BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**3077 of 2020**
Date of filing	:	**09.10.2020**
First date of hearing	:	**25.03.2021**
Date of decision	:	**17.02.2023**

Devla Bhatia
R/o:- B3/28, Safdarjung Enclave, So, South West Delhi, Delhi.

Complainant

Versus

M/s Vatika Limited,
Office:- Vatika Triangle, Sushant Lok-1, Block A, Mehrauli Gurgaon Road, Gurgaon 122002

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:	
S/Sh. Nitin Jaspal and Akash Gupta	Advocate for the complainant
Sh. Dhruv Dutt Sharma	Advocate for the respondent

ORDER

1. The present complaint dated 09.10.2020 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Signature Villas", sector 82, Gurugram.
2.	Nature of the project	Independent floor.
	Project area	98.781 acres
6.	RERA Registered/ not registered	Not registered
7.	Plot no.	79/500/Duplex (Page no. 20 of complaint)
8.	Re-allotment	50/ST-82 D2-3/500/82 D2/Vatika India Next (page 74 of complaint)
10.	Date of builder buyer agreement	**25.07.2012 (page 29 of complaint)**
12.	Due date of possession	25.07.2015
	Possession clause	**10.1 Schedule for possession of the said residential villa** The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said residential villa within a period 3 years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other clause (11.1),(11.2),(11.3) & 37 or due to failure of Allottee(s) to pay in time
13.	Total sale consideration	Rs. 3,47,79,908/- [as per payment plan, annexure P16, page 72 of complaint]

14.	Amount paid by the complainant	Rs. 91,27,497/- [as alleged by the complainant, page 6 of complaint]
15.	Occupation certificate	Not obtained as confirmed by the counsel for the respondent during proceedings as the construction is not yet complete.
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

I. That on dated 18.08.2010, the complainant made an application to book a Villa- construction liked plan, in the project of M/s Vatika ltd. launched by the respondent in the name and style of "SIGNATURE VILLA" at M/s Vatika India Next, Sector 82, Gurgaon. The total consideration amount of the unit was **Rs. 3,46,29,900/-** including PLC, EDC, IDC etc. The complainant gave a cheque of Rs. 10,00,000/-to it as booking amount which was duly acknowledged by the respondent vide receipt no. 919419601 dated 30.08.2010. It is pertinent to mention that when the respondent offered the said unit to the complainant, the said unit was located in the large community of approximate 150 villas of admeasuring from 400 sq. yards to 500 sq. yards, as per the site plan shown by it.

II. That on dated 27.09.2010, the respondent sent a letter of acknowledgement of booking to the complainant. The said letter stated the various details such as details of project, details of allotted unit and payment details etc. On dated 14.10.2010, the complainant made a further payment of Rs. 9,04,645/- to the respondent.

III. That the respondent vide letter dated 30.12.2010, demanded an installment of payment of Rs. 34,62,990/- from the complainant and threatened to levy penal interest of 18% per annum if the said amount is

not paid within the due date. On dated 10.05.2011, complainant sent a reply to the respondent that she has already paid 20% of payment to it and even after 9 months of booking, the builder buyer agreement has not been executed. So, the further payment was not justified.

IV. That vide a letter dated December 2011, the respondent gave intimation to the complainant to change the layout plan of the said project, which resulted in reduction of the number of villas and change in the location of the subject unit from 79 to 50. The respondent without her consent, changed the location of the unit of the complainant and further levied the preferential location charges for park facing and two side open villa. She had no other option other than to accept the same. Therefore, she accepted the offer of the respondent vide a letter issued to the respondent which is annexed as **ANNEXURE P/6** and the lay out plan is annexed as **ANNEXURE P/7.** Thereafter the respondent issued an allotment letter dated 16.12.2011 and allotted a unit no. 50 in the name of the complainant. She also requested the respondent to execute the builder buyer agreement, but it did not pay heed to her requests and kept on delaying the execution of buyer agreement.

V. That finally on dated 25.07.2012, the builder buyer agreement was duly signed and executed between the parties. On dated 10.10.2012, the respondent again issued a demand letter of Rs. 34,62,990/- to the complainant. The complainant replied the respondent vide a letter dated 12.11.2012 stating that the there was no work is being done at the property of the complainant and the amount was payable only as per the payment plan attached with the builder buyer agreement. The construction at site has not been started and the respondent was keep demanding the installments.

VI. That on dated 30.12.2011 and 27.11.2012, the complainant made payment of Rs. 2,01,518/-, Rs. 7,80,000/- and 12,20,000/- to the respondent only on the continuous request of the broker but it has not started the construction work even after receiving the said amount.

VII. That on dated 10.01.2013, the respondent again issued a demand letter of Rs. 15,83,904/- to the complainant. But she refunded to pay any single penny to it as after making payment of huge amount, the construction on site had not been started and further instalment was due towards the complainant only on the completion of DPC.

VIII. That on dated 03.02.2017, the complainant received a letter from respondent regarding initiating re-allotment process as the unit allotted to her was not available due to change in plan. When the complainant met with the official of respondent namely Mr. Sumit, he assured the complainant that if the alternate villa provided by the respondent is not acceptable then the respondent shall refund the entire amount as per builder buyer agreement.

IX. That on dated 22.02.2017, the complainant along with one of the official of the respondent namely Mr. Ravi, visited the alternate villa offered by the respondent. She rejected the said offered property as it had not the same specification as offered earlier to her such as **firstly**, the size of plot was 400 sq. yards instead of 500 sq. yards. **Secondly**, the villa had no lift, the complainant being a senior citizen chose a villa with lift. **Thirdly**, the unit offered by the respondent was not park facing and two side open but the respondent it has charged PLC for park facing villa and two side open villa. **Fourthly**, the offered property was located at the dead end and was adjoined with the others' land, which was the security concern to the

complainant. The complainant conveyed the same to the official of the respondent present on site.

X. That, it is pertinent to mention that the respondent cheated the complainant by allotting a villa over a land which still did not belong to it. It allotted the villas to the complainant and other allottees even before acquiring the ownership right over the said land and when the land owners created the issues, the respondent started offering alternate property to the allottees by giving vague excuses.

XI. That on dated 04.04.2017, the complainant sent a letter to the respondent, to initiate the process of refund as the property allotted earlier to her is not in existence due to change in lay out plan and further the alternate property offered by it is not acceptable to her. It is pertinent to mention that as per the clause 10.1 of the buyer's agreement, her unit was to be handed over within **3 (three) years** from the date of approval of the building plan by the competent authority. But the said project of the respondent is far away from completion in near future. The complainant made repeated request to the respondent to refund the entire consideration amount as per the buyer's agreement but it did not respond to her letter and did not refund her hard earned money.

XII. In view of the above facts it can be clearly understood that the respondent just to harass the complainant, grabbed the hard earned money of the complainant. She has tried every possible way to take refund the entire consideration amount paid to the respondent. It has bad intention to grab her hard earned money by giving vague excuses.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

a. Refund of the entire amount of Rs. 91,27,497/- paid to the respondent along with the interest @ 18 % per annum.

b. Compensation of Rs. 40 lacs on account of mental harassment, agony, physical pain, monetary loss etc.

5. On the date of hearing, the autho ity 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 has contested the complaint on the following grounds.

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 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.

c. 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.

d. That apparently, the complaint filed by the complainant is 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.

e. 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. Therefore, the complainant now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. The complainant has also misdirected in claiming refund on account of alleged delayed offer for possession.

f. 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.

g. That the delay in completing the project is due to the reasons beyond its control. 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 revaluate 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 above has resulted in delays in construction of the project, for reasons that essentially are beyond the control of respondent.

h. 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 3,47,79,908/-, the amount actually paid by the complainant is Rs. 91,27,498/- i.e., around 40% of the sale consideration of the unit. It is further submitted that there is an outstanding amount of Rs. 41,46,584/- to be paid by the complainant as on 10.01.2021 as per the construction linked plan opted by her. It is further submitted that she 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 the complainant 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 suffered a lot financially due to such defaulters like the complainant.

i. 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 are 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.

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, 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

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

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*

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

Section 34-Functions of the Authority:

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

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors."*** **2021-2022(1)RCR(C), 357**:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and

functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

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

F. Findings on the objections raised by the respondent:

F.I Objection regarding entitlement of refund on ground of complainant being investor.

13. The respondent has taken a stand that the complainant is the investor and not consumer, therefore, is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of Rs. 91,27,497/-to the promoter towards purchase of an apartment in its

project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference.

> *2(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*

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainant is an allottee as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr***. has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

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

15. 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 25.07.2012. As per terms and conditions of the said agreement the due date of handing over of possession comes out to be 25.07.2015. The events such as 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 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 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 wrong.

16. 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.

17. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 25.07.2015 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 complainant.

F. I Direct the respondent to refund the paid amount along with interest.

18. The complainant has submitted that she booked a unit in the respondent's project namely "Signature Villas". A buyer's agreement was executed between the parties on 25.07.2012 and allotted a unit bearing no. 79/500/Duplex. The complainant has paid an amount of Rs. 91,27,497 against the total sale consideration of Rs. 3,47,79,908/-. A new unit bearing no. 50/ST-82 D2-3/500/82 D2 was re-allotted on 03.02.2017. The due date of possession is calculated as per clause 10.1 of the agreement i.e., 3 years from the date of execution of buyer's agreement. Therefore, the due date comes out to be 25.07.2015.

19. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the

promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

20. The due date of possession as per agreement for sale as mentioned in the table above is 25.07.2015 and there is delay of 5 years 2 months 14 days on the date of filing of the complaint. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which she 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....."*

21. 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

22. 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). 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 him in respect of the unit with interest at such rate as may be prescribed.

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

24. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund of the amount paid along with interest. However, section 18 of the Act read with rule 15 of the rules provide that in

case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***"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."*

25. 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.

26. 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%.

27. The authority hereby directs the promoter to return to the complainant the amount received by him i.e., Rs. 91,27,497/- 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 the actual date of realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

F.II Litigation cost & Compensation.

28. The complainant in the aforesaid relief is seeking relief w.r.t 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.*** (Decided on 11.11.2021), has 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 complaint in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation

F. Directions of the authority

29. 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) of the Act of 2016:

i. The respondent/promoter is directed to refund the entire amount of Rs. 91,27,497/- paid by the complainant along with prescribed rate of interest @ 10.60% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the 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.

30. Complaint stands disposed of.

31. File be consigned to registry.

V.J –

(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 17.02.2023