

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.: **4813 of 2022**
Date of filing of complaint: **06.07.2022**
Date of Order: **04.12.2025**

1. Rajesh Mahajan
2. Poonam Mahajan

Complainants

Both R/o: - D-20, First Floor, Uppal's
Southend, Sector-49, Sohna Road, Gurugram,
Haryana-122018.

Versus

M/s International Land Developers Pvt. Ltd.
Office: B-418, New Friends Colony,
New Delhi-110025.

Respondent

Also at: 9th Floor, ILD Trade Centre,
Sector-47, Sohna Road, Gurgaon-122018.

CORAM:

Sh. Phool Singh Saini

Member

APPEARANCE:

Usha Singh (Advocate)
Aradhya Singh (Advocate)

Complainants
Respondent

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 under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.



A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"Arete", Sector 33, Gurugram
2.	Nature of the project	Group Housing Colony
3.	Project area	11.61 acres
4.	DTCP license no.	44 of 2013 dated 04.06.2013 valid up to 03.06.2019
5.	Name of licensee	Brijesh-Sanjeev Ss/o Satbir and 2 others
6.	RERA Registered/ not registered	06 of 2019 dated 08.02.2019 valid up to 02.07.2022
7.	Unit no.	E-1503, 15 th Floor, Tower E (As per page no. 26 of the complaint)
8.	Unit area	1325 sq. ft. (Super Area) (As per page no. 26 of the complaint)
9.	Allotment letter	17.04.2014 (As per page no. 26 of the complaint)
10.	Date of execution of apartment buyer agreement	28.03.2015 (As per page no. 24 of the complaint)
11.	Possession clause	<p>10. Possession of Apartment</p> <p>10.1 Subject to timely grant of all approvals (including revisions thereof) permissions Certificates, NOCs, permission to operate, full/part occupation certificate etc. and further subject to the Buyer having complied with all its obligations under the terms and conditions of this Agreement, and subject to all the buyers of the apartments in the Project making timely payments including but not limited to the</p>

		<i>timely payment of the Total Sale Consideration, stamp duty and other charges, fees, IAC, Levies & Taxes or increase in Levies & Taxes, IFMSD, Escalation Charges, deposits, Additional Charges to the Developer and also subject to the Buyer having complied with all formalities or documentation as prescribed by the Developer, the Developer shall endeavour to complete the construction of the Said Apartment within 48(Forty-Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months.</i> <i>(As per page no. 54 of the complaint)</i>
11	Due date of possession	28.09.2019 <i>(Note: Due date to be calculated 48 months from date of execution of ABA i.e., 28.03.2015 plus 6 months grace period as the same is unqualified)</i>
12	Total sale consideration	Rs.75,27,800/- <i>(As per schedule of payment on page no. 79 of the complaint)</i>
13	Amount paid by the	Rs.28,61,836/- <i>(As confirmed by the counsel for the respondent during the proceedings of the day date 04.09.2025)</i>
14	Occupation certificate	Not obtained
15	Offer of possession	Not obtained

B. Facts of the complaint:

3. The complainants have made the following submissions:

I. That the complainants are peace loving and law-abiding citizen of India and residing at 704, B-2, Tulip Purple, Sector-69, Gurgaon.



- II. That the complainants had purchased a flat bearing no. E-1503, Tower-E admeasuring 1325 sq. ft. of super area in the project "ILD Arete" situated at Sector-33, Sohna, Gurugram for total sale consideration of Rs.75,27,800/-.
- III. That at the time of booking, the complainants made the booking/registration payment of Rs.3,00,000/- vide cheque dated 11.01.2014. Till date the complainants have paid an amount of Rs.28,61,836/- against several demands raised by the respondent, as per the payment plan.
- IV. That at the time of booking and as per the terms of apartment buyer's agreement, the respondent assured to deliver the possession of the said flat within 48 months from the date of execution of the agreement. Since 2017, there is no construction raised over Tower-E, however the respondent company built up to 15 floors in tower A, B, C & D and the construction of Tower-E in which the flat no. 1503 was allotted to the complainants, is build only up to basement.
- V. That the complainants on several occasion, met officials of ILD to know the status on further construction of Tower-E. However, no proper response received from the officials of respondent and every time they keep stating that the project is out of fund and as soon as the funds arranges, the company will start the construction.
- VI. That in March, 2020, when the complainants requested the officials of respondent to return the amount paid to them along with interest, the officials of respondent gave an option to the complainants to three BHK flat in Tower-A in lieu of flats in Tower-E.
- VII. That the complainants have also asked the officials of respondent to allot them a flat in other project in Gurugram which is ready to move

and also agreed to pay total consideration of flat by taking loan from the bank. Initially, officials of respondent had agreed and also shown flat in project ILD Green in sector-37 C, Gurugram. In furtherance and as per the discussion between the parties, the complainants short listed flat no. 1102 in Tower-7 of ILD Green, Sector-37, Gurugram but later on the complainants were informed by the officials of respondent company that said flat has been sold.

- VIII. That as per the agreement, the possession was to be handed over by 28.09.2019, but no possession of the unit has been given till date. Even no further construction has been started in Tower-E, however, tower A, B, C & D in the same project have been constructed up to 15 floors.
- IX. That the complainants were cheated by the respondent as the complainants were neither given the possession of the said flat as promised nor they have been provided the refund with any interest amount. Thus, the complainants have no other option but to file the present complaint before this Hon'ble Authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - i. Direct the respondent to refund the whole amount paid by the complainants to the respondent with suitable interest.
 - ii. Direct the respondent to pay litigation charges.

D. Reply by respondent:

5. The respondent has contested the complaint on the following grounds:
 - I. That the complainants have failed to file the complaint in the "CRA" format which is available on the website of the Hon'ble Ld. Authority and is not maintainable and hence need to be dismissed with exemplary cost. It is submitted that an affidavit is utmost necessary for filing any

complaint before any Court or the Authority. It is submitted that no pleadings or documents in the complaint can be relied upon without verifying the same by filing a proper affidavit with the sign and seal of the notary public. The present complaint has been filed without an affidavit to verify the truthfulness of the averments made under the complaint. Therefore, the present complaint is liable to be dismissed with heavy cost.

- II. That at the outset in 2014, the complainants herein, learned about the project launched by the respondent titled as 'Arete' and approached the respondent repeatedly to know the details of the said project. The complainant further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
- III. That after having keen interest in the project constructed by the respondent the complainant herein booked a flat unit i.e., E-1503, Tower-E, admeasuring 1325 sq. ft. of Super area in project Arete, Sector-33, Sohna, Haryana. In furtherance of the same, the respondent issued the provisional allotment letter to the complainants on 17.04.2014.
- IV. That on 28.03.2015, a builder buyer's agreement was executed between the complainants and the respondent. The complainants were aware of the project and also satisfied with every proposal deemed necessary for the development of the project in question. It is submitted that time was essence in respect to the allottees obligation for making the respective payment. And, as per the agreement so signed and acknowledged the allottee was bound to make the payment of instalment as and when demanded by the respondent.



V. That the construction work of the said project is completed around 40-50% in totally. The majority of prospective buyers in the said project failed to make the payments as per the payment schedule attached to the agreement which eventually resulted in the delay in construction process. The respondent with the availability of funds is carrying the construction and the construction of the project is at full swing despite the defaults of the prospective buyers, which is a matter of concern and hence the complainants are themselves liable for the said delay in the handing over of the possession.

VI. That the building plan has been revised on 16.06.2014 vide Memo No. ZP370/AD(RA)/2014/16 dated 16.06.2014 and further revised on 21.09.2015 vide Memo No. ZP370/AD(RA)/2015/18145 dated 21.09.015. It is further submitted that the building plan has been changed for the benefit of the purchaser/allottee and due to this reason, the project got delayed.

VII. That the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affected the progress of the project.

VIII. That due to the impact of the Goods and Services Act, 2017 which came into force after the effect of demonetization in the last quarter of 2016, which left long lasting effect on real estate and development sector even in 2019. It is a matter of fact that the respondent has to undergo huge



obstacle due to adverse effect of demonetization and implementation of GST.

IX. That in the recent years, various construction activities in the real estate sector was stayed due to constant ban levied by various Courts/Tribunals/Authorities/ to curb pollution in Delhi-NCR Region. It is pertinent to mention that recent years the Environment (Pollution and Control) Authority, NCR (EPCA) vide its notification dated 25.10.2019 banned the construction activities in NCR during night hours (6:00 PM to 6:00 AM) from 26.10.2019 to 30.10.2019. And, subsequently the EPCA vide its notification dated 01.11.2019, converted the same into a complete ban on 01.11.2019 to 05.11.2019.

X. That the Hon'ble Apex Court in the writ petition vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "*MC Mehta vs. Union of India*" has completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Court vide its order dated 14.02.2020.

XI. That due to the ban levied by the Competent Authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. And, even after lifting of ban by the Hon'ble Court the construction activities could not resume at full throttle due to such acute shortage. Despite, after such obstacles on the construction activity in the real estate sector and before the normalcy could resume, the entire nation was hit by the Worldwide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the period shall be excluded while computing the delay. The current Covid-19 pandemic resulted in



serious challenges for the respondent with no available labourers, contractors etc. for the construction of the project. On 24.03.2020, the Ministry of Home Affairs, GOI vide notification recognized that entire nation was threatened with Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020.

XII. That the complainants have intentionally concealed material facts and filed the present complaint with the sole purpose of avoiding the agreed terms of the agreement. The construction work of the concerned tower wherein the unit of the complainants is situated is almost complete and thus, the possession of the said unit of the complainants shall be offered very soon. The complainants are very much aware about the said facts and have still filed the present complaint on false and vexatious grounds. The present complaint is devoid of merits and thus liable to be dismissed at the very outset.

XIII. That there is a resolution plan done between the respondent company and ILD Arete Buyer's Association and more than 2/3rd of the allottees have approved the same for the completion of the project. That the respondent has committed to complete the development of the project at the earliest for which every necessary action is being taken by the respondent. It is further submitted that as the development of the project started in May 2024. The respondent company have already submitted the approved resolution plan to the Hon'ble Authority for their approval in out of total home buyers (330 home buyer's), more than 130 clients approved the resolution plan. The complainant has given his consent for the completion of the project via email as he wants to stay with the project.



XIV. That the complainants have alleged some baseless allegations without stating as to how they are being aggrieved by the respondent. The complainants be put to the strict proof of the same. It is humbly submitted that the complainants have not come to this court with clean hands and have withheld crucial information and the said complaint is liable to be dismissed on this ground alone.

XV. That the entire case of the complainants is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story, hence, the present complaint filed by the complainants deserves to be dismissed with heavy costs.

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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

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

E.I Territorial jurisdiction

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.

E.II Subject matter jurisdiction

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)(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.

8. 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.
9. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR(C), 357** and 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 adjudicating 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."

10. 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 the objections raised by the respondent:

F.I Objection regarding the complaint not being filed in the prescribed format and without an affidavit which is necessary for filing of complaint as prescribed in the form "CRA"

11. The respondent has raised a contention that the complainant has not filed the present complaint in the prescribed format prescribed in the Rules, 2017, as form "CRA" as the same has been filed without affidavit which is necessary for filing of the complaint. But the counsel for the complainants on 06.10.2025 has filed the affidavit on behalf of both the complainants. Thus, the aforesaid contention of the respondent stands rejected.

F.II regarding the project being delayed because of force majeure circumstances.

12. The respondent-promoter raised another contention that the construction of the project was delayed due to force majeure conditions such as certain environment restrictions, orders of various courts, demonetisation, implementation of GST, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour, increase in cost of construction material and non-payment of instalments by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and the promoter is required to take the same into consideration while launching the project. Though some allottees may not be regular in paying the amount

due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of 48 months from the date of execution of agreement plus grace period of 6 months. In the present case, the date of execution of agreement is 28.03.2015, so, the due date of subject unit comes out to be 28.09.2019 including 6 months grace period being unqualified. ***Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that:

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The 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."

13. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 28.09.2019 i.e., before 25.03.2020. Therefore, an extension of 6 months is not to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. The due date of subject unit comes out to be 28.09.2019, prior to the occurrence of Covid-19 restrictions and hence, the respondent cannot be benefitted for his own wrong. Thus, the promoter/respondent



cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to refund the whole amount paid by the complainants to the respondent along with suitable interest.

14. 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 as per section 18(1) of the Act and the same 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)

15. Clause 10 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

10. Possession of apartment

"10.1 Subject to timely grant of all approvals (including revisions thereof), permissions, certificates, NOCs, permission to operate, full/part occupation certificate etc. and further subject to the Buyer having complied with all its obligations under the terms and conditions of this Agreement, and subject to all the buyers of the apartments in the Project making timely payments including but not limited to the timely payment of the Total Sale Consideration, stamp duty and other charges, fees, IAC, Levies & Taxes or increase in Levies & Taxes, IFMSD, Escalation Charges, deposits, Additional Charges to the Developer and also subject to the Buyer having complied with all formalities or documentation as prescribed by the Developer, the Developer shall endeavor to complete the construction of the Said Apartment within 48 (Forty-Eight) months from the date of execution of this Agreement and further extension/grace period of 6 (six) months."

(Emphasis supplied)



16. **Due date of handing over possession:** As per clause 10 of the said BBA, the possession of the unit was to be given within a period of 48 (forty-eight) months from date of execution of the agreement i.e., 28.03.2015 along with a grace period of 6 months. Given the fact that the grace period was unqualified, the due date of possession comes out to be 28.09.2019.
17. The counsel for the respondent vide proceedings of the day dated 04.09.2025 stated that the respondent has filed an application for dismissal of complaint as the complainants and the respondent came into a resolution plan dated 25.02.2024 for the project in question and the complainants are not entitled for any compensation for any delay in project and the complainant has also given consent for the same through an e-mail.
18. On consideration of the resolution plan dated 25.02.2024, the Authority has observed that the respondent has promised to handover the possession of the unit of the complainants by May, 2024. And the complainants agreed to relinquish all their rights if the possession of the unit will be delivered by May, 2024. Moreover, the counsel for the respondent vide proceedings of the day dated 27.11.2025 stated that the project is still incomplete but the construction is on full swing and is expected to complete the same soon which clearly depicts that the respondent has failed to deliver the possession of the unit by May, 2024.
19. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule 28(1), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 10.1 of the buyer's agreement executed between the parties on 28.03.2015, the possession of the subject unit was to be delivered within a period of 48 months from the date of execution of buyer's agreement along with a grace



period of 6 months. Therefore, the due date of possession comes out to be 28.09.2019.

20. Keeping in view the fact that the complainants/allottees 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 agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
21. The due date of possession as per apartment buyer's agreement as mentioned in the table above is 28.09.2019. The authority has further, observes that even after a passage of more than 10 years (from the date of execution of agreement 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. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/ completion certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottees intends to withdraw from the project and is well within the right to do the same in view of section 18(1) of the Act, 2016.
22. 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.....”

23. 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. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. it was observed:

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

24. 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 sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as the allottees wishes 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.

25. 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 complainants are entitled for 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*.

G.II Direct the respondent to pay litigation charges.

26. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. The Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H.Directions of the Authority:

27. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to refund the entire amount received by it i.e., Rs.28,61,836/- 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

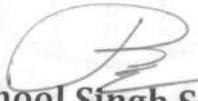


the date of each payment till the actual date of refund of the deposited amount.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of 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 complainant-allotees.

28. Complaint stands disposed of.

29. File be consigned to the registry.



(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 04.12.2025