

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

Complaint no. : 2270 of 2025
Date of Decision : 19.02.2026

Girish Chander Bhatia & Ambika Bhatia
R/o - SHI Uniform, Shop No. 9, K.C Plaza, Residency
Road, Jammu-180001

Complainants

Versus

Reliable Realtech Private Limited
Registered office at: Plot No. 334, Sector-45,
Gurugram

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Sukhbir Yadav (Advocate)
Shri Shankar Wig and Ms. Sanya Arora (Advocates)

**Complainants
Respondent**

ORDER

1. The present complaint dated 07.05.2025 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 thereunder or to the allottees as per the agreement for sale executed *inter se*.



A. Unit and project related details

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

S. No.	Particulars	Details
1.	Project name and location	"Antriksh Heights", Sector 84, Gurugram.
2.	Licensed project area	23.10 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no.	123 of 2008 dated 14.06.2008.
5.	Validity status	13.06.2018
	Licensee details	Reliable Realtech Pvt. Ltd.
6.	RERA Registered	Not registered
7.	Unit no.	AH-904, Block-AH, 9 th floor [Pg.40 of complaint]
8.	Unit area admeasuring	1200 sq. ft. [Pg.40 of complaint]
9.	Date of allotment	Not available
10.	Date of Agreement to Sale	04.07.2012 [Pg.39 of complaint]
11.	Payment Plan	Construction linked [Pg.54 of complaint]
12.	Possession clause	Not available
13.	Due date of possession	04.07.2015 <i>"Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018 Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in</i>



		<p><i>the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."</i></p> <p>In view of the above-mentioned reasoning, the date of the execution of agreement dated 04.07.2012 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 04.07.2015</p>
14.	Total sale consideration	Rs.50,59,004/- [As alleged at pg.22 of complaint and confirmed by respondent at pg.1 of reply]
15.	Amount paid by the complainant	Rs.31,55,564/- [As alleged at pg.22 of complaint & acknowledged by respondent at pg.1 of its written submission]
16.	Occupation certificate /Completion certificate	<p>OC received dated 14.10.2016 for tower/block-</p> <ul style="list-style-type: none"> ➤ AE (ground + 1ST floor to 19th floor) ➤ AG (10th floor to 19th floor) ➤ AH (8TH floor to 19th floor) ➤ AI (10th floor to 19th floor) ➤ AJ (10th floor to 19th floor)
17.	Notice of possession [reminder cum offer of possession]	19.12.2016 [Pg.13 of reply]
18.	Reminder	07.02.2018, 02.04.2020 [Pg.15-17 of reply]
19.	Final reminder for balance outstanding of Rs.93,39,224/- including	13.05.2025 [Pg.18 of reply]



	interest, holding charges, etc.	
20.	Email seeking refund by complainant	18.12.2018 [Pg.74 of complaint]

B. Facts of the complaint:

3. The complainants have made following submissions by filing the present complaint: -

- a. That in 2012, the complainants were searching for a property in Gurugram and learned about the "Antriksh Heights" project developed by the respondent. The respondent's marketing team represented the project as a lucrative investment opportunity, highlighting its potential for high returns due to the area's promising growth prospects. These representations allegedly allured the complainants to visit the sales office and consider investing in the project.
- b. That the complainants, being allured by the representations and assurances of the respondent, decided to book a unit in the respondent's project. The office bearers of the Respondent spoke very highly of the said project and assured the complainants that the possession of the units would be handed over to the allottees within the committed time i.e., 36 months from the date of booking.
- c. That the complainants booked a unit bearing no. AH-904, Block-AH, on the 9th floor, measuring 1200 sq. ft., in the "Antriksh Heights" project. The total sale consideration for the flat was Rs.50,59,004/-



and payable under a construction-linked payment plan. An initial payment of Rs.4,75,000/- was made via two cheques (No.014337 and 014338) dated 25.02.20212, drawn on Andhra Bank. The respondent issued two payment receipts on 01.03.2012.

- d. That on, 29.02.2012, the respondent issued an allotment letter confirming the allotment of unit no. AH-904, Block-AH, on the 9th floor, measuring 1200 sq. ft., in the "Antriksh Heights" project in favour of the complainants. It is relevant to note here that the said booking was done under the construction-linked payment plan.
- e. Following the allotment of unit no. AH-904, the respondent raised several demands for payment as per the agreed-upon terms, issuing three demand letters on 03.04.2012, 14.052012, and 28.06.2012. The complainants duly honoured all these demands by making the required payments, demonstrating their commitment to fulfilling their financial obligations. The respondents issued the payment receipts for the said transactions.
- f. Subsequently, on 04.07.2012, a unilateral, arbitrary, and one-sided builder-buyer agreement was executed between the respondent and the complainants. The respondent presented the agreement on a take-it-or-leave-it basis, leaving the complainants with no choice but to sign without fully understanding the implications. The possession clause in the BBA referenced the Haryana Apartments Ownership Act, 1983, without specifying a due date for handing over the unit.



However, it is pertinent to note that during the booking process, the respondent had explicitly represented that possession would be handed over within three years from the date of the agreement. The total sale consideration as per the BBA is Rs.50,59,004/- .

Area	1200	
Sale Price	3799	4559004
Club Membership		50000
IFMS	100	120000
Car Parking		300000
Power Back-up	100	30000
	Total	5059004

- g. That several visits were paid to the construction site, and there, it was found that the construction was not going on, as per the desired speed. It is worth mentioning here that the complainants were so disappointed to see that the respondent deceived the complainants by giving false assurances that possession would be handed over in the promised time.
- h. In April 2013, the complainants made two payments: Rs. 5,00,000/- and Rs. 4,00,000/-, for which the respondent issued payment receipts. Before the possession due date (04.07.2015), the complainants had already paid Rs.31,55,564/- , exceeding 62% of the total sale consideration.
- i. That upon realizing that the project was unlikely to be completed soon, the complainants decided to withdraw their units/investments due to the respondent's failure to deliver on their promises. When



the complainants approached the respondent with this request, their concerns were ignored. Despite their growing disappointment, the complainants continued to make payments in response to the respondent's regular demand letters, highlighting their ongoing financial commitment to the project.

- j. That after investing a substantial amount and witnessing significant delays, the complainants requested the respondent to refund their money and withdraw from the project. However, the respondent ignored their request once again. On 06.12.2016, the complainants formally requested a refund by sending a registered letter (consignment number RE835661261IN) to the respondent. It is noteworthy that even after repeated requests of the complainants, the respondent party did not listen to them and, in a cunning move, offered possession to the complainants on 19.12.2016 and asked to make the payment of Rs.26,72,340/- on account of outstanding dues.
- k. That the respondent, as before, failed to respond to the complainants' letter and remained silent. Notably, having already received over 62% of the sale consideration, the respondent's inaction in the face of the complainants' genuine refund request suggests dominant and malafide intentions. On 18.12.2018, the complainants sent another email to the respondent, reiterating their concerns and requesting a refund due to the prolonged delay in possession. Unfortunately, this email also went unanswered. The



complainants, initially awaiting possession of their unit and subsequently waiting for a refund, have been left in limbo, with their legitimate right to a refund remaining unfulfilled.

- l. Significantly, the respondent had obtained the occupancy certificate for the complainants' unit tower on 19.05.2016, and subsequently for the 9th floor on 14.10.2016. Despite this, the respondent failed to deliver possession of the unit to the complainants. Moreover, they disregarded the complainants' legitimate request for a refund, highlighting a stark contrast between the respondent's fulfilment of regulatory requirements and their neglect of contractual obligations to the complainants. In 2021, the complainants, still awaiting resolution, sent yet another email to the respondent on 31.08.2021, reiterating their concerns. However, the respondent chose to ignore them once again, leaving the complainants disappointed and frustrated with the lack of response or resolution.
- m. Since 2015, the complainants have been persistently following up with the respondent to obtain possession of their unit. However, the respondent consistently provided vague excuses, delaying the possession date without offering a firm timeline. Despite paying over 62% of the total consideration in good faith, the complainants were led to believe that possession would eventually be handed over. Instead, the respondent seemed to have no intention of fulfilling this obligation. Meanwhile, the respondent continued to send demand



letters for payments, disregarding the complainants' legitimate demand for possession. The initial promised possession date of July 2015 passed without the respondent delivering the unit, leaving the complainants in a state of uncertainty and disappointment.

- n. That since 2016, the Complainants have been making efforts to get a refund of his money, but all in vain. Despite several visits, the complainants have neither been able to determine the actual due date of possession nor get a refund of their money. It is pertinent to mention here that it has been more than 13 years since the booking, however, the respondent neither gave possession nor refund on request of the complainants.
- o. That the complainants made every effort to secure possession of their unit, but as the promised due date lapsed, it became clear that the respondent was unwilling to fulfil their obligations. Consequently, the complainants sought a refund of their investment. However, instead of receiving a resolution, they were met with mental harassment. Notably, the complainants have been requesting a refund since 2016, but the respondent consistently disregarded their pleas, failing to consider their legitimate requests and instead continuing with their own agenda, leaving the complainants frustrated and distressed.
- p. That the complainants have endured prolonged suffering due to the respondent's failure to deliver possession of their unit or refund



their investment, despite repeated requests and follow-ups since 2015. Instead of resolving the issue, the complainants were met with empty promises, ignored pleas, and mental harassment, underscoring the respondent's apparent disregard for their contractual obligations and the complainants' legitimate rights. The complainants' faith in the respondent's ability to honour their commitments has been eroded, leaving them financially and emotionally distressed. The respondent's inaction has caused significant hardship, and the complainants' quest for justice and refund remains unfulfilled.

- q. That the complainants have reconsidered their stance and now wish to proceed with the project, seeking possession of the unit complete in all aspects. Additionally, they are claiming delayed possession charges, given the significant delay in handing over the unit despite having paid a substantial portion of the consideration. The complainants expect the respondent to fulfil their obligations and compensate for the prolonged wait.
- r. That the complainants have persistently followed up with the respondent, only to be met with harassment and further suffering. The respondent's dominant position has been used to disregard the complainants' legitimate rights. Given this backdrop, the complainants request that the respondent provide a genuine offer of possession of the unit, complete in all aspects, along with a detailed



customer ledger highlighting any genuine outstanding payments due. This would enable the complainants to fulfil their obligations while also bringing closure to this protracted dispute.

- s. The respondent obtained the Occupancy Certificate for the complainants' unit in 2016. However, despite this milestone, the respondent never formally offered possession of the unit to the complainants. Moreover, instead of issuing genuine demand letters for outstanding payments, the respondent's representatives verbally demanded maintenance charges without any formal communication. The complainants are willing to pay any genuine outstanding amounts and take possession of their unit, provided the respondent furnishes a detailed account of the amounts due.
- t. That the complainants' primary grievance is that despite paying over 62% of the consideration, they were denied a refund of their investment when they requested it, following the respondent's failure to deliver possession of the unit as promised. However, the complainants now wish to take possession of their flat, given that the occupancy certificate was obtained by the respondent as far back as 2016.
- u. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party, and as such, the respondent is liable to be punished and to compensate the complainants.

- v. That due to the above acts of the respondent and the terms and conditions of the builder buyer agreement, the complainants have been unnecessarily harassed mentally as well as financially, therefore, the opposite party is liable to compensate the complainants on account of the aforesaid act of unfair trade practice.
- w. That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party, and much more a smell of playing fraud with the complainants and others is prima facie clear on the part of the respondent party which makes them liable to answer the Authority.
- x. That there is an apprehension in the mind of the complainants that the respondent has been playing fraud and there is something fishy that which respondent is not disclosing to the complainants just to embezzle the hard-earned money of the complainants and others.
- y. That for the first-time cause of action for the present complaint arose in July 2012, when the buyer agreement and addendum to BBA containing unfair and unreasonable terms was, for the first time, forced upon the allottee/complainant. The cause of action further arose in July 2015, when the respondent failed to hand over possession of the unit, and hence, the cause of action arose on various occasions, including on a) April 2016; b) December 2016; c) February 2017 d) August 2018 e) January 2021, and on many times till date, when the protests were lodged with the respondent party



about its failure to deliver the project and the assurances were given by it that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till the Authority restrains the respondents by an order of injunction and/or passes the necessary orders.

- z. That the complainants being aggrieved persons are filing the present complaint under section 31 with the Authority for violation/contravention of provisions of this Act as mentioned in the preceding paragraph.
- aa. That as per section 11 (4) of the RERA Act. 2016, the promoter is under obligation towards allottees and as per section 12 of the RERA Act. 2016, the promoter is liable to return the entire investment along with interest to the allottees of an apartment, building, or project for giving any incorrect, false statement, etc.
- bb. That as per section 18 of the RERA Act. 2016, the promoter is liable to pay the interest or return of the amount and to pay compensation to the allottees of a unit, building, or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale and as per section 19 (4) of the RERA Act. 2016, the promoter is entitled to a refund of the amount paid along with interest.
- cc. That the complainants hereby submits to the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter and



- further requests that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37.
- dd. That the complainants want to withdraw from the project. The promoter has not fulfilled his obligation; therefore, as per obligations on the promoter under section 18, the promoter is obligated to refund the amount and pay the interest at the prescribed rate.
- ee. That the present complaint is not for seeking compensation, without prejudice, complainants reserve the right to file a complaint to the Adjudicating Officer for compensation.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- I. Direct the respondent to refund the paid amount along with interest from the date of each payment till the realization of the money.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the Respondent:

6. The respondent contested the complaint on the following grounds:
- a. The respondent, M/s Reliable Realtech Private Limited, has at all times acted bona fide and strictly in accordance with the builder buyer agreement ("BBA") executed with the complainants. The project "*Antriksh Heights*" situated at Sector-84, Gurugram is a duly



completed and occupied project, for which the Occupation Certificate was obtained in the year 2016.

- b. It is admitted that the complainants booked unit no. AH-904, Block-AH, 9th floor, admeasuring 1200 sq. ft., for a total sale consideration of ₹50,59,004/-. The BBA dated 04.07.2012 was voluntarily executed by the complainants after reading and understanding all its terms and conditions. The allegation that the agreement was unilateral or one-sided is denied.
- c. As per the construction-linked payment plan, the complainants were required to pay 95% of the total sale consideration prior to offer of possession. However, the complainants paid only about 62%, leaving an outstanding amount of ₹26,72,320/-, thereby committing persistent defaults in payment.
- d. The respondent obtained the Occupation Certificate on 14.10.2016. Thereafter, a formal offer of possession dated 19.12.2016 was issued to the complainants, calling upon them to clear outstanding dues and take possession of the unit.
- e. Instead of complying with the payment obligations and accepting possession, the complainants voluntarily declined possession. In fact, even prior to the offer of possession, vide communication dated 06.12.2016, the complainants had already sought refund of the amounts paid, thereby unilaterally withdrawing from the project.
- f. Having defaulted in payment, refused possession, and voluntarily sought refund in 2016, the complainants remained silent for several years. The present complaint, filed after an inordinate



- delay, is a clear afterthought and an attempt to unjustly enrich themselves by taking inconsistent and mutually destructive stands.
- g. That the present complaint is hopelessly barred by limitation and liable to be dismissed at the threshold. The cause of action, if any, arose on 19.12.2016, when possession was duly offered to the complainants and they were called upon to clear their outstanding dues. The complainants instead refused possession and sought refund on their own.
- h. It is pertinent to mention that even if we consider complainants' last correspondence dated 31.08.2021 is generously considered as the final event giving rise to cause of action, the prescribed three-year limitation expired in August 2024.
- i. The complainants may seek exclusion of time on the basis of Suo Motu Writ Petition (C) No. 3 of 2020, wherein limitation stood suspended from 15.03.2020 to 28.02.2022 (715 days).
Computing limitation even with this exclusion:
- Period from 31.08.2021 to 28.02.2022 = 181 days already consumed
 - Excluded period of 715 days ends on 28.02.2022
 - Even after this exclusion there is a delay of 2 months in filing of the complaint. Therefore, it is not within the limitation period.
- j. The present complaint has been filed after more than a two-month delay even after granting the above exclusion. Thus, the complaint is ex-facie time-barred and no sufficient cause for condonation of delay has been pleaded or established.



- k. Therefore, the complaint deserves to be dismissed as time-barred at the very outset and the cause action has now become stale that even if there is a relief but the remedy has already extinguished.
- l. That the present complaint is liable to be dismissed at the threshold as the complainants have been defaulters from the very inception of the allotment and have deliberately suppressed material documents, thereby approaching this Hon'ble Authority with unclean hands.
- m. Further it is submitted that the payment plan agreed between the parties under the builder buyer agreement was purely construction-linked and not time-linked. All demands raised by the Respondent from time to time were strictly in accordance with the stages of construction and the payment schedule expressly provided under the BBA. The complainants have falsely attempted to portray the demands as illegal, which allegation is wholly misconceived and contrary to the contractual record.
- n. That despite lawful demands, the complainants persistently defaulted in making payments. In fact, even after completion of construction and grant of Occupation Certificate, the complainants failed to clear outstanding dues and take possession of the unit.
- o. It is pertinent to mention that on 19.12.2016, the Respondent issued a formal reminder / offer of possession letter, categorically calling upon the complainants to clear the outstanding amount and take possession of their unit. The said letter clearly demonstrates the readiness and willingness of the Respondent to hand over possession.



- p. Further that the complainants have falsely claimed to have sent a letter dated 06.12.2016 seeking refund, allegedly followed by communication from the side of respondent dated 24.12.2016. It is respectfully submitted that, as duly communicated to the complainants, the respondent received only an empty envelope, and no such refund letter dated 06.12.2016 was enclosed therein. The Respondent's letter dated 24.12.2016, clarifying receipt of an empty envelope, is annexed herewith. The complainants have deliberately concealed this crucial fact from the Authority.
- q. That thereafter, on 01.06.2017, the respondent issued a demand-cum-offer of possession letter, once again calling upon the complainants to clear the outstanding dues and take possession of the completed unit.
- r. It is pertinent to mention that despite repeated opportunities, the complainants showed complete disinterest in taking possession and continued to remain in default. Several reminders were issued, including reminders dated 07.02.2018, 02.04.2020, and a final reminder dated 13.05.2025, calling upon the complainants to make payment and take possession.
- s. That the complainants have deliberately concealed and withheld the aforesaid correspondence from the Authority with the sole intent to create a false narrative of delay and deficiency on the part of the respondent. Such selective suppression of documents amounts to misrepresentation and abuse of the process of law.
- t. That it is a settled principle of law that a party who suppresses material facts and documents is not entitled to any discretionary



or equitable relief. The present complaint is therefore vitiated by fraud, concealment, and lack of bona fides and deserves dismissal on this ground alone.

- u. That the present complaint is liable to be dismissed as no subsisting or enforceable cause of action exists in favour of the complainants. The complainants have themselves failed to adhere to the construction-linked payment schedule stipulated under the builder buyer agreement and have not fulfilled their reciprocal contractual obligation.
- v. It is an admitted and undisputed position that, whereas 95% of the total sale consideration was required to be paid prior to offer of possession, the complainants paid only about 62%, leaving a substantial outstanding amount of ₹26,72,320/- at the relevant time. In the absence of compliance with the agreed payment terms, the complainants cannot claim any legal or equitable relief under the Act.
- w. That after the respondent obtained the occupation certificate and offered possession on 19.12.2016, the complainants voluntarily declined to take possession and sought refund of their own accord, thereby unilaterally withdrawing from the project and abandoning the contractual relationship.
- x. Having voluntarily withdrawn from the project and having remained silent for several years thereafter, the complainants cannot now, after an inordinate and unexplained delay, seek refund under the Act, particularly when such refund is not attributable to any failure or breach on the part of the respondent.



- y. The refund claimed is thus self-induced, contractually impermissible, and legally unsustainable, and the complaint deserves dismissal on this ground alone.
- z. That the present complaint is liable to be dismissed as the complainants have taken mutually destructive, inconsistent, and self-contradictory stands, which are impermissible in law.
- aa. That the complainants have adopted contradictory positions at different stages of their pleadings. At one place, the complainants unequivocally seek refund of the amounts paid, thereby acknowledging their decision to withdraw from the project and abandon their claim for possession. At another place, however, the complainants state that they are reconsidering taking possession and further seek delay possession charges, which presupposes subsistence of the contractual relationship.
- bb. The relief of refund and the relief of possession or delay compensation are mutually exclusive in law. A claim for refund under Section 18 of the Act proceeds on the premise that the allottee no longer wishes to continue with the project, whereas a claim for possession or delay interest proceeds on the basis that the allottee affirms and seeks performance of the agreement. The complainants cannot be permitted to oscillate between these two fundamentally inconsistent remedies.
- cc. Such contradictory pleadings amount to approbation and reprobation, which is impermissible under settled principles of law. A litigant cannot be allowed to accept and reject the same transaction or instrument at different times to suit convenience.

- dd. The adoption of inconsistent pleas not only demonstrates lack of bona fides, but also causes serious prejudice to the respondent, as it becomes impossible to ascertain the precise nature of the relief sought or the basis on which the Respondent is required to defend itself.
- ee. In view of the foregoing facts and submissions, it is respectfully submitted that the present complaint is hopelessly barred by limitation, suffers from serious procedural and legal infirmities, and is devoid of any merit.
- ff. The delay, if any, in overall completion of the project occurred due to reasons beyond the control of the respondent, including delays in statutory approvals, environmental clearances, and infrastructural dependencies — all of which are recognized force-majeure conditions under the BBA.
- gg. The complainants, having themselves defaulted in payment, voluntarily declined possession, and remained silent for several years, cannot now seek refund or any other relief by invoking the jurisdiction of the Authority. The complaint is further vitiated by mutually inconsistent and self-contradictory pleadings, reflecting absence of bona fides and abuse of the process of law. Accordingly, the complaint deserves to be dismissed **in limine**, with costs, as being misconceived, untenable, and unsustainable in lawza

E. Jurisdiction of the authority

7. 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

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.

E.II Subject matter Jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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. 2021-2022 (1) RCR (Civil), 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 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



F. Findings on the relief sought by the complainants

F.I. Direct the respondent to refund the paid amount along with interest from the date of each payment till the realization of the money.

13. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them 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)

14. That the complainants herein were allotted a unit bearing no. AH-904, Block-AH, 9th floor, admeasuring 1200 sq. ft., in project of the respondent named "Antriksh Heights" situated at Sector-84, Gurugram vide agreement to sale dated 04.07.2012 executed between the complainants herein and the respondent regarding the said allotment.
15. In the present complaint, possession clause has not been mentioned in the agreement dated 04.07.2012. The Authority is of view that to determine the due date of possession as per Judgement passed by



- Hon'ble Apex Court titled as "*Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018* as Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract." In view of this reasoning, the date of the execution of Agreement to Sale dated 04.07.2012 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 04.07.2015. But respondent failed to deliver the possession of the unit on time before the due date. The occupation certificate/completion certificate of the project where the unit is situated was obtained by the respondent-promoter on 14.10.2016 and reminder cum offer of possession was delivered on 19.12.2016. The complainants have paid an amount of Rs.31,55,564/- against the sale consideration of Rs.50,59,004/-.
16. On Consideration of documents available on record and submissions made by the parties, the Authorities observes that the occupation certificate for the subject unit has been obtained by the respondent promoter on 14.10.2016 and thereafter possession was offered to complainants on 19.12.2016 but, complainants even before offer of possession allegedly sought refund vide letter dated 05.12.2016 and refused to take the possession of the unit. However, respondent



submitted that it received an empty envelope and no such refund letter, i.e., respondent sent reminder cum offer of possession dated 19.12.2016 respondent clarifying the receipt of an empty registered envelope vide its letter dated 24.12.2016 and further requesting to send the subject matter letter through registered post and email in case complainants forgot to put the same, which is placed on record. That complainants themselves vide email dated 18.12.2018 and 31.08.2021 respectively requested to the respondent company to refund the paid-up amount after deducting 10% deduction of amount as per norms. The relevant portion of the email dated 31.08.2021 is reproduced for your reference:

*"Sir,
Kindly call me at 94*****11
For the refund of the flat
Ah904
As per norms
10% deduction the amount has be refunded
Sir we discussed kindly let me know ASAP. As 10% deduction
of the amount and rest will be refunded.
It's very urgent!!
Pl do the needful
Thank You
Regards
Flat no.904
Girish Bhatia"*

17. Clause 9 'EARNEST MONEY' of the Agreement to Sell dated 04.07.2012 states that the earnest money shall be deemed to be 15% of the basic sale price of the apartment. However, the Authority has set aside the said clause on the ground that the earnest money is, in fact, only 10%.
18. The Authority after taking into consideration the scenario prior to the enactment of the Act, 2016 as well as the judgements passed by Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble



Supreme Court of India, has already prescribed vide Regulation 11(5) of 2018 that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.

19. The Authority observes that the respondent-builder has sent the final demand cum offer of possession on 19.12.2016, after obtaining occupation certificate on 14.10.2016 but the complainants want to surrender the unit and refund the amount paid by them. Keeping in view the aforesaid circumstances, that the respondent builder has already offered the possession of the allotted unit after obtaining occupation certificate from the competent authority, and the judgement of *Ireo Grace Realtech Pvt. Ltd. V/s Abhishek Khanna and Ors. Civil appeal no. 5785 of 32019 decided on 11.01.2021*, it is concluded that if allottees still want to withdraw from the project, the paid-up amount shall be refunded after deduction as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was farmed providing as under:-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that



the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

20. In so far as the relief seeking refund of the amount paid along with interest under the provisions of the RERA Act is concerned, the respondent is directed to refund the paid-up amount of Rs.31,55,564/- after deducting 10% of the sale consideration being earnest money within the timelines provided in Rule 16 of the Haryana Rules, 2017 *ibid*.
21. Although the complainants are entitled to a refund of the balance amount after the aforesaid deductions, it would be inequitable and unjust to direct the respondent to pay interest from the date of surrender, i.e., 18.12.2018. This is particularly in view of the fact that, as per the record, the last communication from the complainants was an email dated 31.08.2021 addressed to the respondent, and no further communication was made thereafter until the filing of the present complaint on 07.05.2025 seeking refund. The complainants, having failed to pursue their claim and having slept over their rights, cannot be permitted to derive benefit from such inaction. The delay in filing the complaint is attributable to the complainants. Accordingly, the Authority finds it appropriate to allow interest at prescribed rate on the balance refundable amount from the date of filing of complaint by the allottees i.e., 07.05.2025 till its actual realization.
22. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.31,55,564/-



after deducting 10% of the sale consideration of Rs.50,59,004/- being earnest money along with an interest @10.80% 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 on the refundable amount, from the date of filing of complaint by the allottees i.e., 07.05.2025, till its realization within the timelines provided in Rule 16 of the Rules, 2017 ibid.

G. Directions of the authority:

23. 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 promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -

- I. The respondent is directed to refund the paid-up amount of Rs.31,55,564/- after deducting 10% of the sale consideration of Rs.50,59,004/- being earnest money along with an interest @10.80% 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 on the refundable amount, from the date of filing of complaint by the allottees i.e., 07.05.2025, till its realization.



- 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 allottees-complainants.
24. Complaint stands disposed of along with applications, if any.
25. File be consigned to registry.

Dated: 19.02.2026



Phool Singh Saini
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM