

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

**Complaint no.:** 6271 of 2024  
**Date of filing of complaint:** 24.12.2024  
**Order pronounced on:** 23.12.2025

1. Rohit Luthra
2. Saurabh Luthra

**Complainants**

**R/o:** MAR-BL-66, Emaar Marbella, Sector-66, Gurugram, Haryana-122018

**Versus**

1. M/S RMS Estates Private Limited
  2. M/s Agrante Reality Limited,
- Both having office at:** DTJ-704, 7<sup>th</sup> Floor, DLF Tower-B, Jasola, New Delhi-110044

**Respondents**

**CORAM:**

Shri Arun Kumar  
Shri Phool Singh Saini

**Chairman**  
**Member**

**APPEARANCE:**

Sh. Ashish Budhiraja (Advocate)  
Sh. Brij Mohan (Advocate)

Complainants  
Respondents

**ORDER**

1. The present complaint dated 24.12.2024 has been filed by the complainant/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 under the provision of the Act

or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

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

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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	"BEETHOVEN'S 8", Sector-107, Harsaru, Gurugram
2.	Nature of the project	Group Housing Complex
3.	Project area	18.0625 acres
4.	DTCP license no. and validity	23 of 2012 dated 27.03.2012 valid up to 26.03.2016
5.	RERA Registration	Unregistered
6.	Unit no. and floor no.	Harmony-I K/E/303 and 3 <sup>rd</sup> floor (As per page no. 39 of the complaint)
7.	Unit area admeasuring	2261 sq. ft. (Super area) (As per page no. 39 of the complaint)
8.	Allotment letter	02.01.2015 (As per page no. 27 of the complaint)
9.	Date of execution of agreement of sale	02.03.2015 (As per page no. 30 of the complaint)
10.	Possession clause	<b>35 Handing over of possession</b> <i>That the exclusive vacant possession of the apartment shall be handed over by the vendor to the vendee within 42 months after the vendee shall make full and final</i>

		<i>payment in accordance with the terms of this agreement.</i> (As per page no. 42 of the complaint)
11.	Due date of possession	<b>02.07.2018</b> ( <b>Note:</b> Due date to be calculated 42 months from the date of allotment i.e., 02.01.2015 as per clause 35 read with clause 18(a) of the buyer's agreement dated 02.03.2015)
12.	Total sale consideration	Rs.1,45,84,285/- (As per page no. 39 of the complaint)
13.	Amount paid by the complainant	Rs.42,41,308/- (As per receipt information on page no. 26 and 29 of the complaint)
14.	Occupation Certificate/ completion certificate	Not received
15.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainants have made the following submissions in the complaint:
  - I. That the complainants are simple, innocent and law-abiding citizens. The complainants do not have knowledge of the intricacies of law and fell prey to the false assurances of the respondents.
  - II. That the respondents no.1 and 2 are the registered companies and published about developing a project under the name and style of Beethoven's 8, at Sector-107, Gurugram promising various advantages, like world class amenities and timely completion/execution of the project etc.

- III. That the representatives and sales people of respondents no.1 and 2 approached the complainants and impressed upon the complainants that they are best in class developer and is developing a residential project namely Beethoven's 8 in sector 107, Gurugram. Due to high pitched offers of the respondents no.1 and 2, the complainants were lured to purchase a residential apartment. Relying on the promise and undertakings given by the respondents in the aforementioned advertisements the complainants filed an application for booking a residential apartment admeasuring super area 2261 sq. ft. at Beethoven's 8, Sector-107, Gurugram for total sale consideration of Rs.1,30,00,750/- which includes BSP, car parking, IFMS, Club Membership, PLC etc. including taxes and paid an amount of Rs.13,48,308/- to the respondents no. 1 and 2, duly acknowledged by the respondent no. 2 vide receipt dated 24.12.2014 and the allotment for the said unit was issued.
- IV. That the complainants were allotted a unit bearing no. Harmony IK/E/303, 3<sup>rd</sup> floor admeasuring 2261 sq. ft. for a total sale consideration of Rs.1,30,00,750/-. The allotment letter was issued to the complainants on 02.01.2015.
- V. That subsequently, the respondents no. 1 and 2 issued various demand invoices/letters for the payment towards the booked apartment and accordingly the amount was paid by the complainants and acknowledged by the respondents.
- VI. That the complainants paid the amount of Rs.28,93,000/- to the respondents as per the demand letter issued to the complainants. The respondent no. 2 issued the receipt against the payment to the complainants.

- VII. That on 02.03.2015, the complainants and the respondent no. 1 executed the agreement to sale/apartment buyer's agreement in respect of the above-mentioned unit. As per the agreement dated 02.03.2015, the total sale consideration was Rs.1,30,00,750/- with car parking and the payment was to be made in accordance with the construction link plan as specified in the agreement.
- VIII. That as per clause 18 of the agreement to sale, the respondents no.1 and 2 had agreed to deliver the possession of the flat within 42 months from the date of allotment and according to that the flat was to be delivered till 02.07.2018.
- IX. That the complainants having dream of its own apartment in NCR signed the agreement in the hope that the unit will be delivered within time on or before 2018. The complainants were also handed over one detailed payment plan which was construction link plan. It is unfortunate that the dream of owning a unit of the complainants were shattered due to dishonest, unethical attitude of the respondents.
- X. That at the time of execution of the above said agreement, the complainants had objected towards the highly titled and one-sided clauses of the agreement, however, the respondents, turned down the concerns of the complainants and informed that the terms and conditions in the agreement are standard clauses and thus, no change can be made. A bare perusal of the agreement reveals that the terms and conditions imposed on the complainants were totally biased in so far as the disparity between the bargaining power and status of the parties, tilted the scale in the favour of the respondents. Furthermore, since the respondents, were in dominant position, they fabricated the agreement according to their whims and fancies.

- XI. That as per the demands raised by respondent no. 1 and 2, the complainants had paid a sum of Rs. 42,41,308/- out of the total sale consideration to the respondent no. 1 and 2.
- XII. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainants approached the respondents and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- XIII. That the respondents despite having made multiple tall representations to the complainants, the respondents have chosen deliberately and contemptuously not to act and fulfill the promises and have given a cold shoulder to the grievances raised by the cheated allottees. The respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, agreement to sale and the different advertisements released from time to time. Further, such acts of the respondents are illegal and against the spirit of Act of 2016 and Rules, 2017. It is abundantly clear that the respondents have played a fraud upon the complainants and have cheated him fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondents had further

malafidely failed to implement the tripartite agreement executed with the complainants. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondents is filing the present complaint.

- XIV. That the complainants have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for residential purposes. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. The respondents are guilty of deficiency in service. The present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondents in sale of their unit and the provisions allied to it.
- XV. That the complainants are the one who have invested their life savings in the said project and is dreaming of a home for themselves and the respondents have not only cheated and betrayed them but also used their hard-earned money for their enjoyment.
- XVI. That the complainants regularly visited the site but was surprised to see that construction was very slow. It appears that respondents have played fraud upon the complainants. Even the respondents themselves were not aware that by what time possession would be granted. Also the respondents constructed the basic structure which was linked to the payments and majority of payments were made too early. However, subsequent to this there has been very little progress in construction of the project. The only intention of the respondents was to take payments for the flat without completing the work. The structure was being erected at great speed since the structure alone was related to the vast majority of the payments in the subvention scheme plan. This

- shows that respondents mala-fide and dishonest motives and intention to cheat and defraud the complainants. That the construction of the project is stopped and there is no single labour on the construction site.
- XVII. That despite receiving of all payment of all the demands raised by the respondents for the said Flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondents have failed to deliver the possession of the allotted apartment to the complainants within stipulated period.
- XVIII. That it could be seen that the construction of the project in which the complainant's flat was booked with a promise by the respondent to deliver the unit/apartment by July, 2018, the construction stood halted and no progress could be seen on the project and it was not completed within time for the reasons best known to the respondent; which clearly shows that ulterior motive of the respondents to extract money from the innocent people fraudulently.
- XIX. That the complainants visited the office of respondent company several times and made several telephonic requests to the officials of the respondent company seeking refund, however, the respondent's officials kept on delaying the matter on one pretext or the other and despite waiting for a sufficiently long time, the respondent company has failed to refund the amount of the complainants.
- XX. That the housing project in which the complainants have invested huge amount of hard-earned earnings has not been delivered to them in time and in spite of a delay of about 6 years in total. As a right provided to a consumer under the domains of different statutes of law the complainants visited the builders office several times, send the builder endless reminders telephonically and also via several e-mails inquiring about the reason of the delay in the completion of the project

but to the utter shock and dismay of the complainants neither of the queries of the complainants were ever entertained and no conclusive and satisfactory reply ever came from the builders end which the builders was duty bound to provide.

- XXI. That the complainants have till today performed their part of the agreement in its entirety and shall perform, without any room for delay apart from suffering mental agony and harassment at several occasions in the form of paying a huge amount of hard-earned money amounting to crores and not had the possession of the unit till today, not getting any satisfactory and conclusive response to any of the legitimate queries from the builder and paying huge interest to the bank for the delay and deceit caused at the builders hand.
- XXII. That the respondents have flouted the terms and conditions of the agreements for its illegal and immoral monetary benefit and duped the innocent complainants. The respondents have no regard for law and is adamant on its unlawful ways to extract money from simple allottees.
- XXIII. That cause of action to file the present complaint firstly accrued when the respondent no.1 when the apartment was booked. The cause of action further accrued when the respondent no.1 and 2 failed to deliver the possession of the unit in question in time as agreed. The cause of action further accrued on each and every date when the complainants requested the respondent and not forcing the complainants to pay the same as the agreed terms of the bookings, but respondents, always avoided the same till date of filling the present complaint. The cause of action is of continuing one.
- XXIV. That the suit property lies within the jurisdiction of this Hon'ble Authority, hence, the Hon'ble Authority has the right to decide the present matter under dispute.

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

4. The complainants have sought following relief(s):
  - i. Direct the respondents no.1 and 2 to refund the amount of Rs. 42,41,308/- taken by the respondents from the complainants with interest @ 10.35% up to the date of payment, in the interest of justice.
  - ii. Restrain the respondents from charging any penal interest in any form from the complainants.
  - iii. Direct the respondent to pay account of damages to the tune of Rs.10,00,000/- in favour of the complainants for illegally threatening and for causing mental agony & harassment to complainant.
  - iv. Direct the respondents not to charge / demand anything that is not a part of the agreement to sell nor charge / demand anything that is outside the scope of Act of 2016 nor anything that is illegal, unethical and against the norms of Act of 2016.

**D. Reply by the respondent no. 1 and 2:**

5. The respondents have contested the complaint on the following grounds:
  - I. That the respondent no. 1 is no longer identified as M/s RMS Estates Pvt. Ltd. and it had got its name changed to M/s Agrante Developers Pvt. Ltd. The respondent no.2 arrayed herein is a sister company of the respondent no.1 and in no manner can be construed to be a promoter for the project in question and thus is liable to be deleted as a respondent.
  - II. The present reply is being filed and verified on behalf of the respondent no.1 by Sh. Satish Kumar who is the authorized representative of the respondent company authorized vide board resolution dated 10.09.2025.
  - III. That at the outset the answering respondent submits that it has not demanded or is in receipt of more than 33% of the total sale

consideration of the proposed apartment from any allottee and is undertaking the cost of construction from its own pocket. The promoter is taking all measures to complete the project with procuring necessary approvals from the competent authority.

- IV. That the complainant has filed the present complaint seeking refund of amount deposited in lieu of unit booked in "Beethoven's 8" project.
- V. That the tower in which the complainant had booked the unit is not ready owing to certain force majeure circumstances. However, Tower-H & J are ready and the construction of a building structure comprising fourteen floors is completed. The necessary electrical wiring and works pertaining to plumbing and sanitation are also ready. The promoter would be in a position in all probability to offer possession of the flats in Tower-H in 8-9 months from the date of filing of the present reply. The promoter has incurred and utilized his own funds and loan towards construction of the project and if the complaints pertaining to refunds are entertained at this stage it would jeopardize the fate of the project which would consequently hamper the valuable rights of the other allottees of the project. The promoter is in the process of applying for occupation certificate for Tower- H. The promoter is willing to adjust for the interest components as computed for delay in offering possession towards the balance sale consideration of the complainant as the promoter will offer possession in Tower-H to the complainant.
- VI. That the promoter is willing to adjust and give allotment and possession of the unit to the complainant in the said H or J towers where the construction is now 90% completed and the promoter would be able to deliver the unit in 12 months from the date of filing of the present reply.

- VII. That the statement of objects, reasons and preamble of the Act makes it manifestly clear that it is not only the interest of the consumers of the real estate sector which the Act seeks to protect and safeguard but also the promotion of the real estate with a view to ensure sale of plot, apartment etc. Therefore, this Hon'ble Authority should consider the said objective especially considering preceding paragraphs. The Hon'ble Authority is empowered not only to monitor the projects but also to ensure their timely completion where projects are held up or stopped and to take steps so the same are completed in time and in the interest of the allottees who are awaiting possessions of the units in the project. It is not out of place to mention here that due to pending registration of the project with the Hon'ble Authority the Promoter since the implementation of the Act was unable to raise funds from its existing customers nor it could raise finance by selling unsold inventory. The shortage of funds to enable rapid construction had been a determining factor for the delay as it slowed down the pace of construction considerably. It is reiterated that the Promoter is undertaking costs of constructions from its own pockets and is not demanding anything from the allottees, an act which is unprecedented by any other real estate company and it is now for this Authority to balance the interest of the consumers and the promoters harmoniously to achieve the maximum good and benefits.
- VIII. That the bona-fide of the promoter can be further gathered by the fact that the promoter is running post to pillar and has filed a representation before Financial Commissioner (Haryana) seeking a bifurcation of the license in two parts for two projects respectively and pursuing the same sincerely. It is pertinent to mention that only after renewal of license the promoter will be competent to obtain RERA

registration. The promoter has undertaken every possible measure in his armor to salvage the project and complete the same.

- IX. That the promoter has filed for HRERA registration vide order letter dated 09.08.2018 of its project on the said land which was to be with the applicant as per the agreement. The fate of the application is dubious and is still pending as the aforesaid license has lapsed and not existing anymore as on date.
- X. That due to non-registration with HRERA the promoter is unable to sell its proposed units in its project. More particularly the applicant is crippled financially as no demand can be raised by the promoter from its existing members. It is to be kindly considered by this Hon'ble Authority that the promoter has accordingly not raised a single demand from its members and has not collected more than 33% of total sale consideration of a unit from any of its members. On the contrary, the promoter has undertaken the tedious task of completing the construction of the project from its own finances and loans so as to offer possession and is also remitting the interests on subvention scheme on behalf of customers so as to protect them from further loss.
- XI. That, it would be of high importance to mention one similar complaint filed with this Hon'ble Authority wherein similar issues were being adjudicated. The Hon'ble Authority had the opportunity to deal with similar complex issues faced by developers in respect of the licensed land wherein the original licensee had further sub-divided the land for development purposes on the basis of collaboration agreements. This Hon'ble Authority in complaint no. 826/2018, 1402/2018, 1343/2018, 1344/2018 had passed common orders. The issues in these complaints were similar to the applicant's issues.

- XII. That the crisis of COVID-19 pandemic has also given a blow to smooth working of the promoter. It is pertinent to mention here that during the lockdown imposed by the Central Government, the workforce at the project site left for their homes and there was a complete halt in the work which added to further delay. It was after sincere efforts of the promoter that the workforce could be again mobilized and presently the works are being carried out at the site.
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 submissions made by the parties.

**E. Jurisdiction of the authority:**

7. The respondent has raised a preliminary submission/objection the Authority has no jurisdiction to entertain the present complaint. The objection of the respondent 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:

**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 allottees 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee 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 complainant 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.*** "SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others V/s 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."*

10. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by the complainants.

**F. Findings on relief sought by the complainant:**

- F.I **Direct the respondents no.1 and 2 to refund the amount of Rs. 42,41,308/- taken by the respondents from the complainant with interest @ 10.35% up to the date of payment, in the interest of justice.**
11. 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)***

12. Clause 35 of the agreement provides for handing over of possession and is reproduced below:

***35. Handing over of possession***

*That the exclusive vacant possession of the apartment shall be handed over by the vendor to the vendee within 42 months after the vendee shall make full and final payment in accordance with the terms of this agreement.*

13. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the agreement for sale by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

14. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund of the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him 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.*

15. 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.
16. 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., 23.12.2025 is **8.80%**. Accordingly, the 10.80%.
17. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

18. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 35

read with clause 18(a) of the agreement dated 02.03.2015, the possession of the subject apartment was to be delivered within a period of 42 months after full and final payment in accordance with the terms of agreement shall be made by the complainants-allottee. The due date is calculated 42 months from date of allotment i.e., 02.01.2015. Accordingly, the due date of possession comes out to be 02.07.2018. It 11 years (i.e., from the date of BBA 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 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. It is also to mention that complainant has paid almost 29% of total consideration till 2015. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project.

19. 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....."*

20. 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."*

21. 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 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.
22. The authority hereby directs the respondent to refund the amount received by it i.e., Rs.42,41,308/- along with interest on such balance amount at the rate of 10.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) on such balance amount 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*.

**F.II Direct the respondent to pay account of damages to the tune of Rs.10,00,000/- in favour of the complainant for illegally threatening and for causing mental agony & harassment to complainant.**

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

**F.III Restrain the respondents from charging any penal interest in any form from the complainants.**

**F.IV Direct the respondents not to charge / demand anything that is not a part of the agreement to sell nor charge / demand anything that is outside the scope of Act of 2016 nor anything that is illegal, unethical and against the norms of Act of 2016.**

24. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

25. The complainants are seeking refund of the paid-up amount along with the interest. As the Authority is allowing the refund of the paid-up amount along with interest as mentioned in para 23, the above sought relief by the complainants becomes redundant.

**G. Directions of the Authority:**

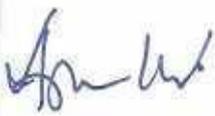
26. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of

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 entire amount of Rs.42,41,308/- received by him from the complainants-allottee (along with interest on such balance amount at the rate of 10.80% 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 paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.
27. Complaint stands disposed of.
28. File be consigned to the registry.



**(Phool Singh Saini)**  
Member



**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority,  
Gurugram

**Dated: 23.12.2025**