BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 172 of 2024
Complaint filed on : 01.02.2024
Date of Decision: 31.10.2024

1. Raj Prakash Verma
2. Neeta Verma

Both R/o: B20, Viraj, Dharam Narayan Hatta, Paota, Jodhpur, Rajasthan - 342006 **Complainants**

Versus

1. M/s Ansal Housing Limited
Regd. Office at: - 606, 6th floor, Inder Prakash 21 Barakhamba Road, New Delhi-110001
2. Indiabulls Housing Finance Ltd.
Office: 5th Floor, Building no. 27, KG Marg, Connaught Place, New Delhi – 110001
3. CFM Asset Reconstruction Pvt. Ltd.
Office: A/3, 5th Floor, Safal Profitaire, Near Prahlad Nagar Garden, Ahmedabad, Gujarat - 380015 **Respondents**

CORAM:
Shri Arun Kumar **Chairman**

APPEARANCE:
Sh. Yashvardhan Singh (Advocate) Complainants
Sh. Amandeep Kadyan (Advocate) Respondent no. 1

ORDER

1. The present complaint has been filed by the complainants/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation

and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions 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 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	"Ansal Amantre" , Sector 88A, Gurugram
2.	Nature of project	Group Housing Project
3.	RERA registered/not registered	Not Registered
4.	DTPC license no. & validity status	License No. 42 of 2013 dated 06.06.2013
5.	Date of apartment buyer agreement	08.07.2015 (page no. 32 of complaint)
6.	Tripartite agreement	07.11.2015 (page 68 of complaint)
7.	Buy Back Agreement	10.11.2015 (page no. 75 of complaint)
8.	Unit no.	T6-501 (page 35 of complaint)
9.	Area admeasuring	2120 sq. ft.

		(page 35 of complaint)
10.	Possession clause	***31*** The Developer shall offer possession of the Unit any time, within a **period of 48 months from the date of execution of Agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later** subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace period **of 6 months allowed to the Developer over and** above the period of 48 months as above in offering the possession of the Unit. *(Emphasis supplied)*
11.	Due date of possession	08.01.2020 (48 months from the date of agreement i.e., 08.07.2015 as the date of construction is not on record plus 6 months grace period allowed being unqualified)
12.	Buyback clause	**1.** That under the scheme, the Second Party shall, subject to other terms and conditions mentioned herein, have an option to opt, in writing, **either to surrender the Booking Or Continue the Booking.** That such option must be exercised by second Party and intimation must be received in writing by the First Party, before the expiry of 30 months from 2nd June 2015 (the date of booking).******12.2017 In case written

		intimation is received by the First Party **beyond this period** it would be the sole discretion of the First Party to accept or reject the said option. 1. That in case second party **fails to exercise** the option within 30 months from the date of booking, it shall be deemed that the second party is not interested in surrendering the booking and wants to continue the Booking. 6. That on Buyback of the booking the First Party shall make following payments: a. Total amount received by it from Second Party towards Part Sale Consideration and Service Tax shall be refunded in full to the Second Party. b. Total amount received by it from the Financing Company/Institution shall be refunded to the Financing Company/Institution, and c. Additional amount equal to Super Area 2120 sq. ft. X Rs. 750 sq. ft. shall be paid to the Second Party. (page 78 and 80 of complaint)
13.	Time period for buyback of unit	02.06.2015 till 02.12.2017
14.	Letter regarding shifting of unit in Ansal Highland Park project	15.12.2019 (page 147 of complaint)

15.	BBA annexed of Ansal Heights	14.06.2021 (page 176 of complaint) The said BBA is signed by complainants but not by respondent.
16.	Mail sent by respondent regarding calculation sheet of ansal height project	1.03.2021 for Rs. 53,51,176/- (page 196 of complaint)
17.	Total sale consideration	Rs. 1,69,37,981/- (as per payment plan at page no. 49 of complaint)
18.	Paid up amount	Rs. 1,06,70,485/- (as per details mentioned at page 8 of complaint)
19.	Occupation certificate	Not on records
20.	Offer of possession for fit out	Not on records

B. Facts of the complaint

3. The complainants have made the following submissions: -

I. That the complainants, on basis of the representations made by the respondent no. 1 i.e., Ansal Housing Ltd. made payments of Rs. 5,00,000/- on 01.06.2015, Rs. 9,00,000/- on 07.07.2015 and Rs. 3,15,538/- on 08.07.2015 via NEFT towards the booking amount thereby paying a total of Rs. 17,15,538/-. Thereafter on dated 08.07.2015 an original apartment buyer agreement was executed between the complainants and the respondent no. 1.

II. That on dated 10.10.2015 a loan agreement was executed between the complainants and respondent no. 2 for buying a residential apartment bearing unit no. T6-501, 3BHK + 3T Lux Corner, admeasuring area 2120 sq. ft.

III. That the builder executed a tripartite agreement in the nature of a subvention agreement by and among the complainants, respondent no. 1 and respondent no. 2. Further, it was agreed that during the subvention period, the respondent no.1 will duly pay the PEMIs to the respondent no. 2 till the completion of the subvention period. That as per understanding of the complainants, the said loan agreement was supposedly linked with the construction plan. However, respondent no. 2 on the pretext of the respondent no. 1's requisition obtained the consent of the complainants for disbursal of amount despite the complainants highlighting delay and non-completion of the target construction. Such consent was obtained by committing fraud upon the complainants by the respondent no. 2 and the respondent no. 1. That IBHFL directly disbursed an alleged total amount of Rs. 1,11,38,689/- to the respondents.

IV. That on dated 01.12.2015 a buy back agreement was executed between the complainants and respondent no. 1 which was supplemental to the apartment buyer agreement dated 08.07.2015. Further, loan amount of Rs. 41,67,750/- was disbursed by the respondent no. 2 to the respondent no. 1.

V. That on dated 28.12.2016 the respondent no. 2 disbursed loan amount of Rs. 21,03,797/- and Rs. 4,71,741/- to the respondent no. 1, Further, on dated 16.06.2017 an amount of Rs. 22,11,659/- was disbursed by the respondent no. 2 to the respondent no. 1 total amounting to Rs. 47,87,197/-.

VI. That on dated 15.11.2017 the complainants were informed via customer care generated email from the respondent no. 1 that the construction has been temporarily suspended due to the order of the

NGT. Further, on dated 30.03.2018 an email communication was exchanged between the complainants and the respondent no. 2 seeking update of the stage of construction. Subsequent to the said email an email communication was exchanged between the complainants and the respondent no. 1 wherein the respondent no. 1 assured that the PEMI's will be paid by them to the respondent no. 2 directly but to the utter dismay of the complainants EMI's were deducted by the respondent no. 2 from the complainant's account. The complainants had sent various mails to the respondent no. 1 asking to directly pay the PEMI amount but they failed to perform their duty due to which the same was deducted from the complainant's account.

VII. Subsequently, the complainants received an email dated 29.11.2018 from respondent no. 2, whereby, it was informed that the subvention period has come to an end and that on account of the non-payment of the PEMIs by the respondent no. 1, the same will now be debited from the account of the complainants.

VIII. The complainants thereafter sent an email dated 18.11.2019 to the respondent no.1 duly informing them that the respondent no. 2 is again following up with respect to the pending payment of the defaulted PEMIs and that their representatives are visiting the complainants for the recovery of the said defaulted PEMI's which is the responsibility of the respondent no. 1.

IX. That the respondent no. 1 issued a letter dated 15.12.2012 stating the shifting of the booking from the original "Ansal Amantre" project to "Ansal High Land Park" project and pursuant to the same, an agreement for sale dated 20.12.2019 was executed between the respondent no. 1

and the complainants for unit no. GLSGW-0604 admeasuring 1940 sq. ft. on 6th floor having total cost of Rs. 1,02.83,455/-.

X. That the complainants again received an email dated 20.01.2020 from the respondent no. 2 to clear an outstanding amount of Rs. 4,06,564/- due against the default in respect to the non-payment of the PEMIs by the respondent no.1, however, the respondent no.1 assured that the same is taken care of and they will repay the same directly to the respondent no. 2.

XI. Further, the complainants vide email dated 29.01.2021, rejected the proposal of the "Ansal High Land Park" project as proposed by the respondent no. 1 upon finding out that the same was also under construction. Subsequently, another project "Ansal Heights" was offered by Ansal Housing Ltd. vide email dated 23.03.2021 towards the cost difference between the original "Ansal Amantre" project and "Ansal High Land Park" project and pursuant to the same a flat buyer agreement dated 14.06.2021 was executed between the complainants and the respondent no.1 for unit bearing flat no. F-1304 having sale area of 1565 sq. ft. at project "Ansal Heights", Sector- 92, Gurgaon.

XII. That after the offer of a flat in Ansals Heights, the complainants visited the site of the project on 25.09.2021 and was shocked to see the building condition. Upon the visit, it was found that not only the site was very disorganized but the buildings were also 10+ years old much contrary to the representation made by the respondent no.1 that the same were only just 2 years old.

XIII. That an email dated 20.04.2022 was received from respondent no. 3 whereby, it was informed that an original application u/s 19 of the

RDDBFI Act, 1993 bearing O.A number 470/2021 has been filed by them and that the summons has been issued to the complainants.

XIV. That respondent no. 3 through an email dated 10.05.2022 served upon the complainants and respondent no. 1 the notice issued dated 30.04.2022 for cancellation of allotment of the unit at "Ansal Amantre" project and demanded refund of Rs. 1,43,88,190/- from the complainants.

XV. That respondent no. 3 through their advocates, supplied the copy of original application to the advocates of the petitioners through an email dated 30.09.2022. Upon receiving the same, following misdeeds of the respondents came to light:

- That the notice dated 18.11.2019 u/s 13(2) of the SARFAESI Act, 2002 issued by respondent no. 2 were not served/not validly served and were never received by the complainants herein.
- Respondent no. 2 claimed to have taken symbolic possession over the property of "Ansal Amantre" which was never constructed as per the respondent no. 1's representation.
- Respondent no. 1 never informed respondent no. 2 about the shifting of the projects.
- The complainant's loan account was assigned by respondent no. 2 to respondent no. 3 on 30.06.2020 without any intimation to the complainants.
- The said original application has been filed for recovery of Rs. 1,37,95,224/- from the complainants, in breach of the terms of agreement having no locus standi in absence of any intimation sent to the complainants and the same is recoverable from the respondent no. 1 as the loan amount has been appropriated by

them and also did not deliver the possession to the complainants till date.

- The respondent no. 2 has failed to conduct proper due diligence in disbursal of loan amount to respondent no. 1 which was construction linked and have failed to adhere to the RBI guidelines regarding the same.

XVI. Thereafter, on dated 07.12.2022 the complainants filed a Writ Petition before the Hon'ble High Court of Delhi seeking Appropriate Writ, Direction or Order in the nature of Mandamus against the Ld. Presiding Officer, DRT -II, Delhi and respondents for Interim stay on all recovery proceedings and for quashing of such illegal proceedings initiated against the complainants and directing the respondent no. 1 to refund the loan amount disbursed to them which was disposed off vide order dated 11.08.2023.

XVII. That the respondent no. 1 has miserably failed to deliver the possession of any units under the projects proposed by them till date and had been making such false and hollow promises since the year 2015 when the original booking for "Ansal Amantre" project was made. The respondent no. 1 has defaulted due to which the complainants is suffering the implications. Hence, the present application.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

I. Direct the respondent no. 1 to refund the entire amount of Rs. 17,15,538 /- along with interest @ 18% which was paid towards the booking amount by the complainants.

II. Direct the respondent no. 1 to refund the amount paid by the complainants to respondent no. 2 in respect of the PEMIs for the

month of Jan, Feb, March and April 2019 amounting to Rs. 4,19,930/- along with interest @ 12%.

III. Direct the respondent no. 1 to refund an amount of Rs. 1,11,38,689/- towards principal outstanding amount in respect of the loan amount disbursed directly to the respondent no. 1 by the respondent no. 2 along with interest @ 12% towards and such other charges as imposed by the respondent no. 2 and successor in interest.

IV. Direct the respondent no. 1 to pay compensation for mental harassment and agony caused to the complainants to the tune of Rs. 2,00,000/-.

D. Reply by the respondent no. 1

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

I. That the complainants had approached the answering respondent for booking a flat no. T6-501 in an upcoming project Amantre, Sector 88A, Gurugram. Upon the satisfaction of the complainants regarding inspection of the site, title, location plans, etc. an agreement to sell dated 08.07.2015 was signed between the parties.

II. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainants and the answering respondent was in the year 2015. The regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that Parliament would not make the operation of a statute retrospective in effect.

III. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement.

IV. That the complainants have admittedly filed the complaint in the year 2023 and the cause of action accrue on 20.12.2019 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.

V. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2015 without coercion or any duress cannot be called in question today. The complainants have not impleaded the IHFL ltd as a party. The IHFL LTD had without the instructions of the complainants had transferred the loan amount to the respondent no. 1. Therefore, without having the IHFL LTD as a party it would be safe to assume that the complainants and the IHFL are hand-in-gloves with each other.

VI. That the complaint itself discloses that the said project does not have a RERA approval and is not registered. It is submitted that if the said averment in the complaint is taken to be true, the Hon'ble Authority does not have the jurisdiction to decide the complaint.

VII. That the respondent no. 1 had in due course of time obtained all necessary approvals from the concerned authorities. The permit for environmental clearances for proposed group housing project for Sector 88A, Gurugram, Haryana. Similarly, the approval for digging the foundation and basement was obtained and sanctions from the department of mines and geology were obtained. Thus, the respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainants.

VIII. That the delay has been occasioned on account of things beyond the control of the answering respondent. The builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondent no. 1 ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the answering respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.

IX. That respondent no. 1 and the complainants admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. Clause 32 the builder buyer agreement is clear that there is no compensation to be sought by the complainants/prospective owner in the event of delay in possession.

X. That since the complainants are relying upon the agreement dated 08.07.2015 therefore, the clause 62 of the aforesaid agreement is relevant as it talks about the dispute being settled by appointing an arbitrator or through arbitration proceedings only. Hence, the present authority does not have the jurisdiction to adjudicate the present complaint. Therefore, the present matter shall be sent for arbitral proceedings.

XI. That the complainants till date had not paid the complete amount yet the complainants demands for refund of the whole consideration that

has been agreed to be paid to the respondent no. 1. That the complainants had till date not sent a single communication to forfeit the retail unit booked by him in the above mentioned project of the complainants.

XII. That due to the acts of the complainants of not paying any EMIs to the IHFL Ltd. The respondent no. 1 had to get dependent on other alternatives. The IHFL (Indian Bulls Housing Finance Ltd.) and the respondent no. 1 got tangled in disputes and the IHFL had backed out to finance the Amantre project in question. Pursuant to which the respondent no. 1 had filed a case before DRT Chandigarh wherein till date stay has been ordered on the Amantre Project.

E. Reply by the Respondent no. 2

I. That the present complaint is not maintainable qua the respondent no. 2 as this Hon'ble Authority has no jurisdiction to deal with any matter in respect of financial institutions. The respondent no.2 is a financial institution registered under the provisions of The National Housing Board Act and presently being governed by Reserve Bank of India.

II. That the present complaint is not at all maintainable against the respondent no.2 as the present complaint is the glaring example of clever drafting and complainants with mala fide intentions falsely implicated the respondent no. 2 without any cause of action and default of the respondent no.2. The main dispute as it is apparent from the contents is only between the complainants and the respondent no.1 regarding delay in construction, possession and for payment of the Pre-EMI and EMIs on home loan as per the terms as per understanding between the complainants and respondent no.1.

III. That the complainants approached the answering respondent no. 2 for grant of home loan against mortgage of property. Consequently, based upon the representations and documents furnished, the respondent no. 2 approved/sanctioned the loan amount of Rs.1,30,00,000/- and the complainants and respondent no.2 executed the loan agreement dated 10.10.2015 for the amount of Rs. 1,30,00,000/- . Thereafter, the complainants, respondent no.1 and respondent no.2 entered into the tripartite agreement dated 09.11.2015 setting out the understanding amid the parties. Out of total sanctioned amount, the respondent no.2 disbursed the amounts on different dates totalling to Rs.1,11,38,689/- under the instructions and with the consent of the complainants as per the request of the complainants vide request for disbursal, which was directly transferred in the account of the respondent no.1 on behalf of the complainants against the mortgaged of property being a residential flat unit no.-T6-501, floor-5th, Tower-T6, Ansal Amantre, Sector-88A, Gurugram-122001 as security for the aforesaid loan amount based upon the terms and conditions as mentioned vide the loan agreement.

IV. That the parties entered into the tripartite agreement dated 9.11.2015 whereby it was agreed that there would be no repayment default of loan amount for any reason whatsoever including but not limited to any concern/issues by and between the complainants and respondent no.1. The complainant's obligation to repay the loan shall be a distinct and independent of any issues/ concern/ dispute of whatsoever nature between the complainants and respondent no. 1.

V. That it was only upon the terms and conditions of the loan agreement having being accepted by the complainants that the loan was

processed by the respondent no.2 and consequently, the respondent no.2 acceded to granting the loan facility in question. The loan agreement/sanction letter were duly signed by the complainants as token of acceptance of the terms and conditions clearly stated in the loan agreement which duly bind the parties. The complainants expressly declared and confirmed in the tripartite agreement that builder/respondent no.1 is of their choice and they are confident of the builder's capability for quality construction and timely completion of the said project. Not only this, the complainants also declared and confirmed that they have agreed and consented to the terms of the payment plan upon understanding that nature of risks and consequences associated with the payment plan opted by them. They further declared that they shall be solely responsible and shall continue to repay the loan amount in terms of the loan agreement irrespective of the stage of construction/delay or failure to develop/construct the said project by Builder within the stipulated period.

VI. That the respondent no.1 and respondent no.2 are two distinct entities and have no co-relation between them. The respondent no.1 is a promoter/developer and the respondent no.2 is a financial institution. It is submitted that the complainants have independently choose the respondent no.1 as developer/promoter and booked the unit and thereafter the complainants have approached the respondent no.2 for availing housing loan and only based upon the complainants the loan amount was sanctioned to the complainants and only disbursed the part of the total sanctioned loan amount pursuant to the request of the complainants. Hence it is derogatory to allege that the respondent no.2

has colluded with the respondent no.1. There is no collusion and deficiency of services on the part of the respondent no.2.

F. Reply by the Respondent no. 3

I. That the present complaint is not maintainable qua the respondent no. 3 as this Hon'ble Authority has no jurisdiction to deal with any matter in respect of financial institutions. The respondent no. 3 is a securitisation and asset reconstruction company duly registered with Reserve Bank of India under section 3 of Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI ACT"). The respondent no. 3 is neither a developer of the project nor a real estate agent nor the promoter of the real estate project. Thus, the present complaint is liable to be dismissed on this ground alone against the respondent no. 3.

II. That that the present complaint is not maintainable as the same is totally false, frivolous, and devoid of any merits. The complaint under reply is based on assumptions, presumptions, conjunctures, and surmises. The present case is a gross misuse of the process of law and the respondent no. 3 is entitled to recover the lawful dues from the complainants. Thus, the present complaint is liable to be dismissed on this ground alone.

III. That the respondent no.2 vide assignment deed dated 05.10.2020 assigned the loan account of the complainants together with all its' rights, title and interest in the financing documents and any underlying security interests in respect of such loan account to the respondent no.3. In view of defaults committed by the complainants in

making payment of EMI and interest thereon, the respondent no. 3 initiated the recovery proceedings by filing OA before the concerned Debt Recovery Tribunal. The Hon'ble Authority determines to order to refund the amount, then the same be directed to first clear the accounts of the respondent no.3 in accordance with clause 14 of the tripartite agreement dated 09.11.2015 towards the balance outstanding against loan account pertaining to the complainants and balance if any be transferred to the complainants.

IV. That the complainants approached the respondent no. 2 for grant of home loan against mortgage of property. Consequently, based upon the representations and documents furnished, respondent no.2 approved/sanctioned the loan amount of Rs.1,30,00,000/-. Thereafter, the complainants and respondent no.2 executed the loan agreement dated 10.10.2015 for the amount of Rs.1,30,00,000/- . Thereafter, the complainants, respondent no.1 and respondent no.2 entered into the tripartite agreement dated 09.11.2015 setting out the understanding amid the parties. Out of total sanctioned amount, the respondent no.2 disbursed the amounts on different dates totalling to Rs.1,11,38,689/- under the instructions and with the consent of the complainants which was directly transferred in the account of the respondent no.1 on behalf of the complainants against the mortgaged of property being a residential flat unit no. T6-501, 5th Floor, Tower-T6, Ansal Amantre, Sector-88A, Gurugram-122001 as security for the aforesaid loan amount based upon the terms and conditions as mentioned vide the loan agreement.

V. That the parties entered into the tripartite agreement dated 9.11.2015 whereby it was agreed that there would be no repayment default of

loan amount for any reason whatsoever including but not limited to any concern/issues by and between the complainants and respondent no.1. The complainant's obligation to repay the loan shall be a distinct and independent of any issues/ concern/ dispute of whatsoever nature between the complainants and respondent no. 1.

VI. That the loan agreement/sanction letter were duly signed by the complainants as token of acceptance of the terms and conditions clearly stated in the loan agreement which duly bind the parties. The complainants expressly declared and confirmed in the tripartite agreement that builder/ respondent no.1 is of their choice and they are confident of the builder's capability for quality construction and timely completion of the said project. Further, the complainants also declared and confirmed that they have agreed and consented to the terms of the payment plan upon understanding that nature of risks and consequences associated with the payment plan opted by them. They further declared that they shall be solely responsible and shall continue to repay the loan amount in terms of the loan agreement irrespective of the stage of construction/delay or failure to develop/construct the said project by builder within the stipulated period.

VII. That the respondent no.1 and respondent no.2 and 3 are distinct entities and have no co-relation between them. The respondent no.1 is a promoter/developer and the respondent no. 2 and 3 are financial institutions. The complainants have independently choose the respondent no.1 as developer/promoter and booked the unit and thereafter the complainants have approached the respondent no.2 for availing housing loan and only based upon the complainants the loan

amount was sanctioned to the complainants and only disbursed the part of the total sanctioned loan amount pursuant to the request of the complainants. Hence the complainants are liable to repay the loan amount as per the terms and conditions of the loan agreement and tripartite agreement. Thus, the present complaint is liable to be dismissed qua the respondent no.3.

VIII. That the complainants by way of present complaint is trying to obviate from his contractual obligations as undertaken under the loan agreement and tripartite agreement. The respondent no.2 being an assignee of the loan account of the complainants and the debt being a secured debt, the respondent no.3 is entitled to recover its' lawful dues and interest. Furthermore, the respondent no.3 has been acting within four corners of the loan agreement and tripartite agreement executed between the parties towards the lawful recovery of their lawful dues.

IX. That since the complainants committed default in repayment of the loan amount and interest thereon as per the loan agreement, the respondent no.3 filed the original application to recover its lawful dues, which is pending adjudication before debt recovery tribunal-II, New Delhi.

6. 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 submission made by the parties.

G. Jurisdiction of the authority

7. The contention of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has

territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

G.I Territorial jurisdiction

8. 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 complete territorial jurisdiction to deal with the present complaint.

G.II Subject matter jurisdiction

9. 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:

> ***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.*

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainants at a later stage.

11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and*** *reiterated in case of* ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

12. 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.

H. Findings on the objections raised by respondent no. 1.

H. I Objection regarding jurisdiction of the complaint w.r.t the agreement executed prior to coming into force of the Act.

13. The respondent no. 1 submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the agreement was executed between the parties in the year 2015 i.e., prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

14. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017*** which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not*

contemplate rewriting of contract between the flat purchaser and the promoter...

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

15. Further, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

16. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any

other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

H.II Objection regarding force majeure conditions:

17. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and demonetization. In the present the complaint the buyer's agreement was executed between the parties on 08.07.2015 As per the possession clause the possession of the booked unit was to be delivered by 08.01.2020. The events such as various orders by Punjab and Haryana High Court and demonetization were for a shorter duration of time and were not continuous as there is a delay of more than six years. Even today no occupation certificate has been received by the respondent no. 1. Therefore, said plea of the respondent no. 1 is null and void. As far as delay in construction due to outbreak of Covid-19 is concerned, the lockdown came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said

time period is not excluded while calculating the delay in handing over possession.

I. Findings on the relief sought by the complainants

I. Direct the respondent no. 1 to refund the entire amount of Rs. 17,15,538/- along with interest @ 18% which was paid towards the booking amount by the complainants.

II. Direct the respondent no. 1 to refund the amount paid by the complainants to respondent no. 2 in respect of the PEMIs for the month of Jan, Feb, March and April 2019 amounting to Rs. 4,19,930/- along with interest @ 12%.

III. Direct the respondent no. 1 to refund an amount of Rs. 1,11,38,689/- towards principal outstanding amount in respect of the loan amount disbursed directly to the respondent no. 1 by the respondent no. 2 along with interest @ 12% towards and such other charges as imposed by the respondent no. 2 and successor in interest.

18. The above mentioned relief no. G I and GII are interrelated to each other. Accordingly, the same are being taken up together for adjudication.

19. That the complainants booked a unit bearing no. T6-501 situated on 5th Floor admeasuring 2120 sq. ft. in the project of the respondent no. 1 namely, Ansal Amantre, situated at Sector-88A, Gurugram. The builder buyer agreement regarding the said unit was executed on dated 08.07.2015 between the complainants and the respondent no. 1. The tripartite agreement was also got executed on 07.11.2015 between the complainants, respondent no. 1 and respondent no. 2. As per the possession clause the possession of the said unit was to be handed over within a period of 48 months from the date of execution of agreement or from obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later. Further there shall be grace period of 6 months. The due date of possession comes out to be

08.01.2020 calculated from the date of execution of agreement including the grace period of 6 months. The respondent no. 1 vide letter dated 15.12.2019 shifted the unit of the complainants from 'Ansal Amantre' to 'Ansal Highland Park'. Thereafter again on 14.06.2021 the unit of the complainants was shifted from 'Ansal Highland Park' to 'Ansal Heights'. However, the authority observes that no buyer's agreement was executed regarding the new unit in new project.

20. In the present complaint, the complainants intend to withdraw from the project and is seeking return of the amount paid by him 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)*

21. Clause 31 of the buyer agreement dated 08.07.2015 provides for handing over of possession and is reproduced below:

> *31. The Developer shall offer possession of the Unit any time, within a **period of 48 months from the date of execution of Agreement or***

within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later *subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace period* ***of 6 months allowed to the Developer over and*** *above the period of 48 months as above in offering the possession of the Unit."*

22. **Due date of handing over possession and admissibility of grace period:** As per clause 31 of the buyer agreement, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 42 months from the date of execution of agreement or date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later. Including further grace period of 6 months. The date of construction is not available on records so, the due date of possession is calculated from the date of agreement which comes out to be 08.01.2020 including grace period of 6 months as it is unqualified.

23. **Admissibility of refund along with prescribed rate of interest:** The complainants intends to withdraw from the project and is 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.

24. 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.

25. 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., 31.10.2025 is **8.85%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%.**

26. On consideration of documents available on record as well as submissions made by the parties, the authority is satisfied that the respondent no. 1 is in contravention of the provisions of the Act. By virtue of clause 31 of the buyer agreement executed between the parties on 08.07.2015, the due date of possession of the subject unit comes out to be 08.01.2020 including the grace period as allowed being unqualified. The authority observes that even after a passage of more than 6 years till date neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoter.

27. Keeping in view the fact that the complainants/allottees wish to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit in question with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

28. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent /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 they have 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....."*

29. Further 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. 2021-2022 (1) RCR (Civil), 357*** 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 that:

> 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."*

30. 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 unable to give possession of the unit in accordance with the terms of agreement for

sell or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as the allottees wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

31. 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 no. 1/promoter is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @10.85% 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.

32. Out of the total amount so assessed, the amount paid by the bank/financial institution shall be refunded first and the balance amount along with interest will be refunded to the complainants. Further, the respondent no. 1 is directed to provide the No Objection Certificate to the complainants after getting it from the bank/financial institution.

J. Directions of the authority

33. 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 no. 1/promoter is directed to refund the amount i.e., Rs. 1,06,70,485/- received by it from the complainants along with interest at the rate of 10.85% p.a. 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 deposited amount.

ii. Out of the total amount so assessed, the amount paid by the bank/financial institution shall be refunded first and the balance amount along with interest will be refunded to the complainants. Further, the respondent no. 1 is directed to provide the No Objection Certificate to the complainants after getting it from the bank/financial institution.

iii. A period of 90 days is given to the respondent no. 1 to comply with the directions given in this order and failing which legal consequences would follow.

34. Complaint stands disposed of.

35. File be consigned to registry.

Dated: 31.10.2025

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory
Authority, Gurugram