/s Parkwood Infrastructure Pvt. Ltd.	Milind Modi for Complainants and Venkat Rao for Respondent
5.	CR/3216/2023	Ameet Katyal and Renu Katyal V/s Parkwood Infrastructure Pvt. Ltd. & L&T Housing Finance Ltd.	Milind Modi for Complainants and Venkat Rao and Ajay Yadav for Respondent no.1 & 2 respectively
6.	CR/3217/2023	Ameet Katyal and Renu Katyal V/s Parkwood Infrastructure Pvt. Ltd. & L&T Housing Finance Ltd.	Milind Modi for Complainants and Venkat Rao and Ajay Yadav for Respondent no.1 & 2 respectively

CORAM:

Shri. Arun Kumar

Shri. Ashok Sangwan

Chairperson

Member

ORDER

1. This order shall dispose of all the 6 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred

as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Parkwood Westend" (residential group housing colony) being developed by the same respondent/promoter i.e., Parkwood Infrastructure Pvt. Ltd. The terms and conditions of the flat buyer's agreement and allotment letter against the allotment of flats in the upcoming project of the respondent/builder and fulcrum of the issues involved in all the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund of the entire amount along with interest.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Parkwood Westend", Sector-92, Gurugram
Project area	14.13 acres
DTCP License No.	53 of 2010 dated 10.07.2010 valid up to 09.10.2018
Name of Licensee	Smt. Devki & 4 Ors.
Possession Clause: - Clause 28. Possession (a) Time of handing over the Possession <i>"That subject to terms of this clause and subject to the FLAT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the FLAT within a period of thirty six(36) months from the date of signing of this Agreement. If however understood between the parties that the possession of various Block/Towers comprised in the complex as also the various common facilities planned therein shall be ready and complete in phases and will be handed over to the Allottee of different Block/Towers as and when completed."</i>	

Occupation Certificate: Not yet obtained

Sr. No	Complaint No., Case Title, and Date of filing of complaint and reply	Date of apartment buyer agreement	Unit No.	Unit adm easuring	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/3212/2023 Ameet Katyal and Renu Katyal V/s Parkwood Infrastructure Pvt. Ltd. & L&T Housing Finance Ltd. DOF: 14.07.2023 Reply Status: 09.04.2024 and 06.12.2023	21.08.2015 (As on page 32 of complaint)	D-1402, Tower-D, 14 th Floor (As on page 27 of complaint)	1840 sq. ft. [Super area] (As on page 27 of complaint)	21.08.2018 (Calculated 36 months from date of execution of agreement)	Total Sale Consideration: Rs.96,61,000/- (As per payment plan on page 29 of complaint) Amount Paid: - Rs.71,66,800/- (as per payment receipts at page 72-74 of complaint and page 36 of reply)	Refund
2.	CR/3213/2023 Ameet Katyal and Renu Katyal V/s Parkwood Infrastructure Pvt.	27.07.2015 (As on page 28 of complaint)	D-1401, Tower-D, 14 th Floor (As on page 34 of complaint)	1840 sq. ft. [Super area] (As on page 34 of complaint)	27.07.2018 (Calculated 36 months from date of execution of agreement)	Total Sale Consideration: Rs.97,53,000/- (As per payment plan on page 57 of complaint) Amount Paid: - Rs.57,16,800/-	Refund

	Ltd. & L&T Housing Finance Ltd. DOF: 14.07.2023 Reply Status: 09.04.2024 and 06.12.2023					(as per payment receipts at page 68 of complaint and page 34 of reply)	
3.	CR/3214/ 2023 Ameet Katyal and Renu Katyal V/s Parkwood Infrastruct ure Pvt. Ltd. DOF: 11.07.2023 Reply Status: 09.04.2024	27.07.2015 (As on page 32 of complaint)	D- 1403, Tower- D, 14 th Fl oor (As on page 38 of compla int)	1840 sq.ft [Supe r area] (As on page 38 of comp laint)	27.07.2018 (Calculated 36 months from date of execution of agreement)	Total Sale Consideration: Rs.94,03,000/- (As per payment plan on page 61 of complaint) Amount Paid: - Rs.74,47,363/- (as per page 72-76 of complaint)	Refund
4.	CR/3215/ 2023 Ameet Katyal and Renu Katyal V/s Parkwood Infrastruct ure Pvt. Ltd.	27.07.2015 (As on page 32 of complaint)	D- 1404, Tower- D, 14 th Fl oor (As on page 38 of compla int)	1840 sq.ft [Supe r area] (As on page 38 of comp laint)	27.07.2018 (Calculated 36 months from date of execution of agreement)	Total Sale Consideration: Rs.94,03,000/- (As per payment plan on page 61 of complaint) Amount Paid: - Rs.74,47,363/- (as per page 72-75 of complaint)	Refund

	DOF: 11.07.2023						
	Reply Status: 09.04.2024						
5.	CR/3216/2023 Ameet Katyal and Renu Katyal V/s Parkwood Infrastructure Pvt. Ltd. & L&T Housing Finance Ltd. DOF: 14.07.2023 Reply Status: 09.04.2024 and 28.08.2023	21.08.2015 (As on page 32 of complaint)	D-1202, Tower-D, 12 th Floor (As on page 36 of complaint)	1840 sq.ft [Super built-up area] (As on page 27 of complaint)	21.08.2018 (Calculated 36 months from date of execution of agreement)	Total Sale Consideration: Rs.93,11,000/- (As per payment plan on page 29 of complaint) Amount Paid: - Rs.72,86,430/- (as per page 72-75 of complaint)	Refund
6.	CR/3217/2023 Ameet Katyal and Renu Katyal V/s Parkwood Infrastructure Pvt. Ltd. & L&T Housing	21.08.2015 (As on page 32 of complaint)	D-1201, Tower-D, 12 th Floor (As on page 36 of complaint)	1840 sq. ft [Super built-up area] (As on page 27 of complaint)	21.08.2018 (Calculated 36 months from date of execution of agreement)	Total Sale Consideration: Rs.93,11,000/- (As per payment plan on page 30 of complaint) Amount Paid: - Rs.72,86,430/- (as per page 61-64 & 65 of complaint)	Refund

Finance Ltd.							
DOF: 14.07.2023							
Reply Status: 09.04.2024 and 28.08.2023							

4. The aforesaid complaints were filed against the promoter on account of violation of the buyer's agreement and allotment letter against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of refund of the entire paid-up amount along with interest.
 5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
 6. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/3212/2023 titled as Ameet Katyal and Renu Katyal V/s Parkwood Infrastructure Pvt. Ltd. & L&T Housing Finance Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund of the entire paid-up amount along with interest.
- A. Project and unit related details**
7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/3212/2023 titled as Ameet Katyal and Renu Katyal V/s Parkwood Infrastructure Pvt. Ltd. & L&T Housing Finance Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	"Parkwood Westend", Sector-92, Gurugram, Haryana.
2.	Nature of project	Group Housing Colony
3.	DTCP License no.	License No. 53 of 2010 dated 10.07.2010
4.	RERA registered	Registered 16 of 2018 dated: -19.01.2018, valid up to 31.12.2019
5.	Unit no.	D-1402, Tower-D, 14 th Floor (As per allotment letter on page 27 of complaint)
7.	Unit area	1840 sq. ft. [Super area] (As on page 27 of complaint)
8.	Date of execution of buyer's agreement	21.08.2015 (As on page 32 of complaint)
9.	Possession clause	Clause 28. Possession (a) Time of handing over the Possession <i>That subject to terms of this clause and subject to the FLAT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the FLAT within a period of thirty six(36) months from the date of signing of this Agreement. If, however, understood between the parties that the possession of various Block/Towers comprised in the complex as also the various common facilities planned therein shall be ready and complete in</i>

		<i>phases and will be handed over to the Allottee of different Block/Towers as and when completed.</i> (As on page 48 of complaint)
10.	Due date of possession	21.08.2018 (Calculated 36 months from date of execution of agreement)
11.	Total sales consideration	Rs.96,61,000/- (As per payment plan on page 29 of complaint)
12.	Amount paid by the complainants	Rs.71,66,800/- (as per payment receipts at page 72-74 of complaint and page 36 of reply)
13.	Offer of possession	Not yet obtained
14.	Occupation certificate	Not on record

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -
 - a. That the complainants were allotted a flat bearing no. D-1402, Tower-D, 14th Floor having 1840 sq. ft. super area in the project of the respondent no.1 named "Parkwood Westend" at Sector -92 Gurugram vide allotment letter dated 27.07.2015. Thereafter, a flat buyer's agreement dated 21.08.2015 was executed between the parties regarding the said allotment for a total sale consideration of ₹96,61,000/- against which the complainant has paid a sum of ₹71,66,800/- in all.
 - b. That the respondent no.2 is one of the largest finance companies worldwide. Respondent no.2 in association with the respondent no.1 had sanctioned the subvention scheme/loan with respect to the project.
 - c. That while the booking amount and further few instalments were paid by the complainants through their own resources, the rest of the amount was financed by the respondent no.2.
 - d. That the respondent no.1 has failed to complete the construction and development of the project and deliver possession to the complainants till

date. On the other hand, at the time of the execution of the agreement, the complainants were promised that the possession of the unit shall be delivered within a maximum period of 36 months. Nevertheless, despite a lapse of almost 5 years now, the possession of the unit/flat is nowhere near soon. The complainant has written multiple reminders to the respondent no.1, but he has failed to receive any satisfactory response from it.

- e. That the situation of the complainants is further worsened as over the time the respondent no.1 has also failed to abide by its promise to make the payment of the EMI to the respondent no.2 until the completion of the project and eventual delivery of the unit.
- f. That the situation of the complainants is not helped by the fact that the respondent no.2 is pressuring the complainants to make the payment of the EMI while, at the same time, the respondent no.1 continues to delay in the completion of the project.
- g. That the complainants have now lost complete interest in the project as they no longer have faith in the ability of the respondent no.1 to complete the development and construction and deliver the flat. The complainants cannot be expected to wait indefinitely for the completion of the project and have thus decided to seek refund of their money by filing of the present complaint.

C. Relief sought by the complainants: -

- 9. The complainants have sought following relief(s)
 - a. Direct the respondent to refund the paid-up amount along with prescribed rate of interest.

D. Reply by the respondents

- 10. The respondent no.1 has contested the complaint on the following grounds: -

- a. That the respondent no.1 issued an allotment letter dated 27.07.2015 in favour of complainants for the unit no. D - 1402 at Tower-D having super area of 1840 sq. ft. in its project named "Parkwood Westend" at Sector -92 Gurugram having sale consideration as Rs.96,61,000/-. Thereafter, a flat buyer agreement dated 27.07.2015 was executed between the respondent no.1 & complainants with regard to the allocated unit, wherein the possession was to be offered within 36 months from the date of signing of the agreement. Further the complainants were intimated and apprised about the delay if caused due to the reasons of force majeure or any such unavoidable circumstances, respondent no.1 may not be liable for the same, to which the complainants did not present any objection.
- b. That the complainants were less of finances to pay the outstanding dues against the unit booked by them in the project of the respondent no.1 and had approached L & T Housing Finance Limited i.e. respondent no.2 for financial assistance for grant of loan to them against the unit. That post disbursement of the loan amount by the respondent no.2, the respondent no.1 duly intimated the complainants about the utilization of the amounts against the unit and intimated the same vide receipt bearing no. PW/15-16/0029 dated 10.08.2015.
- c. That due to inability of the complainants to pay the EMI to the respondent no.2, the complainants had sent a legal notice dated 08.06.2018 to the respondent no.1 and its directors and sought execution of surrender deed in respect of six number of flats booked by them and further threatened to file criminal complaint against the respondent no.1, in case if the units are not cancelled. It is pertinent to note that the said surrender request was much before the due date of possession and accordingly, if any such refund is allowed that should be post deduction of earnest money as per the terms

of the agreement as well as in lines with the Real Estate (Regulation & Development) Act, 2016.

- d. That in the meanwhile, the complainants started threatening the respondent no.1, appointed directors along with their family members and due to physical threats, the respondent no.1 furnished the payment of Rs.23,46,064/- towards the pre-EMIs to respondent no.2.
- e. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the respondent no.1. The project of the respondent was delayed due to several force majeure circumstances such as shortage of labours in the NCR Region, ban on construction by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR region, demonetization and new tax law i.e. GST, Covid-19 pandemic etc.

11. The respondent no.2 has contested the complaint on the following grounds: -

- a. That the complainants approached respondent no.2 for availing a financial facility up to a total limit of Rs.53,75,895/- for purchasing unit no. D1402, Parkwood Westend, Sector 92, Gurugram, Haryana. Based on the representations given by them and in good faith, respondent no.2 had agreed to grant a financial facility vide loan agreement dated 07.09.2019 on terms and conditions contained therein which was duly accepted by the complainants.
- b. That in terms of said agreement, it was categorically agreed by the complainants that it will be entirely their responsibility to ensure prompt and timely payment of the equated monthly installments (EMIs). In the said agreements, complainants had undertaken to repay the loan amount within a period of 258 months along with an interest @12.70% p.a. to the respondent no.2.

- c. That the respondent no.2 being a financier has advanced the loan facility to the complainants for the purpose of purchasing the said apartment from respondent no.1. Tripartite Agreement was also executed between the parties as per which certain rights of the respondent no.2 was created with only sole motive to protect the interest of the respondent no.2 with respect to the said loan facility advanced to the complainants. It is also evident from the pleadings of the complainant that no allegation has been leveled against the respondent no.2 and as per provisions of the RERA Act, no legal liability is imposed upon the financier for delay in completion and handing over of the flat.
- d. That in view of the agreements referred above and in view of the provisions of the RERA Act, the proceedings qua respondent no.2 shall be closed.
12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

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

Section 11

(4) The promoter shall-

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

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the objections raised by the respondent.**F.I. Objection regarding force majeure conditions.**

17. The respondent-promoter has raised the contention that the construction of project has been delayed due to force majeure circumstances such as shortage of labour, demonetization, orders/restrictions of the NGT as well as competent authorities, High Court and Supreme Court orders, major spread of Covid-19 across worldwide etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 21.08.2018. Hence, events alleged by the respondent do not have any impact on the project being developed by it. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the

project. Thus, the promoter cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants.

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

18. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

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

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

19. Clause 28(a) of the buyer's agreement provides for handing over of possession and is reproduced below:

28. Possession:

a) Time of handing over the Possession

"That subject to terms of this clause and subject to the FLAT ALLOTTEE (S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed documentation, payment of all amount due and payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc.,

as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the FLAT within a period of thirty six (36) months from the date of signing of this Agreement. If, however, understood between the parties that the possession of various Block Towers comprised in the complex as also the various common facilities planned therein shall be ready & complete in phases and will be handed over to the Allottee of different Block/Towers as and when completed."

20. **Due date of handing over possession:** As per clause 28 (a) of the buyer's agreement dated 21.08.2015, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of signing of the agreement. Accordingly, the due date of possession comes out to be 21.08.2018.
21. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate interest. However, the allottees 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]**
- (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.*
22. 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.

23. 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., 08.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
24. On consideration of documents available on record as well as submissions made by the parties, the authority is satisfied that in terms of the buyer's agreement executed between the parties on 21.08.2015, the possession of the subject flat was to be delivered within a period of 36 months from the date of execution of buyer's agreement. Therefore, the due date of handing over of possession was 21.08.2018. However, the complainants have already withdrawn from the project before the due date by sending legal notice dated 08.06.2018, seeking signing of surrender deed in respect of all the six units booked in the project in question. The Authority observes that the promoter did not act upon the said request of the complainant and rather thereafter vide letter dated 28.02.2020 the respondent promised to handover the possession of the subject unit as quick as possible. Accordingly, the said act of respondent has set aside the surrender request of the complainant. Now the complainant after lapse of due date of possession has filed the present complaint seeking refund of the paid-up amount along with interest.
25. It is pertinent to mention over here that even after a passage of more than 5 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 i.e., Rs.71,66,800/- 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*.
30. Further, vide proceedings dated 18.09.2024, Sh. Sukhbir Yadav Advocate appeared before the Authority and has stated that the complainant in this matter has already alienated the subject property vide agreement to sell dated 06.12.2018 and has filed the intervention application on 20.11.2024 seeking the Authority not to pass the final order without considering the facts/documents attached with the said application.
31. The Authority observes that the intervener has failed to produce any document on record to prove that the said agreement to sell attained maturity

and resulted in a sale deed or transfer of the property in any way from the complainant allottee to a third party. The case filed before the CMM, Saket in respect of NI, Act has no bearing on the outcome of this complaint. In view of the above, the application dated 20.11.2024 filed by the intervenor has no merit.

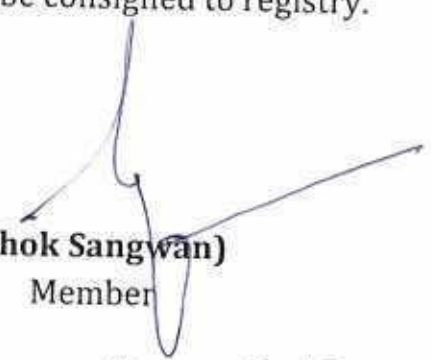
H. Directions of the authority

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):

- i. The respondent/promoter is directed to refund the paid-up amount 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 from the date of each payment till actual refund of the amount after adjusting the amount paid by respondent no.1 under subvention scheme if any, from the above refundable amount.
- ii. Out of total amount so assessed, the amount paid by the bank/payee if any, be refunded in the account of bank and the balance amount along with interest will be refunded to the complainants.
- iii. 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.

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

34. Complaints stand disposed of.
35. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.07.2025



HARERA
GURUGRAM