

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

Date of Decision:

17.07.2026

NAME OF THE BUILDER		Paras Dewes, Sector-106, Gurugram
S. No.	Case No.	Case title
1.	CR/3434/2025	Harudaya Nath VS. Sepset Properties Private Limited & Paras Buildtech Private Limited
2.	CR/3436/2025	Harudaya Nath VS Sepset Properties Private Limited & Paras Buildtech Private Limited
CORAM:		
Shri Arun Kumar		Chairman
APPEARANCE:		
Shri Anshul Yadav Advocate		Advocate for the complainant
Shri Dhruv Rohatgi Advocate		Advocate for the respondent

ORDER

- The above complaints have 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 allottees as per the agreement for sale executed *inter se*.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Paras Dewes, Sector-106, Gurugram being developed by the respondent/promoter i.e., M/s Sepset Properties Private Limited & Paras Buildtech Private Limited. The issue involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question and the complainant is seeking refund along with interest.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Sr. No	Cr no. /Case Title, and Date of filing of complaint	Unit No.	Date of execution of agreement for sale/allotment letter	Due date of possession, offer of possession	Total Consideration	Total Amount paid by the complainants (In Rs.)
1.	CR/3434/2025 Harudaya Nath VS. Sepset Properties Private Limited & Paras Buildtech Private Limited DOF: 22.07.2025 RR:- 14.11.2025	T-B/0208, T-B	15.05.2013	15.03.2017	Rs. 1,20,24,713/-	Rs. 1,20,24,713/- OC received on 15.01.2019 Offer of possession: - 24.01.2019



2.	CR/3436/2025 Harudaya Nath VS. Sepset Properties Private Limited & Paras Buildtech Private Limited DOF: 22.07.2025 RR:- 14.11.2025	T- B/0804, T-B	15.05.2013	15.03.2017	Rs. 1,20,24,713/-	Rs. 1,20,24,713/- OC received on 15.01.2019 Offer of possession: - 24.01.2019
Relief sought: 1. Refund along with interest.						

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell against allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking refund along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder. Out of the above-mentioned cases, the particulars of case CR/3434/2025 titled as **Harudaya Nath VS. Sepset Properties Private Limited & Paras Buildtech Private Limited** is being taken into consideration as lead case for determining the rights of the allottee(s) qua refund along with interest.

A. Unit and project related details.

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

S. N	Particulars	Details
1.	Name of the project	Paras Dewes, Sector-106, Gurugram
2.	Nature of the project	Group housing colony
3.	DTCP license no.	61 of 2012 dated 13.06.2012
	Validity of license	12.06.2025
4.	HRERA Registered or not registered	118 of 2017 dated 28.08.2017 valid upto 31.01.2022
	Registration valid till	31.01.2022
5.	Booking date	23.08.2012
6.	Allotment letter	10.01.2013
7.	Unit no.	T-B/0208, T-B
8.	Unit area	1760 sq. ft.
9.	Date of buyer developer agreement executed between parties	15.05.2013
10.	Possession clause 3	<i>The Seller proposes to hand over possession of the apartment to the Purchaser within 42 months, with an additional grace period of 6 months, from the date of execution of this Agreement or from the date of obtaining all licenses and approvals required for commencement of construction, whichever is later, subject to delays caused by force majeure.</i>
11.	Endorsement dated	28.07.2015
12.	Due date of possession	15.03.2017

13.	Total sale consideration as per buyer developer agreement	Rs. 1,20,24,713/-
14.	Amount paid by the complainants	Rs. 1,20,24,713/-
15.	Occupation certificate	15.01.2019
16.	Offer of possession	24.01.2019

B. Facts of the complaint:

7. The complainants have made the following submissions: -

- I. That the complainant Lalitendu Pradhan after seeing advertisements of the Respondent/Builder herein, and approached by some of their agents, soliciting sale of their Residential Units to be located at Sector-106, Dwarka Expressway, Gurgaon, Haryana, forming part of a housing project of residential flats namely "Paras Dew's" (hereinafter referred to as "the said project"), came into contact with the executives of the Respondent, who embarked upon the complainant with their sales team with various promises of timely completion of project and swift delivery of possession on time.
- II. That the complainant Lalitendu Pradhan, trusting and believing completely in the words, assurances and towering claims made by the Respondent, fell into their trap of sweet words and agreed to book 2 units, in the independent floor, of 1760 sq. ft. in the said project. And further assured that the possession of the flat shall be handed over in not more than 42 months from the date of booking said flat.



- III. That the complainant's cousin brother namely Lalitendu Pradhan (Original Allottee) paid a sum of Rs. 7,50,000/- as the booking amount demanded by the respondent on 01.01.2013 and booked a Unit no. T-B/0208 in the name of the complainant. That the present complaint pertains to Unit no. T-B/0208.
- IV. That the respondent after the payment made by the complainant's cousin brother namely Lalitendu Pradhan (Original Allottee), issued the allotment letter to the original allottee on 10.01.2013.
- V. That the buyer's agreement was also executed between the parties on 15.05.2013. It was a pre drafted agreement which was made up with wrongful points and irrelevant and the original allottee had no option left other than to sign and endorse the same. The terms of the agreement were not true, biased, one-sided and that gave the original allottee complete shock; these were against the wish of the original allottee and even the possession of the date was altered.
- VI. That the original allottee & the complainant had paid a total amount of Rs. 1,20,24,713/- for the Unit no. T.B/0208", to the respondents till date as and when demanded by the respondent through installment plan.
- VII. That the complainant had made various requests for possession of flats seeking information on the status of the project and the proposed date of handover by the respondent, but the respondent chose not to give any concrete reply to the said requests rather kept on ignoring the complainant. As the complainant's brother was expecting the possession on NOVEMBER 2016.
- VIII. That after multiple requests by complainant, However, considering the inordinate delay and sluggish pace of construction site the brother of complainant anticipated that the possession would not be handed over by the opposite party in time hence the complainant was compelled to

withdraw from the said booking due to the slow pace of construction and foreseeable delaying in handing over the possession, however, as the complainant who also wanted to buy the same flats for his family so the original allottee transferred the same flats on the name of complainant with the consent and prior approval of opposite party in favour of complainant and the same was approved and endorsed by opposite party on 28.07.2015 and hence complainant stepped into the shoe of the Original Allottee.

- IX. That after the transfer, the opposite party began demanding the remaining installments and issued threats, stating that failure to make timely payments would result in revocation of possession. Despite all payments being made in a timely manner, the opposite party, citing a delay of only a few days, imposed an interest rate of 18% on the delayed amount. Such conduct by the respondents was highly unethical and unjustified.
- X. That the possession of the flat became due to the complainant on 15.11.2016 as per the terms and conditions of the agreement to sell as no extension or grace period was sought by the respondents at the time of raising the demand and it was assured that the construction was going on as per the plan. That the respondents failed to give the actual physical possession of the flat despite offering possession vide letter dated 12.04.2019. Even after the expiry of three years.
- XI. That the complainant had already paid 100% of the sale price as mentioned in the builder buyer agreement. That the respondent has illegally raised demand from the complainant via the above said letter but the complainant still paid the said arbitrary demand after receiving the offer of possession. That even after making the complete payment the flat was not completed and the respondents kept making excuses

for the handing over the possession of the said flat and even broke all communications from the complainant. That the complainant was not even allowed to visit the office of the respondent to enquire about the possession of the said flat. That the complainant was shocked to see such hostile behaviour of the respondents and decided to take the refund of the payments made by the complainant to the respondents.

- XII. That the complainant tried his level best to resolve the issue but the respondents did not pay any heed to the said requests of the complainant. That even after paying the 100% amount as demanded by the respondent the respondent was not inclined to handover the possession of the said flat to the complainant and gave one or the other excuses. After all this chaos, the complainant reached to the counsel and got sent a legal notice dated 24.09.2019 seeking refund along with interest; however, the opposite parties paid no heed to the same. That the respondent didn't even reply to the said legal notice sent by the counsel of the complainant.
- XIII. That the respondent is liable to pay the aforesaid amount of Rs. 1,20,24,713/- paid by the complainant against the flat no. 208 along with the interest on the same of @ 18% p.a. from the date of payment of each respective amount to till date, along with sum of Rs. 5,00,000/- for each booking, for mental torture and agony suffered by the respondents. And complainants also deserve to get the legal cost of expenses along with future interest from the opposite parties till the realisation of the same.
- XIV. That in this way, the respondent has committed fraud upon the complainant by misappropriating the funds paid by the complainant. The actions of the respondent tantamount to unfair trade practice and deficiency in service. The respondent has also betrayed the trust

imposed upon complainant and as such, complainant was legally entitled to take physical possession of the said unit in terms of the agreement to sell dated 15.05.2013.

- XV. The complainant thereafter filed a complaint before the National Consumer Redressal Commission, New Delhi bearing complaint no.2257 of 2019 pertaining to damages caused by the false advertisements and non-adherence to the project specifications, approve plan and failure to complete the project to on specific date that the complainant had withdrawn the said consumer complaint with the liberty to file the complaint in the appropriate forum and preferred to file the present complaint before the Authority, Gurugram.
- XVI. That the cause of action for filing present complaint first arose when the Respondent denied to handover the possession of the flat and denied to refund the amount paid by the complainant of the said unit after delay of almost 3 years and the cause of action is still continuing and subsisting one as the respondent has failed to handover the possession and even failed to provide refund of amount paid by complaint along with interest.
- C. Relief sought by the complainants:**
8. The complainant has sought following relief:
- I. To pay the refund entire amount of Rs. 1,20,24,713/- and along with prescribed rate interest @ 11% p.a as prescribed under rule 15 of the Rules, 2017 from the date of each payment till the filling of this complaint with interest.
9. 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.

10. The respondent has contested the complaint on the following grounds by way of reply: -
- i. That the captioned complaint is liable to be dismissed for the reason that the complainant has not approached this Hon'ble Authority with clean hands. It is a matter of record and as detailed herein below that the complainant is guilty of concealment and misrepresentation of facts and has twisted the facts in a manner so as mislead this Authority.
 - ii. That the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this authority. The complainant has filed the present complaint seeking refund, compensation and other ancillary reliefs of costs and others. It is respectfully submitted that complaints pertaining to the relief of compensation etc. are to be decided by the Adjudicating Officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act" for short) read with Rule 29 of the of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as "the Rules") and not by this Authority. The Authority does not have the jurisdiction to grant the relief sought by the complainant. The present complaint is liable to be dismissed on this ground alone.
 - iii. That the complaint is bad for mis-joinder un-necessary party. It is a matter of record that the unit in question was booked by the complainant and the buyer's agreement dated 15.05.2013, was executed between the complainant and the respondent no.1, i.e. Sepset Properties Pvt. Ltd.. The Respondent No.2, i.e. Paras Buildtech Pvt. Ltd., is not a signatory to the transaction between the complainant and the respondent No.1, and hence,

is not a proper and necessary party to the present proceedings. Moreover, the complainant has failed to disclose any role of the respondent no.2, in his pleadings. Thus, respondent no.2 is liable to be deleted from the array of parties, as no relief is sought, nor can be granted against the respondent no.2.

- iv. That the present complaint is barred by limitation. It is submitted that the complaint, seeks refund. It needs to be noted that the present complaint has been filed as late as on 09.07.2025, while the offer of possession was issued on 24.01.2019. The entire cause of action is based on the offer of possession dated 24.01.2019. The complainant has filed the present complaint after a period of 06 years and 6 months from the date of offer of possession. In either scenario, the present complaint is barred by limitation of 3 years.
- v. That the complainant is not entitled to the relief of refund in the present complaint. The complainant is liable to clear his dues as per the statement of accounts and the CAM statements and take the possession of the unit in question. It is relevant to highlight and refer to the judgment of the Hon'ble Supreme Court in **Ireo Grace Realtech Pvt. Ltd. Vs Abhishek Khanna & Ors**, reported in MANU/SC/0013/2021, wherein, it has been held that "where Phase 1 of the project had been issued the occupancy certificate after the completion of construction and the developer has offered the possession to the respective allottees, such allottees are obligated to take the possession of their respective units." It has also been held by the UP RERA in case titled **M/S Supertech Ltd. Vs Neeraj Tyagi**, Complaint No. NCR144/04/1120/2019, where the promoter has offered possession and also had the occupancy certificate on record and requested the allottee to take possession of his allotment, which was being delayed by the allottee, the UP RERA directed the allottee to take the possession of the Unit within 45 days after paying the pending dues against the same. A similar view has

been taken by this Authority in the case of Puri Constructions Pvt. Ltd. & Ors. Vs Sanjay Goel, decided on 20.08.2019, reported in MANU/RR/0539/2019, where the allottee had defaulted in making timely payments and taking possession even after the offer of possession and occupancy certificate, it was observed: "40. Since, the respondent has defaulted in making payment of outstanding dues and taking possession of the apartment in question, so there is a violation of terms and conditions of agreement and also violation of obligation of allottee under Section 19(6) of the Act on the part of the respondent. Hence, the complainant entitled to delayed possession charges at the prescribed rate of interest of 10.45% per annum." The complainant, having chosen to continue with the allotment after the due date, was in receipt of the offer of possession and hence, is estopped from seeking refund at this stage, citing delay in possession. Furthermore, it is relevant to note that the complainant has purchased another unit in the same project bearing unit no. B-0408 and is seeking possession and delay possession charges in the complaint bearing no. 3436 of 2025. Thus, the complainant cannot contradict his own case by citing delay as the reason for claim of refund in the present case, while keeping the possession of the similar situated unit in the same project and seeking delay possession charges for the same. Clearly, it shows that the claim of refund on the allegations is not genuine on the part of the complainant.

- vi. That the complainant is not an "aggrieved party" or "allottee" as defined under the Act but are investors who had admittedly booked the unit as a speculative investment in question in order to realise quick profits from its resale. The complainant is in default of his contractual obligations.
- vii. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect

understanding of the terms and conditions of the application form, allotment letter and the buyer's agreement, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of this Authority to refer to and rely upon the terms and conditions set out in the aforesaid documents in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainant.

- viii. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the respondent has already offered possession of the unit in question to the complainant, who has failed to complete all the monetary and documentary formalities and take the possession of the unit, as such, the respondent has already complied with its obligations under the buyer's agreement. The reliefs sought in the false and frivolous complaint are barred by estoppel. That the present complaint is not maintainable in law or on facts.
- ix. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.
- x. That the original allottee approached the answering respondent and evinced an interest to purchase a unit in the commercial colony being developed under the name and style of "Paras Dew's" situated in Sector 106, Gurugram (hereinafter referred to as "said project"). It is pertinent to mention that only after being fully satisfied with regard to all aspects of the project, including but not limited to the capacity/capability of the answering respondent to undertake conceptualization, promotion,

- development and construction of the same, the original allottee took an independent and informed decision to purchase a unit in the said project.
- xi. That the original allottee duly accepted the terms and conditions forming part of the application form and undertook, inter alia, to execute the buyer's agreement in the standard format of the answering respondent. Thereafter, unit bearing no. B-208, Second Floor, Tower B, tentatively admeasuring 1760 square feet (super area) (hereinafter referred to as "said unit") was allotted in favour of the original allottee.
- xii. That thereafter, the respondent issued an allotment letter dated 10.01.2013, to the complainant, confirming their allotment of Unit bearing No. B-208, fourth floor, in the project in question, on the terms and conditions contained therein. The said allotment contained the price break-up and contained the provisions relating to the other charges which were not included in the Basic Price, but were payable additionally by the complainant, determinable at a later stage.
- xiii. That thereafter, apartment buyer agreement having analogous terms and conditions were executed between the respondent and the complainant for the Unit. It is pertinent to mention that the complainant was aware of terms and conditions under the aforesaid agreement and after being satisfied with each and every term, the complainant agreed to sign on the same, willingly, voluntarily with freewill and full consent. It is pertinent to mention here that as per Clause 3 of the buyer's agreement, the respondent company proposed to handover the possession of the unit within 42 months from the date of execution of buyer's agreement or from the date of obtaining the licenses or approval, whichever is later, with a further grace period of 6 months and further period of 90 days after grace period for handing over the possession. However, the said period of handover was subject to force majeure conditions as contained in clause 10.

- xiv. That the respondent has rightly made good on all of its contractual obligations. That despite being adversely affected by the various construction bans by the NGT, the grave impact of the pandemic, shortage of labour and non-availability of material, the respondent has shown par excellence in ensuring timely completion of the construction activities. That after having timely completed the construction of the unit, the application for occupation certificate was made and the occupation certificate was obtained on 15.01.2019.
- xv. That it is pertinent to note that the unit was thereafter, on the request of the complainant and the original allottee, endorsed in favour of the complainant on 28.07.2015. The said endorsement is a part of the Buyer's Agreement.
- xvi. That possession of the unit was offered to the complainant by offer of possession letter dated 24.01.2019. It is pertinent to mention herein that the complainant was always conscious and aware that he was required to pay additional charges, which were determinable at a later stage. The said fact was clear from the clause 6 of the application form as well as clauses 1, 2.2, 2.5, 2.19, 6.4, 7, 8.1, 8.5, 8.6 and 8.7 of the buyer's agreement and the complainant are liable to pay the same.
- xvii. That the total sale consideration of the unit at the time of sale was Rs. 1,14,82,773/- (exclusive of taxes) and Rs. 1,20,23,760/- (inclusive of taxes), out of which the complainant has paid a sum of Rs. 1,20,24,713/-. As on date, there is a total outstanding dues of Rs. 36,423/- (towards interest), payable by the complainant.
- xviii. The complainant did not pay any heed to the legitimate, just and fair requests of the respondent and started raising frivolous issues and grievances, which were contrary to the agreed terms of the application form, allotment letter and even fortified in the buyer's agreement and

threatened the respondents with institution of unwarranted litigation. It is relevant to note here that the respondent no.1 company had complied with all its obligations by offering the possession well within time.

- xix. That it is pertinent to mention that the complainant did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the complainant refrained from obtaining possession of the unit in question. The complainant needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the buyer's agreement. Therefore, there is no equity in favour of the complainant. Without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the alleged interest frivolously and falsely sought by the complainant is illegal and bereft of logic. The complainant is not entitled to contend that they are entitled for any sort of refund, even after receipt of offer for possession. The complainant have consciously and maliciously refrained from obtaining possession of the unit in question.
- xx. That it is the obligation of the complainant under the Act to take the possession of the allotment within two months of occupancy certificate after completion of all formalities including the payment of outstanding dues of stamp duty and registration charges, as per the notice of offer of possession.
- xxi. That the law of equity and justice cannot allow such complainant to reap benefits of such opportunistic attitude and will strive for balance of rights of both the parties at dispute. That this Authority should not allow the Complainant to mislead the Authority and to misuse Real Estate (Regulation and Development) Act, 2016 for harassing the builder. That despite the

utter failure of the complainant in fulfilling the obligations, the respondent has always showed exemplary conduct.

- xxii. That it is submitted that the respondent has acted strictly in accordance with the terms and conditions of the agreement between the parties. There is no default or lapse on the part of the respondent. The allegations made in the complaint inter-alia that the respondent has failed to comply with the obligations under the agreement. On the contrary, it is the complainant who are in clear breach of the terms of the agreement by not remitting the outstanding amount of the said unit in question within the stipulated time. That the respondent has duly fulfilled its obligations under the buyer's agreement. There is no default or lapse in so far as the respondent is concerned. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
- xxiii. Without prejudice to the aforesaid preliminary objections and the contention of the respondent that unless the question of maintainability is first decided, the respondent ought not to be called upon to file the reply on merits to the complaint, this reply is being filed by way of abundant caution, with liberty to file such further reply as may be necessary, in case the complaint is held to be maintainable.
- xxiv. It is also submitted that the all the facts and submissions set out in the complaint are incorrect and are denied as if the same are specifically set out herein and traversed, except those which are specifically admitted herein. Further, the contents of the preliminary objections, set out hereinabove, should be deemed to be incorporated in reply to all paras of the Complaint as well as in reply to the list of dates.

11. 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

12. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E.I Territorial jurisdiction

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

14. Section 11(4)(a) of the Act 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.

15. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
16. 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 Pvt. Ltd. and other Vs. Union of India and other 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."

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/allottees.

F. I To pay the refund entire amount of Rs. 1,20,24,713/- and along with prescribed rate interest @ 11% p.a as prescribed under rule 15 of the Rules, 2017 from the date of each payment till the filling of this complaint with interest.

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

18. As per clause 3 of the flat buyer agreement dated 15.05.2013 provides for handing over of possession and is reproduced below:

3. POSSESSION

The Seller proposes to hand over possession of the apartment to the Purchaser within 42 months, with an additional grace

period of 6 months, from the date of execution of this Agreement or from the date of obtaining all licenses and approvals required for commencement of construction, whichever is later, subject to delays caused by force majeure.

19. The section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein.
20. This is a case where the promoter has offered possession of the unit after obtaining the occupation certificate and the allottee seeks to withdraw from the project and claim refund of the amount paid along with interest at the prescribed rate. The complainants/allottees in the present case have sought refund at the time of filing of the complaint 22.07.2025.
21. It is observed that the allottee had not, at any earlier point of time, opted or expressed any intention to withdraw from the project, even after the due date of possession. The complainants/allottees have sought refund at the time of filing of the complaint and the request for withdrawal has been made only after the offer of possession was extended to them. It is further noted that the occupation certificate/part occupation certificate in respect of the building/tower, wherein the allotted unit of the complainant is situated, has already been obtained. The complainants/allottees have sought refund at the time of filing of the complaint. Section 18(1) gives two options to the allottee if the promoter fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein:
 - (i) Allottee wishes to withdraw from the project; or
 - (ii) Allottee does not intend to withdraw from the project.
22. The right under section 18(1)/19(4) accrues to the allottee on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified

therein. If allottee has not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to him, it impliedly means that the allottee has tacitly wished to continue with the project. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottee's interest for the money he has paid to the promoter are protected accordingly. Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.* (supra) reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022.* it was observed

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

23. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"5. AMOUNT OF EARNEST MONEY

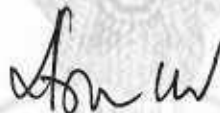
Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission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

24. Keeping in view, the request of the complainants, the respondent/promotor directed to refund the balance amount after deducting 10% of the sale consideration from the date of filling of complaint i.e., 22.07.2025 till the date of its actual realization.

G. Directions of the authority

25. 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):
- The respondent is directed to refund the balance amount of the unit by deducting the earnest money which shall not exceed the 10% of the sale consideration and shall return the balance amount to the complainants within a period of 90 days from the date of this order. The refund should have been made on the date of filling of complaint i.e., 22.07.2025 accordingly interest at the prescribed rate i.e., 10.80% is allowed on the balance amount from the date of filling of complaint till the date of its actual 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.
26. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
27. Complaint stands disposed of.
28. File be consigned to the registry.



Arun Kumar
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.07.2026

HARERA
GURUGRAM