

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

Complaint no. :	4677 of 2020
Date of filing complaint:	21.12.2020
First date of hearing:	04.03.2021
Date of decision :	17.02.2023

Ruchi Gupta R/o: 067-68, 2nd Floor, Chah Indara, Behind Jubilee Cinema, Bhagirath Place, New Delhi	Complainant
Versus	
M/s Vatika Limited address: Vatika India Next, A Block Town Square, Sector 82 A Gurugram	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Ravi Rao proxy counsel	Complainant
Sh. Dhruv Dutt Sharma	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions 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. Unit and project related details

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

	Heads	Information
1.	Project name and location	"Tranquil Heights Ph.-I" at Sector 82A, Gurgaon, Haryana.
2.	Project area	11.218 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP License	22 of 2011 dated 24.03.2011 valid upto 23.03.2019
5.	Name of the licensee	M/s Stanway Developers Pvt. Limited & 3 others
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 dated 17.12.2017 for area admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Unit no.	1502, 15 th floor, building D (page 19 of complaint)
8.	Unit area admeasuring	2650 sq. ft. (super area)
9.	Date of allotment letter	29.09.2014 (page 35 of complaint)
10.	Date of builder buyer agreement	24.08.2015 (page 18 of complaint)
11.	Due date of possession	24.08.2019
12.	Possession clause	<p>13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT</p> <p><i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses 14 to 17 &</i></p>

		37 or due to failure of Allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure -I or as per the demands raised by the developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions off this agreement. Emphasis supplied
13.	Total sale consideration	Rs. 1,86,04,325/- [as per SOA dated 23.02.2021 page 112 of reply]
14.	Amount paid by the complainant	Rs. 77,53,779/- [as per SOA dated 23.02.2021 page 112 of reply]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - a. The complainant booked a unit for a total sale consideration of Rs. 1,77,61,625/- which includes BSP, car parking, IFMS, club membership, PLC etc. The complainant made payment of Rs. 77,53,779/- to the respondent. As per buyer's agreement dated 24.08.2015, the respondent allotted a unit bearing no. 1502 in tower D measuring 2650 sq.ft. to the complainant. As per para no. 13 of the buyer's agreement, the respondent agreed to deliver the possession of the unit within a period of 48 months from the date of execution of buyer agreement.
 - b. That complainant regularly visited the site but was surprised to see that construction work was not in progress and no one was present at the site to address her queries. It appears that



respondent played fraud upon the complainant. The only intention of the respondent was to take payments for the unit without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant. Despite receiving of payment of all the demands raised for the said unit and repeated requests and reminders over phone calls and personal visits. The respondent has failed to deliver the possession of the allotted unit to the complainant within stipulated period.

- c. That it could be seen that the construction of the block in which the complainant unit was booked with a promise by the respondent to deliver the unit by 24.08.2019. But it was not even started within time for the reasons best known to the respondent, which clearly shows its ulterior motive was to extract money from the innocent people fraudulently.
- d. That due to this omission on the part of the respondent the complainant had been suffering from disruption on her living arrangement, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the unit on time. As per clause 18 of the buyer's agreement dated 24.08.2015, it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @Rs. 7.5/- per sq.ft. for every month of delay. If one calculates the amount in terms of financial charges, it comes to approximately @2% per annum rate of interest whereas the respondent charged 18% per annum interest on delayed payment.

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- e. That on the ground of parity and equity, the respondent also be subjected to pay the same rate of interest. Hence, the respondent is liable to pay interest on the amount paid by the complainant@18% per annum to be compounded from the promised date of possession till the flat is actually delivered to the complainant.
- f. That the complainant has requested the respondent several time on making telephonic calls and also personally visiting the office of the respondent either to deliver possession of the flat in question or to refund the amount along with interest@18% per annum on the amount deposited by the complainant but respondent has flatly refused to do so.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest from the date of respective deposits till its actual realisation in accordance with the provisions of the Act.
 - ii. Direct the respondent to pay the compensation of Rs. 5,00,000/- for causing mental agony, harassment to the complainants and for violation of the obligations conferred by the Act, as per section 18(3).
 - iii. Direct the respondent to pay Rs. 55,000/- as litigation costs.

D. Reply by respondent:

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5. The respondent made the following submissions in its reply:



- (a) That at the outset, respondent humbly submits that each and every averment and contention, as raised in the complaint, unless specifically admitted, be taken to have been categorically denied by it and may be read as travesty of facts.
- (b) That the complaint filed before the authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected her in filing the above captioned complaint before the authority as the reliefs being claimed, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of the authority.
- (c) That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then, the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
- (d) The reliefs sought by the complainant appear to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
- (e) That apparently, the complaint is an abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.
- (f) That the complainant has miserably and willfully failed to make payments in time or in accordance with the terms of the



builder buyer's agreement. It is submitted that the complainant has frustrated the terms and conditions of the builder buyer's agreement, which were the essence of the arrangement between the parties and therefore, she now cannot invoke a particular clause, and so, the complaint is not maintainable and be rejected at the threshold. The complainant has also misdirected in claiming refund on account of alleged delayed offer for possession.

- (g) It has been categorically agreed between the parties that subject to the complainant having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said building/ said apartment within a period of 48 months from the date of execution of the agreement unless, there shall be delay due to force majeure events and failure of allottee(s) to pay in time the price of the said apartment.
- (h) That the delay in completing the project is due to the reasons beyond the control of the developer. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:
- a. Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project of the Respondent which further constrained the Respondent to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption



caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the Respondent were adversely affected and the Respondent was forced to reevaluate its construction plans which caused a long delay.

- b. Delay caused by the Haryana Development Urban Authority (HUDA) in acquisition of land for laying down sector roads for connecting the Project. The matter has been further embroiled in sundry litigations between HUDA and land-owners.
- c. Due to the implementation of MNREGA Schemes by the Central Government, the construction industry as a whole has been facing shortage of labour supply, due to labourers regularly travelling away from Delhi-NCR to avail benefits of the scheme. This has directly caused a detrimental impact to the Respondent, as it has been difficult to retain labourers for longer and stable periods of time and complete construction in a smooth flow.
- d. Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana.
- e. Disruptions caused by unusually heavy rains in Gurgaon every year.
- f. Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.
- g. Declaration of Gurgaon as a Notified Area for the purpose of Groundwater and restrictions imposed by the state government on its extraction for construction purposes.
- h. Delayed re-routing by DHBVN of a 66KVA high-tension electricity line passing over the project.
- i. The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in Air Quality in the Delhi-NCR region, especially during winter months. Among these measures were bans imposed on construction activities for a total period of 70 days between November 2016 to December 2019.
- j. Additionally, imposition of several partial restrictions from time to time prevented the Respondent from continuing construction work and ensuring fast construction. Some of these partial restrictions are:



- i. Construction activities could not be carried out between 6 p.m. to 6 a.m. for 174 days.
 - ii. The usage of Diesel Generator Sets was prohibited for 128 days.
 - iii. The entries of truck traffic into Delhi were restricted.
 - iv. Manufacturers of construction material were prevented from making use of close brick kilns, Hot Mix plants, and stone crushers.
 - v. Stringently enforced rules for dust control in construction activities and close non-compliant sites.
- k. The imposition of several total and partial restrictions on construction activities and suppliers as well as manufacturers of necessary material required, has rendered the Respondent with no option but to incur delay in completing construction of its projects. This has furthermore led to significant loss of productivity and continuity in construction as the Respondent was continuously stopped from dedicatedly completing the Project. The several restrictions have also resulted in regular demobilization of labour, as the Respondent would have to disband the groups of workers from time to time, which created difficulty in being able to resume construction activities with required momentum and added many additional weeks to the stipulated time of construction
- (i) The Government of India imposed lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic. That severely impacted the respondent as it was constrained to shut down all construction activities for the sake of workers' safety, most of the labour workforce migrated back to their villages and home states, leaving the respondent in a state where there is still a struggle to mobilize adequate number of workers to start and complete the construction of the project due to lack of manpower. Furthermore, some suppliers of the respondent, located in Maharashtra, are still unable to process orders which inadvertently have led to more delay.
- (j) Further it is not disputed that due to the outbreak of Covid 19, the entire world went into lockdown and all the construction activities were halted and no labour was available. Infact, all



the developers are still facing hardship because of acute shortage of labourers and even the HRERA, Gurugram has vide order dated 26.05.2020 declared the Covid 19 as a calamity under the Force Majeure clause and therefore, there cannot be said to be any delay in delivering the possession by the Respondent.

- (k) That the complainant has failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the buyer's agreement and as such, the complaint is liable to be rejected. It is submitted that out of the sale consideration of Rs 1,86,04,325/-, the amount actually paid by the complainant is Rs. 77,53,779/- i.e., around 40% of the sale consideration of the unit. It is further submitted that there is an outstanding amount of Rs. 10,25,186/- by the complainant as on 23,92,2921 as per the construction linked plan opted by her. It is further submitted that the complainant is a real estate investor who has made the booking with the respondent only with an intention to make speculative gains and huge profit in a short span of time. However, it appears that her calculations and planning have gone wrong on account of severe slump in the real estate market and she is now raising several untenable pleas on highly flimsy and baseless ground. The complainant after defaulting in complying with the terms and conditions of the buyer's agreement, now wants to shift the burden on the part of the respondent whereas it has suffered a lot financially due to such defaulters like the complainant.

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- (1) That it is to be appreciated that a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers is further invested towards the completion of the project. It is important to note that a builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. It is submitted that it is important to understand that one particular buyer who makes payment in time can also not be segregated, if the payment from other prospective buyer does not reach in time. It is relevant that the problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers. It is relevant to note that the slow pace of work affects the interests of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. It is most respectfully submitted that the irregular and insufficient payment by the prospective buyers such as the complainant freezes the hands of developer / builder in proceeding towards timely completion of the project.
6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties. The written submissions made by both the parties along with documents have also been perused by the authority.

A E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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.

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10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on 11.11.2021 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."

F. Finding on the objections raised by the respondent.

F.I Objection w.r.t. force majeure.

12. 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 shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 24.08.2015 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 24.08.2019. 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 three 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 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 on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any

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

13. As far as delay in construction due to outbreak of Covid-19 is concerned, 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 (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 has observed that-

"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."

14. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 24.08.2019 and 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 is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants:

G.1 Direct the respondent to refund the paid entire amount paid by the complainants.

15. The complainant booked a unit bearing no. 1502, 15th floor, building D admeasuring 2650 sq. ft in the above-mentioned project of respondent and the same led to execution of buyers' agreement on 24.08.2015. She paid a sum of Rs. 77,53,779/- to the respondent against the total sale consideration of Rs. 1,86,04,325/- but due to misrepresentations w.r.t. the project, she did not pay the remaining amount and is seeking refund of the paid-up amount besides interest from the respondent. Section 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)

16. Clause 13 of the buyer's agreement dated 24.08.2015 provides for schedule for possession of unit in question and is reproduced below for the reference:

13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT

The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete



*construction of the said building/said Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses 14 to 17 & 37 or due to failure of Allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure -1 or as per the demands raised by the developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this agreement. **Emphasis supplied***

17. **Entitlement of the complainant for refund:** The respondent has proposed to hand over the possession of the apartment within a period of 48 months from date of execution of builder buyer's agreement. The builder buyer's agreement was executed *inter se* parties on 24.08.2015 and therefore, the due date of possession comes out to be 24.08.2019.
18. It is not disputed that the complainant is an allottee of the respondent having been allotted a unit no. 1502, 15th floor, building D admeasuring 2650 sq. ft. of the project known as Tranquil Heights, Phase I, Sector 82A, Gurugram for a total sale consideration of Rs. 1,86,04,325/-. The respondent in the reply has admitted that the project could not be delivered due to various reasons and it has filed a proposal for de-registration of the project in question. As of now, there is no progress of project at the site. Thus, the complainant is right in withdrawing from the project and seeking refund of the paid-up amount besides interest as the promoter has failed to raise construction as per the schedule of construction despite demands being raised from them and the project being abandoned.
19. 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***, 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."

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

21. **Admissibility of refund along with prescribed rate of interest:** 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 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.”

22. 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.
23. 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., **17.02.2023** is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.
24. The authority hereby directs the promoter to return to the complainant the amount received by him i.e., Rs. 77,53,779/- with interest at the rate of 10.60% (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

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the actual date of refund of the amount within the timelines provided in rule 16 of the rules *ibid*.

G.II Litigation expenses & compensation

25. The complainant is also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the Authority:

26. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i. The respondent/promoter is directed to refund the entire amount of Rs. 77,53,779/- paid by the complainant along with




prescribed rate of interest @ 10.60% p.a. as prescribed under rule 15 of the rules from the date of each payment till the actual date of refund of the 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.

27. Complaint stands disposed of.

28. File be consigned to the registry.


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.02.2023