



**BEFORE THE HARYANA REALESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. :	2686 of 2023
Date of filing complaint:	04.07.2023
Date of decision	16.04.2024

Kaushal Kumar Kakash R/O: House No-908,Sector-3	Complainant
Versus	
Ansal Housing & Construction Ltd. Regd. Office At: 15 Ugf, Indraprakash, 21, Barakhambha Road, New Delhi-110001s	Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Gaurav Yadav (Advocate)	Complainant
Sh. Sparsh Chaudhary (Advocate)	Respondent

ORDER

1. This complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottee 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project	Ansal Hub 83 boulevard , Sector 83, Gurugram, Haryana
2.	Total area of the project	2.60acres
3.	Nature of the project	Commercial
4.	DTCP license no.	113 of 2008 dated 01.06.2018 valid upto and 71 of 2010 dated 05.09.2010
5.	Rera Registered	Registered vide no. 09 of 2018 dated 08.01.2018 for 2.80 acres Valid upto 31.12.2020
6.	Shop no.	S-072 [page 26 of complaint]
7.	Area of the shop	420 sq. ft
8.	Provisional allotment letter issued on	Not on record (Inadvertently mentioned in the proceeding of the day as 31.01.2011)
9.	Endorsement in the name of 1 st subsequent allottee i.e the complainant dated	27.10.2020 (Page 53 of the complaint) (The complainant's father i.e the original allottee transferred the shop in the name of the complainant)
10.	Date of execution of buyer's agreement	30.12.2014 [page 22 of complaint]
11.	Possession clause	30. POSSESSION The developer shall offer possession of the unit any time , within a period of 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction , whichever is later subject to timely payment and of all the dues by buyer and subject to force majeure circumstances as described in clause 31 . Further there shall be a grace period of 6



		months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit. [page 33 of complaint]
12.	Due date of possession	30.12.2018 [Note: 42 months from the date of agreement i.e 30.12.2014 as the date of start of construction is not known + 6 months grace period allowed being unqualified]
13.	Total consideration as per the buyer agreement	Rs.29,38,005/- BSP (Page 26 of complaint)
14.	Total amount paid by the complainant	Rs.26,74,955/- (As stated by the complainant in the facts) (Inadvertently mentioned in the proceeding of the day as Rs. 26,74,95/-)
15.	Occupation certificate granted on	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the respondent is builder company under the name and style of Ansal Housing and Construction Ltd. engaged into the construction business having its regd. office at 15 UGF Indra Prakash Building 606, 6th Floor, 21, Barakhamba Road, New Delhi (hereinafter called as Promoter, Developer, Builder, Respondent) and the project in question as known as Ansal Hub 83 Boulevard, Sector-83, Gurgaon.
- II. That somewhere, in the mid of the year 2013, the respondent through its business development associate approached the complainant's father with an offer to invest and buy a shop/commercial place in the propose project of the respondent. The respondent highlighted the amenities of the project and represented to the complainant that the



respondent is very ethical business house in the field of residential and commercial project and in case, the complainant's father would invest in the project of respondent, then they would deliver the possession of the proposed project before the delivery date. The respondent further assured the complainant's father that the respondent has already process^e the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of the said project.

- III. That lured by the assurance of the respondent and believing them to be true, complainant's father booked a shop/unit and accordingly, the complainant's father paid an amount of Rs. 4,00,000/- on date 05.06.2013, Rs. 40,674/- on date 28.06.2013, Rs. 2,93,781/- on date 26.07.2013 and Rs. 3,80,000/- on date 27.08.2013 respectively to the respondent. Therefore, the total amount of Rs. 11,14,455/- was paid as advance booking by the complainant's father to the respondent.
- IV. That thereafter, on dated 30.12.2014, a pre-printed arbitrary unilateral builder buyer agreement was executed between complainant's father and respondent. Wherein, the complainant's father was allotted shop No. S-072 measuring 420 Sq. Ft. at the basic price of Rs. 27,91,005/-. It is pertinent to mention here that at the time of execution of the agreement, the respondent assured the complainant's father that all the necessary sanctions have been taken from the concerned authorities for the construction of the project and the possession of the shop will be timely allotted to the complainant's father.
- V. That thereafter, complainant's father paid the amount as per the payment plan enumerated agreement without any delay as and when demanded by the respondent on different-different dates from year 2014 to 2018. Accordingly complainant's father paid an amount of Rs.



15,60,500/- as per the payment schedule. The complainant's father had paid the total amount of Rs. 26,74,955/- to the respondent from 2013 to 2018.

- VI. That thereafter, complainant's father transferred the said shop in the name of the complainant on dated 27.10.2020. As per the clause No. 30, builder buyer agreement, the possession of the shop/unit was to be given within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction.
- VII. That as per the clause of builder buyer agreement, the possession was to be given before June, 2018 by the respondent, but the possession has not been given to the complainant till yet. It is pertinent to mention here that the grace period of six months of giving possession had also expired.
- VIII. That the complainant visited the office of the respondent several times and enquired about the project, but no satisfactory response was every provided to the complainant, the complainant also visited the site of the project and was shock to see that the project is nowhere near completion and completion of the site is only a distant dream and farfetched reality. It is pertinent to mention here that the said project is already lapsed project as the licence granted by the Director of Town and Country Planning Department and the said project has already expired on 31.12.2020.
- IX. That the respondent has played fraud upon the complainant and has robbed all his savings that were majorly invested with the respondent further purpose of purchasing the said unit. The complainant requested the respondent to refund back the amount and also



requesting to cancel the booking of the buyer/complainant immediately due to an abnormally delay had not been even considered/acknowledged by the builder.

- X. That the respondent has utterly failed to fulfill his obligations/duties/commitment as per the terms and conditions of the buyer agreement and has caused huge loss and mental agony to the complainant.

C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the amount deposited by the complainant i.e Rs. 26,74,955/- .
- ii. Direct the respondent to pay interest @18% p.a on the delayed possession starting from the booking year 2013 till date.
- iii. Direct the respondent to pay Rs.1,50,000/- as cost of litigation and misc. expenses.

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:-

- I. That the respondent is a developer and has built multiple residential and commercial buildings within Delhi/NCR with a well-established reputation earned over years of consistent customer satisfaction.
- II. That the complainant had approached the answering respondent for booking a shop no. F-124 in an upcoming project Ansal Boulevard, Sector 83, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 30.12.2014 was signed between the parties.



- III. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainant and the answering Respondent was in the year 2014. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that Parliament would not make the operation of a statute retrospective in effect.
- IV. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2015 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 34 of the said agreement provides for Rs. 5/ sq foot per month on super area for any delay in offering possession of the unit as mentioned in Clause 30 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the Hon'ble Commission in order to alter the penalty clause by virtue of this complaint more than 8 years after it was agreed upon by both parties.
- V. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondent has in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainant.



- VI. That the delay has been occasioned on account of things beyond the control of the answering respondent. It is further submitted that the builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The Respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID - 19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.
- VII. That the answering respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted that clause 31 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.
- VIII. That admittedly, the complainant had signed and agreed on Builder Buyer Agreement dated 30.12.2014. That perusal of the said agreement would show that it is a tripartite Agreement wherein M/s Samyak Projects Pvt. Ltd is also a party to the said agreement.
- IX. That the perusal of the Builder Buyer Agreement at page 3 would show that the proposed party to be impleaded i.e M/s Samyak Projects Pvt. Ltd not only possesses all the rights and unfettered ownership of the said land whereupon the project namely Ansal boulevard, Sector 83 is being developed, but also is a developer in the said project. That the operating lines at page 3 of the Builder Buyer Agreement are as follow:



"The Developer has entered into an agreement with the Confirming Party 3 i.e M/s Samyak Projects Pvt. Ltd to jointly promote, develop and market the proposed project being developed on the land as aforesaid.

- X. The said M/s Samyak Project Pvt. Ltd. in terms of its arrangement with the respondent could not develop the said project well within time as was agreed and given to the respondent, the delay, if any, is on the part of M/s Samyak Project Pvt. Ltd. not on the part of respondent, because the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd. 15. That in an arbitral proceedings before the Ld. Arbitrator Justice A.K Sikri, M/s Samyak Project Pvt. has taken over the present project the respondent for completion of the project and the respondent has no locus or say in the present project.
7. 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:

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

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. 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.

11. 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.
12. 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."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent:

F.1 Objection regarding delay in completion of construction of project due to force majeure conditions.

14. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 30.12.2014, and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 30.06.2018. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than four years and even some happening after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent/builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on

based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

15. The respondent also took a plea that the construction at the project site was delayed due to Covid-19 outbreak. In the instant complaint, the due date of handing over of possession comes out to be 30.12.2018 and grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builder.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to refund the amount deposited by the complainant i.e Rs. 26,74,955/- .

G.II Direct the respondent to pay interest @18% p.a on the delayed possession starting from the booking year 2013 till date.

16. In the present complaint, a builder buyer agreement was executed between the original allottee and the respondent on 30.12.2014 and thereafter the original allottee who is the father of the complainant transferred the shop to the first subsequent allottee being the complainant on 27.10.2020 .Therefore, the complainant stepped into the shoes of original allottee on 27.10.2020.

17. It is of utmost importance to go through the definition of the term "allottee" as defined under section 2(d) of the Act and the same is reproduced as under for ready reference:

"2 In this Act, unless the context otherwise requires-

*(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, **has been allotted**, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes **the person who subsequently acquires the said allotment through sale, transfer or otherwise** but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent".*

(Emphasis supplied)

18. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference :

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

19. As per clause 30 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"30.

The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."

20. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and



documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

21. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 42 months plus 6 months from date of agreement or the date of commencement of construction which whichever is later. The authority calculated due date of possession from the date of agreement i.e., 30.12.2014 as the date of construction is not known. The period of 42 months expired on 30.06.2018. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.
22. The due date of possession as per the possession clause of the flat buyer's agreement is 30.12.2018. The occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoter.
23. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him along with interest



18% rate of interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

24. 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.
25. 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., 16.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
26. The respondent raised an objection to implead M/s Samyak Projects Pvt. Ltd. as a party to the case, asserting that M/s Samyak Projects Pvt. Ltd. possesses all rights and ownership of the land for the project, was a confirming party in the buyer's agreement and any delays in the project solely attributes to them. However, it is essential to note that all payment were made in favor of the respondent by the complainant as evident from the payment receipts issued by the respondent. Consequently, at the time of these transactions and the execution of the builder-buyer agreement, the respondent was the primary responsible entity. Therefore, the respondent is liable towards delays or failures in the project's



development, as it was the responsible entity during the period when payments were made and the agreement was executed.

27. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 30 of the agreement executed between the parties on 30.12.2014, the due date of possession is calculated from the date of execution of builder buyer's agreement i.e., 30.12.2014. The period of 42 months expired on 30.06.2018. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 30.12.2018. It is pertinent to mention over here that even after a passage of more than 5 years (i.e., from the date of BBA till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid almost the total consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

28. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents



/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

29. Further, the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. observed as under: -

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

30. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the



project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

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. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.III Direct the respondent to pay Rs.1,50,000/- as cost of litigation and misc. expenses .

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

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):



- i. The respondent/promoter is directed to refund the amount i.e., Rs.26,74,955/- received by it from the complainant along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
34. Complaint stands disposed of.
35. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:16.04.2024