

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

Complaint no.: 3881 of 2024
Date of filing: 09.08.2024
Date of order: 07.04.2026

1. Amit Oswal
2. Silky Oswal

Both R/o: A-301, Plot no.1A, Sector-13, Dwarka, South West Delhi, Delhi-110078.

Complainants

Versus

1. M/s Agrante Developers Private Limited
Office address: DTJ – 704, 7th Floor, DLF Towers – B, Jasola, New Delhi – 110025.

Respondent no.1

2. Yuvraj Singh
Resident of: House No.253, Janakpuri, Bareilly, Uttar Pradesh – 243122.

Respondent no.2

3. R. K. Associates
Office at: D – 602, Stellar Kings Court, Sector – 50, Noida, Uttar Pradesh – 201303.

Respondent no.3

4. M/s Indiabulls Housing Finance Limited
Office at: 62 -63, Block – M, 1st Floor, Connaught Place, Delhi – 110001.

Respondent no.4

5. M/s Sammaan Capital Limited
(Earlier known as M/s Indiabulls Housing Finance Limited)
Office at: A-34, 2nd Floor & 3rd Floor, Lajpat Nagar (South Delhi), New Delhi – 110024.

Respondent no.5

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Awanish Sinha (Advocate)
Shri Sanjiv Kumar Thakur (Advocate)
None
Shri Gaurav Dua (Advocate)

Complainants
Respondent no. 1
Respondent no. 2 & 3
Respondent no. 4 & 5

ORDER

- 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 as provided 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. Project and unit related details

- The particulars of the project, the amount of 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. N.	Particulars	Details
1.	Name of the project	"Beethoven's 8", Sector- 107, Gurgaon
2.	Nature of project	Group Housing Complex
3.	DTPC License no.	23 of 2012 dated 23.03.2012
	Validity status	Not available on record
	Name of licensee	Narendra Kumar Gupta & others
	Licensed area	18.0625 acres
4.	RERA registered/not registered	Un-registered
5.	Allotment Letter	27.01.2016 (As on page no. 26 of complaint)
6.	Unit no.	Harmony II L/E/703 (As on page no. 26 of complaint)

7.	Unit area admeasuring	2261 sq. ft. (As on page no. 26 of complaint)
8.	Date of builder buyer agreement	Not on record
9.	Quadripartite Agreement <i>[Between complainants, M/s. Agrante Developers Pvt Ltd, Indiabulls Housing Finance Limited]</i>	30.01.2016 (As on page no. 34 - 46 of complaint)
10.	Sale consideration	Rs.1,58,27,835/- (As on page no. 36 of complaint)
11.	Amount paid by the complainant	Rs.13,00,000/- (As per Receipts annexed on page no. 28 to 32 of complaint)
12.	Loan Sanction Letter <i>[Issued by Indiabulls Housing Finance Limited]</i>	31.01.2016 (As on page no. 47 of complaint)
13.	Loan Amount sanctioned	Rs.1,10,00,000/- (As on page no. 47 of complaint)
14.	Possession clause	Not available
15.	Due date of possession	27.01.2019 [Note: the due date of possession is calculated 36 months from the date of allotment]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

1. That the present complaint is in respect of a housing project being developed and constructed by respondent no.1 and is situated on a land admeasuring 18.0625 acres at Village Dharampur, Sector 107, Gurugram, Haryana, owned by respondent no. 2 and 3 (hereinafter "Owners").

- II. That the owners entered into an agreement dated 17.05.2007 with respondent no. 1 and agreed to transfer the development rights for construction and development of a residential and commercial project in the name of "Beethoven 8".
- III. That the complainants induced by various advertisements issued by the respondents, applied for an apartment no. Harmony II L/E/703 on VII Floor, apartment Type 4 BHK having an area of approx 2261 sq. fts for the total sale consideration of Rs.1,58,27,835/-.
- IV. Thereafter, as required by the respondents, the complainants paid a sum of Rs.6,00,000/- vide Cheque No. 005809 dated 21.01.2016 and the respondents issued a receipt bearing no. ADPL/B/0027 dated 27.01.2016 for an amount of Rs.6,00,000/-. A sum of Rs.1,00,000/- was paid vide cheque no. 000064 dated 26.08.2015 and the respondents issued a receipt bearing no. ADPL/B/0006 dated 27.08.2015 for an amount of Rs.1,00,000/-. Thereafter, as required by the respondents, the complainant paid sum of Rs.3,00,000/- vide cheque no. 000094 dated 21.01.2016 and the respondents issued a receipt bearing no. ADPL/B/0028 dated 27.01.2016 for an amount of Rs.3,00,000/-.
- V. The respondent no. 4 on behalf of the complainants made a payment of Rs.36,48,432/- to the respondent no.1 towards part payment of purchase of the apartment.
- VI. That after payment of the above said amount, the respondents allotted the said apartment to the complainant vide allotment letter dated 27.01.2016. The respondents are to be held solely accountable for the negligence, actions/ inactions and malafide intentions on the part of the respondents that have led to the current state of affairs of the project and to the cause of action by the complainants.

- VII. That a quadripartite agreement dated 30.01.2016 was executed between the parties; which inter alia contained the terms and conditions related to the purchase as well as loan and repayment of loan with regards to the apartment.
- VIII. On the basis of advertisement and representations made by the respondent, the complainants along with other allottees filed a booking application on 26.08.2015 to book an apartment in the said project. Thereafter, on 30.01.2016 the respondents called upon the complainant to execute the buyer builder agreement. The complainants were shocked to see that the commitment to handover possession of the apartment and to execute the sale deed within 36 months from the date of allotment letter was not mentioned in the agreement. However, the respondent refused to give the said commitment in writing and verbally assured the complainants that the possession would be handed over and the sale deed would be executed in respect of the apartments within 36 months of the allotment letter.
- IX. The respondents further assured the complainants and other allottees in the project, that in case the possession is delayed by 36 months, then inter alia they would continue to keep paying the Pre-Emi interest to the respondent no. 4 under clause 4 of the agreement.
- X. That the complainants approached the respondent no.4 for procurement of loan for financing the balance amount for the purchase of flat and accordingly, respondent no.4 issued sanction letter to the complainants. The sanctioned loan amount was paid directly to the respondent no.1.
- XI. That no timeline regarding the date of handover of possession is mentioned in the Agreement, the complainants and other allottees cannot be made to wait for unreasonable time period to take possession of the apartment. Therefore, in view of the delay in handing over possession and executing the sale deed of the Apartment in favor of the complainants and other

allottees, the respondents have committed deficiency in services and therefore, they are liable to refund the amounts paid by the complainants and other allottees along with interest.

- XII. As recorded under "Recital H" of the Agreement, respondent no. 1 along with the complainants and other allottees approached respondent no. 4, to provide loan to the complainants and other allottees to purchase the apartment. It was provided in the Agreement under clause 3, that the loan would be repaid by the complainants and other allottees and the installment of repayment of loan would start after the entire loan amount has been disbursed by the respondent no. 4. The entire loan amount has not been disbursed by the respondent no. 4 with regards to the complainants and other allottees in the Project, because the payment was construction linked, and the construction of the project, is far from final stage.
- XIII. That from the date of first disbursement to the last disbursement, the respondent no. 4 was to charge the pre EMI interest, as per clause 4 of the Agreement, the liability to pay pre-EMI interest had been taken over by the respondent no. 1 to 3. Although as per Clause 4 of the Agreement, the pre EMI interest would be paid for 36 months, the respondent no. 1 to 3 had represented that in the event of delay in completion of the project beyond 36 months they would keep on paying the pre-EMI interest till the date of possession of the apartment and the execution of sale deed. However, despite repeated requests such commitment was not made in writing.
- XIV. That the Agreement was executed on 30.01.2016 and the first installment of the loan was paid by the respondent no. 4 to the respondent no. 1 on behalf of the complainants on 06.02.2016. The respondent no. 1 to 3 kept on making payment of pre-EMI interest until January 2019. However, after that they stopped making payment. Since February 2019, respondent no. 4 started taking the pre-EMI interest directly from the Bank account of

complainant no. 1. A monthly Pre-EMI interest of Rs.13,566/- was paid for the month of February 2020 and Rs. 45,850 was paid for the month of March to April 2019 and thereafter Rs. 51,564/- was paid for the month of May 2019 to April 2020 by the complainants.

XV. That the complainants approached the respondent no. 1 that the payment of pre-EMI interest from their account was contrary to the Agreement and that it should be paid by respondent no. 1 to 3. On repeated requests, the respondent no. 1 paid the sum of Rs. 3,11,522 to the complainant in three tranches on 08.05.2019; 20.06.2019 and 26 August 2019. From September 2019, the respondent no. 1 to 3 did not refund the complainants the amounts that were debited for the pre-EMI interest. Due to deficiency of services and in breach of the terms of the Agreement, the allottees in the project are being forced to pay the pre-EMI interest to the respondent no. 4.

XVI. That the complainants have not paid the pre-EMI interest since May 2020, which as per respondent no. 4 is a default. However, despite the same, no information in this regard has been sent by respondent no. 4 to respondent no. 1. Therefore, respondent no. 4, instead of exercising its rights as mentioned in the Agreement, which entitled it to claim its money, is pressurizing the complainants and other allottees to make payments. This fact establishes that respondent no. 1 to 4 are acting hand in gloves together to cause detriment to the complainants and other allottees, which is a clear case of unfair trade practice.

C. Relief sought by the complainants:

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

- a. In case of failure to give possession, the allottee wishes to withdraw from the project and without prejudice to any other remedy available

seeks return of the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate.

5. On the date of hearing, the Authority explained to the respondent/promoters 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 respondents:

6. The respondent no.1 has contested the complaint on the following grounds:
 - I. That at the outset the answering respondent submits that it has not demanded or is in receipt of more than 30% 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.
 - II. That the complainant has filed the present complaint seeking refund of amount deposited with M/s Agrante Developers Pvt Ltd in lieu of unit booked in "Beethoven's 8" project. That the complainant has availed subvention scheme and financed the consideration amount from India Bulls Housing Finance Ltd. and sum amount out of total Rs.1,10,00,000/- was disbursed by India Bulls Housing Finance Ltd. to M/s Agrante Developers Pvt Ltd on behalf of the complainant.
 - III. That the respondent, as per the mutual understanding with the complainant, has been duly complying and paying the pre-EMI's on the disbursed amount to the bank regularly. It is submitted that there is a slight default in payment of the said pre-EMI/Interest till date and the respondent undertakes to remit the same till possession is offered to the complainant.

- IV. That the tower in which the complainant had booked the unit is owing to certain force majeure circumstances not ready 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. It is submitted that the promoter would be in a position in all probability to offer possession of the flats in Tower-L in coming years from the date of filing of the present reply. The promoter has incurred and utilized his own funds and loans 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 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- L to the complainant.
- V. 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 8-9 months from the date of filing of the present reply.
- VI. 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 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.

- VII. That M/s RMS Estate Pvt Ltd now known as "Agrante Developers Pvt Ltd" was granted development licence from Director Town and Country Planning, Haryana ("DTCP") for development of land spread over a total area of 18.0625 acre of land on which the present project is being developed. The said license was granted on 27.03.2012 and was valid for 4 years.
- VIII. That after grant of the above licence the Promoter had executed a development/collaboration agreement dated 23.05.2013 with M/s Sarvaram Infrastructure Pvt Ltd ("collaborator"). An area admeasuring 10.218 acre out of the aforesaid total land was handed to the Collaborator with absolute and exclusive rights for the purposes of developing the same. It is pertinent to mention here that M/s Sarvaram Infrastructure Pvt Ltd himself or through his nominee had proposed to build a separate project namely "ELACASSA" on that parcel of land with which the Promoter has no association whatsoever. Thus, resultantly

there were two projects being developed under the same license by two distinct colonizers with rights and liabilities strictly framed under the said collaboration agreement. It would not be out of place to mention here that such agreements were in common practice then.

- IX. The development/collaboration agreement dated 23.05.2013 stipulated strict liability on M/s Sarvaram Infrastructure Pvt Ltd or his appointed nominee to be in compliance of all statutory compliances, bye-laws applicable as per HUDA, DTCP etc as applicable for his parcel of land. M/s Sarvaram Infrastructure Pvt Ltd was further under the obligation to remit all the dues accrued towards governmental authorities arising under the agreement for the portion of land with the collaborator under the agreement.
- X. That M/s Sarvaram Infrastructure Pvt Ltd however, started defaulting in his compliance of statutory duties and contractual obligations. The Promoter had on several occasions issued written requests and even served Legal Notices to M/s Sarvaram Infrastructure Pvt Ltd to rectify the said defaults inter-alia payment of EDC and IDC charges. The Promoter had taken every step to ensure compliance of statutory obligations as non-compliance by M/s Sarvaram Infrastructure Pvt Ltd would directly prejudice the Promoter's project completion having the common license. It is submitted that the license for the land lapsed due to non-renewal and it cannot be renewed until outstanding EDC & IDC charges along with penalty is not cleared for the total land jointly by the Promoter and M/s Sarvaram Infrastructure Pvt Ltd in proportion to their respective projects. Needless to mention here that the Promoter is ready and willing to pay its share of EDC and IDC charges for the purposes of renewal of license.

- XI. 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 armory to salvage the project and complete the same.
- XII. 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 and further, EDC and IDC charges are unpaid which were to be paid by the M/s Sarvarm Infrastructure Pvt Ltd. It is pertinent to mention here that the directors of the Sarvarm Infrastructure Pvt Ltd are lodged in jail presently. The Promoter is crippled in the sense that he is unable to correspond with them which could perhaps lead to any fruitful results. Moreover, Insolvency Proceedings are pending against them before Hon'ble National Company Law Tribunal.
- XIII. 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 court that the promoter has accordingly not raised a single demand from its members and has not collected more than 40% 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. The overall conduct of the promoter plays a vital part in deciding the complaint such as the present one. The promoter is faced with peculiar circumstances which would require mutual co-operation of its members.

- XIV. That, it would be of high importance to mention one similar complaint filed with this Authority wherein similar issues were being adjudicated. The Authority under HARERA had the opportunity to deal with similar complex issued 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 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. In this case also the Original Licensee Triveni Ferrous Infrastructure Pvt Ltd a joint venture comprising of two groups Seth and Mittal Group who had subsequently divided/assigned development/marketing rights into five separate land holding to be developed separately pursuant to which similar issues arose which are being faced by the applicant. This Authority in that complaint had passed its conclusions and recommendations more particularly the recommendation to Town and Country Planning Department, Haryana stressing the grave importance that DTCP must divide license in five parts (As there were Five assignee developers) and determine liabilities of each party individually and separately (Liability on account if overdue License fee, EDC, IDC penal interest and other charges). Once the License are bifurcated separate RERA registration would be permissible Besides this Hon'ble Authority had also

pertinently recommended that DTCP should defer recovery of their overdue EDC so as to leave some cash flow in the hands of the Developers for investing in the project. Therefore, the Promoter prays with folded hands to refer the present matter to the Hon'ble Authority in light of the aforementioned case law as cited so that similar recommendations can be issued on behalf of the Promoter to Town and Country Planning Department, Haryana. It is submitted that such recommendations would be in parlance with the statutory duty of the Authority in Section 32 of the Act which states the functions of the Authority for promotion of the Real Estate Sector.

- XV. That lastly it is submitted 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.
- XVI. It is also pertinent to mention here that the respondent no.2 & 3 has nothing to do with the complainant's booking, neither there is any privity of contract between the respondent no.2 & 3 with the complainant. That the respondent no. 2 & 3 has no title or interest over the project or its land, hence there is no need to add them in the array of the parties.
7. The complaint was filed on 09.08.2024 and the Authority issued a notice dated 13.08.2024 of the complaint to the respondents by speed post and also on the given email address on 12.08.2024 for filing reply within 4 weeks. The delivery reports have been placed in the file. The counsel for

the respondent no.4 & 5 has filed vakalatnama in the registry of the Authority on 05.03.2026, however, no reply to the complaint has been received till date. Despite multiple opportunities for filing reply on 14.11.2024, 23.01.2025, 01.05.2025, 14.08.2025, 23.10.2025, 11.12.2025, 23.12.2025, 13.01.2026, 24.02.2026, 17.03.2026 & 07.04.2026, it failed to comply with the orders of the Authority. It shows that the respondents were intentionally delaying the procedure of the Authority by avoiding to file written reply despite a lapse of more than 1 year & 7 months from the date of filing of complaint. Therefore, the Authority assumes/ observes that the respondent no. 2 to 5 have nothing to say in the present matter. Accordingly, the Authority struck off the defence of the respondent no. 2 to 5.

8. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

E. Jurisdiction of the Authority:

9. 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

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

11. 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. 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.

13. 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."

14. 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 objections raised by the respondent no.1:

F.I. Objection regarding delay in the completion of construction of project due to outbreak of Covid-19.

15. The 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 (1) (Comm.) no' S8/2020 and LAS 3696-3697/2020* dated 29.05.2020 has observed as under:

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."

16. In the present case also, the respondents were liable to complete the construction of the project and handover the possession of the said unit by 27.01.2019. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over

possession. Thus, the plea taken by the respondent is hereby dismissed and it is well settled principle that a person cannot take benefit of his own wrongs.

G. Findings on the relief sought by the complainants:

G.I. In case of failure to give possession, the allottee wishes to withdraw from the project and without prejudice to any other remedy available seeks return of the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate.

17. In the present complaint, the complainants applied for the booking of an apartment in the project titled "Beethoven's 8", situated at Sector-107, Gurugram, being developed by the respondent. Pursuant to the same, vide allotment letter dated 27.01.2016, a unit bearing no. Harmony II, L/E/703 located on the 7th floor admeasuring 2261 sq. ft. in the said project was allotted to the complainants. Thereafter, a Quadra-partite Agreement was executed between the complainant, respondent, M/s. Indiabulls Housing Finance Ltd, Yuvraj Singh, Narender Kumar Gupta, on 30.01.2016 and an loan amount of Rs.1,10,00,000/- was granted in favour of the complainants. However, till date no buyer's agreement has been executed between the complainants and the promoter.

18. The complainants assert that the complainants booked an apartment in the project namely, "Beethoven's 8", situated at Sector-107, Gurugram. They have paid an amount of Rs.13,00,000/- to the respondent/ promoter against the sale consideration of Rs.1,58,27,835/-. Further submits that the project is incomplete and the occupation certificate has not been received by the respondent/ promoter from the competent authorities. Thus, the complainants intend to withdraw from the project and is seeking refund of the amount paid.

19. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid 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."

20. **Due date of handing over of possession:** As per the documents available on record, no BBA has been executed between the parties and the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442: (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725: -***

"Moreover, 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 i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

21. Accordingly, the due date of possession is calculated as 3 years from the execution of memorandum of understanding i.e., 27.01.2016. Therefore, the due date of handing over of the possession for the flat/unit comes out to be 27.01.2019. 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 allottee 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....."

22. It has come on record that against the sale consideration of Rs.1,58,27,835/-, the complainants have paid an amount of Rs.13,00,000/- to the respondent no.1/ promoter. However, the complainants contended that the due date of possession has been lapsed and No occupation certificate has been obtained against the said project by the respondent/ promoter. Further, the Authority would like to clarify that the Authority can only grant relief sought in the instant complaint only on account of failure in terms of agreement to sell or as per the provisions of the Act of 2016. Hence, in case if allottee wish to withdraw from the project, the respondent is liable on demand to return amount received by it with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of buyer's agreement. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private**

Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357 reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, it was observed 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."

23. 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 allottee as per agreement for sale under Section 11(4)(a) of the Act. 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 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 the unit with interest at such rate as may be prescribed.
24. There has been an inordinate delay in the project which cannot be condoned. Thus, in such a situation, the complainants cannot be compelled to wait endlessly to take possession of the unit and they are well within right to seek refund of the paid-up amount.
25. Vide order dated 07.04.2026, the Authority has deleted the respondent no. 2 and 3 from the array of parties as there is no privity of contract between respondent no. 2 (i.e., Mr. Yuvraj Singh), respondent no.3 (i.e., RK

Associates), and complainants along with respondent no.1 (i.e., M/s. Agrante Developers Private Limited) and respondent no.4 (i.e., Indiabulls Housing Finance Limited).

26. This is without prejudice to any other remedy available to the allottees including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under Sections 71 & 72 read with Section 31(1) of the Act of 2016.

27. **Admissibility of refund along with prescribed rate of interest:** The Section 18 of the Act read with Rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee 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: सत्यमेव जयते

"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."

28. 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.

29. 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., 07.04.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

30. The definition of term "interest" as defined under Section 2(za)(ii) of the act provides that the interest payable by the promoter to the allottee shall be from the date the promoter received the amount. 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—

... (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, ...

31. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with Section 18(1) of the Act on the part of the respondent is established. Therefore, The Authority hereby directs the promoter to return the amount received by it i.e., Rs.13,00,000/- with interest at the rate of 10.80% (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 Rules *ibid*.

32. Out of the total amount so assessed, the amount paid by the financial institute i.e., M/s Indiabulls Housing Finance Limited (Respondent no.4) now known as M/s Sammaan Capital Limited (Respondent no.5) be refunded first to the financial institute and the balance amount along with interest will be refunded to the complainants. Further, the respondent no.1 is directed to get the NOC from HDFC bank and give it to the complainants within a period of 30 days of this order.

H. Directions of the Authority:

33. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the act to ensure compliance of obligations

cast upon the promoter as per the function entrusted to the Authority under Section 34(f):

- a. The respondent no.1/promoter is directed to refund the entire amount i.e., Rs.13,00,000/- to the complainants, received by it against the allotted unit along with interest at the rate of 10.80% per annum as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till its realization.
- b. Out of the total amount so assessed, the amount paid by the financial institute i.e., M/s Indiabulls Housing Finance Limited (Respondent no.4) now known as M/s Sammaan Capital Limited (Respondent no.5) be refunded first to the financial institute and the balance amount along with interest will be refunded to the complainants.
- c. The respondent no. 1 is further directed to get the NOC from financial institute and give it to the complainants within a period of 30 days of this order.
- d. 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.

34. Complaint as well as applications, if any, stand disposed off accordingly.

35. File be consigned to the registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2026