



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	843 of 2021
Date of filing:	13.08.2021
Date of first hearing:	16.09.2021
Date of decision:	09.03.2023

Hamina Kang
R/o Shanti Bagh, Near Aman-A Khas Hotel,
Village Sherpur, Sawai, Modhopur, Rajasthan-322001.

...COMPLAINANT

VERSUS

Vatika Ltd.
Regd. Office at Vatika Triangle, 4th Floor, Sushant Lok,
Phase-I, Mehrauli, Gurugram Road, Gurugram Haryana-122002.

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh Member
Nadim Akhtar Member

Present: Mr. Yajur Bhalla, Advocate, counsel for the complainant
through VC
None for the respondent

ORDER (NADIM AKHTAR - MEMBER)

Initially present complaint dated 13.08.2021 was filed by complainant before Adjudicating Officer under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

Vide order dated 12.04.2023, the Adjudicating Officer transferred the above said complaint to the Authority in view of observations of the Hon'ble Apex Court in CWP no.6745-6749 of 2021 titled as Newtech Promoters and Developers Pvt Ltd. versus State of UP and Others and observations of Punjab and Haryana High Court in CWP No.6688 of 2021 titled as Ramprastha Promoters and Developers Pvt Ltd. versus Union Of India and others regarding jurisdiction of Authority with respect to matters concerning possession and refund.

Nad

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 possession, delay period, if any, have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	Initially, Vatika One India Next, Wazirabad, Gurugram thereafter shifted to Vatika Mindscapes, Sector-27, Faridabad
2.	Nature of the Project	Commercial Space
3.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)
4.	Allotment letter dated	30.04.2018 and reallocation on 03.12.2019 as mentioned in pleadings at page no.8 of complaint book
5.	Unit No. and area	P-572(700 sq. ft.), P-573(500 sq. ft.), P-574(500 sq. ft), P-575(500 sq. ft), P-576(500 sq. ft), P-577(500 sq. ft) After Reallocation Changed to COM-007-Tower-D-9-926(500 sq. ft), COM-007-Tower-D-9-927 (750 sq. ft), COM-007-Tower-D-9-928(500 sq. ft), COM-007-Tower-D-9-929(500 sq. ft), COM-007-Tower-D-9-930(500 sq. ft)
7.	Builder Buyer Agreement	Not Executed
8.	Total Sale Consideration	₹84,72,000/- for each unit as mentioned in statement of accounts issued for reallocations
9.	Paid by the complainant	₹3,20,62,528/- for all units as mentioned in pleadings
10.	Deemed date of possession	Not mentioned



11.	Offer of possession	Not offered
12.	Provision regarding assured returns	Clause 1 of the allotment letter dated 30.04.2018 provides assured return in full down payment cases @₹75.83/- per sq. ft. only on receipt of 100% basic sale price.
13.	Occupation certificate	Obtained as mentioned in reply. However, no document has been placed on record

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT:

3. Case of the complainant is that it was assured by the respondent that on investment of ₹3,07,03,943.17/-, six units (five units measuring 500 sq. ft. and one unit measuring 700 sq. ft.) would be allotted to the complainant. On assurance given by the respondent, a payment of ₹3,10,62,528/- was made to the respondent on 19.06.2018. Complainant was surprised to know that backdated allotment letters were issued to him i.e., on 30.04.2018. Total 6 units bearing nos. P-572, P-573, P-574, P-575, P-576 and P-577 measuring total area of 3200 sq. ft. were allotted. In terms and conditions of allotment letters, it was assured that return of ₹75.83/- per sq. ft. per month on super area of said unit till completion of the building will be paid and Post construction, a return @₹65/- per sq. ft. per month up to 3 years from the date of completion of construction or the unit is put on lease, whichever is later will be paid to the complainant. It is pertinent to mention here that at the time of allotment, few cheques handed over to the complainant, were the only payment which was made to the complainant by the respondent.



No further payments have been received. Even after repeated requests by the complainant, respondent has failed to execute builder buyer agreement till date. That, respondent via email dated 09.11.2018 and 30.11.2018, informed the complainant that due to change in legal framework governing real estate investment i.e., by introduction of RERA Act 2016 and amendments in SEBI Act, respondent should not be selling any properties with commitment of assured returns and all the properties would be sold on 'down payment basis', 'possession linked basis' and 'construction linked basis'. Since the respondent did not pay assured returns, complainant demanded his money back i.e., ₹3,10,62,528/- along with interest and amount of ₹33,38,128/- as TDS, however, the respondent did not pay any heed.

4. That, further, an offer was made to the complainant to shift the investment to another project of the respondent and it was again assured that quarterly assured returns will be paid as the new project is registered project with SEBI. On 20.11.2019, it was told to the complainant that the only way to save her money would be transfer to the alternate project. Therefore, respondent transferred funds from "Vatika One India Next" to "Vatika Mindscapes" and ₹10,00,000/- more was invested by the complainant. Total amount paid by the complainant becomes ₹3,20,62,528/-. After that reallootment was made to complainant and five units bearing nos.COM-007-TOWER-D-9-926, COM-007-TOWER-D-9-927, COM-007-TOWER-D-9-928, COM-007-TOWER-D-9-929,



COM-007-TOWER-D-9-930 in the project namely, Vatika Mindscapes were allotted.

An amount of ₹26,25,042/- has been paid till date as rent for December 2019, January-March 2020. After that respondent stopped making payments of assured return, complainant again requested for refund of investment made by her as this was her only source of income but the respondent did not make any payment of assured return and not refunded the paid amount. The project of the respondent is still not complete. In fact, it is far from completion and there is no sign of its completion in the foreseeable future and therefore, complainant has filed the present complaint.

C. RELIEF SOUGHT:

5. The complainant in her complaint has sought following reliefs:
- i. To direct the respondent to refund of the paid amount of ₹3,20,62,528/- inclusive of GST paid i.e., ₹33,38,128/- along with interest @24% per annum from the date of investment made by the him;
 - ii. To direct the respondent to make payment of assured return @₹68/- per sq. ft. per month for the entire period from 29.05.2018 i.e., date from which investment was made;



- iii. To direct the respondent to pay compensation of ₹5,00,000/- on account of causing mental agony, harassment to the complainant;
- iv. To direct the respondent to refund of legal cost of ₹50,000/- incurred by the complainant;
- v. Any other relief which is deemed fit by this Hon'ble Authority.

D. REPLY:

6. Respondent in reply submitted that as far as project namely, "Vatika Mindscape" is concerned, it consists of four towers i.e., Tower A, B, C and D. Occupation certificate has already been received for Towers A, B and D and these four towers are fully operational. Respondent company has obtained registration certificate vide memo no. HRERA-313/2017/1082 bearing registration no.196 of 2017 dated 15.09.2017 which was valid till 14.09.2022. Due to covid pandemic, a force majeure situation, last date of completion of project was extended. Respondent alleges that complainant had approached the respondent as an investor looking for certain investment opportunities. Complainant being an investor purchased six units in the project and, the agreement for commercial space/unit contained a lease clause which empowers the developer to put unit of the complainant along with other commercial space on lease. It does not have a clause for offering possession. Since complainant was a speculative buyer, who invested in the project for only monetary gains, and real estate market is showing



down trend, the complainant could not take advantage of such down conditions by way of this Act.

7. Respondent further challenges that present complaint has been filed before a wrong forum. Complainant had invested money in an assured return scheme of the respondent company. Authority has no jurisdiction to try and decide instant complaint. It is pertinent to apprise the Authority that the developmental work of the said project was slightly delayed due to the reasons beyond the control of the respondent. It is a matter of fact that the respondent had to undergo huge obstacle due to adverse effect of demonetisation and implementation of GST. Despite, after such obstacles on the construction activity in the real estate sector and before normalcy could resume, the entire nation was hit by Covid-19 pandemic. Further, respondent cannot pay assured returns to complainant due to prevailing laws. Respondent argued that on 21.02.2019, Central Government issued an ordinance "Banning of Unregulated Deposit 2019" ordinance, by virtue of which payment of assured returns became wholly illegal. Said ordinance was converted into an Act named "Banning of Unregulated Deposit Scheme Act, 2019" (BUDS Act in brief) on 31.07.2019. Respondent argue that on account of enactment of BUDS Act, they are prohibited from granting assured returns to complainant. Respondent has further taken a plea that complainant is a speculative buyer, who invested in the project of the respondent company for monetary returns and since the real estate market is showing



downward tendency, complainant cannot take it as a weapon by way of taking undue advantage of provisions of RERA Act 2016.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

8. Learned counsel for complainant argued that complainant firstly applied for allotment of six units in the project namely, "Vatika One India Next, Wazerabad, Gurugram" (hereinafter referred as first project). Respondent has failed to complete its first project and illegally transferred the allotment from first project to another project i.e., Vatika Mindscapes, Faridabad. Subsequently, complainant was allotted five units in the second project on payment of enhanced consideration. Respondent has not executed builder buyer agreement till date and as per terms of the allotment letter, respondent had paid assured returns as rent for December 2019, January 2020 and February 2020. After that respondent stopped making payments of assured returns. Learned counsel for complainant argued that since there is no agreement executed between the parties, the allotment letter is also silent in regard to date of delivery of possession and respondent has failed to comply with provisions of RERA Act, and complainant is left with no other option but to file present complaint. She has decided to withdraw from respondent's project, as the project of the respondent is still not complete. In fact, it is far from completion and there is no sign of its completion in the foreseeable future. Learned counsel for complainant argued that he has clear instructions from his client to only press for refund of the amount paid by

her along with permissible interest and payment of assured return @₹68/- per sq. ft. per month for the entire period on the ground that respondent has inordinately delayed completion of project.

F. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT:

9. It has been argued by learned counsel for respondent that the complainant was not ready and willing to perform his obligation and the complainant herself has never come forward to execute the necessary documents. Learned counsel for respondent argued that complainant is an investor. As per terms and conditions of allotment letter, a leasing arrangement was agreed between the parties. This is in the form of investment/lease agreement. Respondent submitted that complainant had invested her money in an assured return scheme of the respondent company and in terms of allotment, respondent had already made payments of assured return till February 2020. Respondent argue that on 21.02.2019, Central Government issued an ordinance "Banning of Unregulated Deposit 2019" ordinance, by virtue of which payment of assured returns became wholly illegal. Said ordinance was converted into an Act named "Banning of Unregulated Deposit Scheme Act, 2019" (BUDS Act in brief) on 31.07.2019. Respondent argue that on account of enactment of BUDS Act, they are prohibited from granting assured returns to complainant. Respondent cannot pay assured returns to complainant due to prevailing laws. The conditions precedent for exercising jurisdiction of this Authority on the subject are not fulfilled, therefore, Authority is precluded from proceedings ahead with the



matter. The question of assured returns is squarely covered by the BUDS Act. On account of provisions of the said Act, the jurisdiction will be of any other appropriate forum but not of this Authority. Further, due to covid pandemic and force majeure situation, last date of completion of project was extended.

10. Respondent has further taken a plea that complainant is speculative buyer, who invested in the project of the respondent company for monetary returns and since the real estate market is showing downward tendency, complainant cannot take it as a weapon by way of taking undue advantage of provisions of RERA Act 2016.

G. ISSUES FOR ADJUDICATION:

- i. Whether complainant is entitled to refund of the deposited amount along with interest in terms of Section 18 of Act of 2016?
- ii. Whether complainant is entitled to assured returns?

H. OBSERVATIONS OF THE AUTHORITY:

11. Upon consideration of facts and submissions made by parties, it is observed by the Authority that the complainant, who is an aggrieved person, has filed a complaint under section 31 of the RERA Act, 2016 against the promoter Vatika Limited for non-fulfilment of his obligation under the provisions of the RERA Act, 2016 and Rules or Regulations made thereunder. It is observed that the complainant has filed the captioned complaint for seeking relief of refund of the amounts paid towards allotment of five units in the project 'Vatika Mindscapes' located at Faridabad. The respondent promoter in his reply has

raised an objection that the complaint is not maintainable in the present form and cannot be entertained by the Authority as only a single complaint has been filed for seeking relief with respect to multiple (five) units, whereas the complainant is required to file separate complaints for seeking relief against each unit and therefore, the instant complaint is liable to be dismissed for misjoinder of multiple and distinct cause of actions. In this regard, it is pertinent to state that there is no such provision in the RERA Act, 2016 or the Rules/ Regulation, made thereunder that entails filing of different complaint for different units allotted to the same allottee in the same project and that too the adjoining units which are not demarcated/divided by any structures or walls and forms part of a virtual space in the same project. Therefore, the complaint is maintainable and the Authority is well within the jurisdiction to adjudicate the same.

12. Further, the respondent in its reply had contended that the complainant is a "speculative buyer" who has invested in the project for monetary returns and taking undue advantage of RERA Act, 2016 as a weapon during the present down side conditions in the real estate market and therefore she is not entitled to the protection of the Act of 2016. In this regard, Authority observes that "any aggrieved person" can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainant is an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter M/s Vatika Ltd. for violation/contravention of the provisions of the RERA Act,

2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016,

reproduced below:-

Section 2(d) of the RERA Act:

(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;

13. In view of the above-mentioned definition of "allottee" as well as upon careful perusal of allotment letters dated 30.04.2018 issued at the time of original allotment in the project "Vatika One India Next", the statement of accounts dated 20.11.2019 issued for present units in the project "Vatika Mindscapes", it is clear that complainant is an "allottee" as five subject units bearing nos.COM-007-TOWER-D-9-926, COM-007-TOWER-D-9-927, COM-007-TOWER-D-9-928, COM-007-TOWER-D-9-929, COM-007-TOWER-D-9-930 in the real estate project "Vatika Mindscapes", Sector-27, Faridabad were allotted to her by the respondent promoter on payment of ₹3,20,62,528/-(as mentioned in the complaint). The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an



allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

14. On perusal of record, it is observed that the complainant, who is a widow, invested an amount of ₹3,10,67,528/- for allotment of six commercial units in the project namely, "Vatika One India Next, Wazerabad, Gurugram" (hereinafter referred as first project) for earning assured income on her investment. Accordingly, the respondent vide six allotment letters, all dated 30.04.2018 allotted six units vide unit nos. P-572 admeasuring 700 sq. ft., P-573, 574, 575, 576, 577, admeasuring 500 sq. ft. each in the project 'Vatika One India Next', Wazerabad, Gurugram. Vide clause (1) of the allotment letters, the respondent had promised to pay assured return of ₹75.83/- per sq. ft. per month on super area of the unit till completion of the construction of building, however, the allotment letters are silent with respect to the date of completion of the construction of the building. Further, no builder buyer agreement was executed between the parties even after acceptance of total sales consideration.



15. It is observed that subsequent to the allotment letters, respondent promoter vide email dated 30.11.2018 had informed the complainant that "Vatika will not be selling any properties with commitment of assured returns or that pays return of any kind and hereafter all properties will be sold on a down payment basis, possession linked basis or construction linked basis." The email also mentioned that the construction of the project will commence in April 2019 and the project is likely to take 24-30 months. Vide this email, the respondent *promoter offered the complainant to alternatively choose to shift to a project of their in the vicinity, on the terms and conditions as applicable to that particular project.* Per contra, the complainant in her complaint has averred that on being informed that the respondent would not be making payment of assured returns, she vide an email, (at page-57 of the complaint) demanded refund of the entire amount invested by her along with interest and also GST paid by her. Here, it is noted that the email relied upon the by the complainant is undated and without mention of email address of the recipient (to whomsoever it was sent), therefore, authenticity of the email cannot be ascertained.

16. It is further observed that the respondent promoter shifted the units of the complainant to another real estate project being developed by it in Faridabad and reallocated five units vide numbers COM-007-TOWER-D-9-926, COM-007-TOWER-D-9-927, COM-007-TOWER-D-9-928, COM-007-TOWER-D-9-929, COM-007-TOWER-D-9-930 in the real estate project "Vatika Mindscapes", Sector-27, Faridabad admeasuring 2700 sq. ft. by issuing

statement of accounts all dated 20.11.2019 for all five units. In this regard, the complainant in her complaint has stated that the respondent has unilaterally decided to shift the investment made by the complainant to a project called "Vatika Mindscapes" and made reallocations of five units. Subsequent thereupon, the respondent further communicated to the complainant to get the allotment of the units in the other project i.e., Vatika Mindscapes by paying extra amount of ₹10,00,000/- for the new units and consequent thereupon the units were allotted to her in this second project along with an assurance of payment of monthly rental @ 68/- per sq. ft. per month. Here, Authority observes that the respondent has not placed on record any document to show that consent was ever sought from the complainant to reallocate units to her in another project being developed by the respondent. It is but natural that the complainant, who is a widow lady and invested a huge amount of ₹3,10,67,528/- for earning a monthly income would have not been left with any other option but to accept the reallocation of units to the other project and would have been forced to make payment of ₹10,00,000/- in addition to the earlier made payment to secure her investment. It appears that the respondent promoter who had received an amount of ₹3,10,67,528/- was in a dominant position to dictate/pressurise the lady to accept whatever was being offered to her in lieu of her investment. Nevertheless, no document/receipt /statement of account depicting this additional payment of ₹10,00,000/- has been placed on record/or produced by the complainant. Neither has the complainant

placed on record any proof to show that this payment of ₹10,00,000/- was made by way of any adjustments of amounts payable to her by the respondent.

17. Further, all the statement of accounts dated 20.11.2019 issued by the respondent promoter leaves no room for any doubt that 100% payment was received against allotment of five units, cumulative admeasuring 2700 sq. ft., however, despite receiving the same, the respondent did not issue any fresh allotment letter or execute any builder-buyer agreement, whereas the email dated 30.11.2018 clearly provided that in case the allottee choose/opt to shift units in another project of the respondent the same will be "on terms and conditions as applicable to that project". Resultantly, the complaint till date is clueless of the terms and conditions with respect to the present allotments. The conduct of the respondent shows that it had failed to discharge his obligations as a promoter and is in clear violation of section 11(4) read with section 13 of the RERA Act, 2016.

18. The complainant in her complaint has alleged that on repeated occasions the respondent has failed to deliver the possession of the units within a reasonable time even after reallocation and is, therefore, liable to refund the amount paid as sale consideration for five units. Further, complainant in her complaint has stated that though the respondent unilaterally reallocated the units in the project "Vatika Mindscapes", however, she was assured that the project is completed one and has already been leased out. The respondent has rebutted the allegations made by the complainant and stated that the due date for completion of the project as declared under section 4(2)(I)(C) at the time of grant of

registration by the Authority is 14.09.2022 and it is optimist that very soon it shall be able to complete the project. The respondent in its reply has also stated that the project Vatika Mindscapes consists of total four towers i.e. Tower A, B, C and D and out of the four towers, the company has already received the occupation certificate for tower A, B and D (Tower in which units of the complainant are situated) and these towers are fully operational. However, the Authority observes that the respondent has not placed on record any document/ copy of occupation certificate to corroborate its statement. Since the project is registered with HRERA, Panchkula vide registration no.196 of 2017 dated 15.09.2017, the fact with respect to occupation certificate of the towers A, B and D was checked with the project branch of the Authority and it was informed by the project branch that as per the record available occupation certificate vide dated 14.10.2016 had been received by the respondent for tower A and B only. The project branch of the Authority also informed that the website of Department of Town and Country Planning was also referred, however no occupation certificate issued to Tower D is uploaded on the website.

19. As observed above, no builder buyer agreement has been executed till date i.e., even after a lapse of more than three years therefore exact date for handing over of possession/conveyance deed cannot be ascertained. In the present case the plight of the complainant is that she neither received the fruits of her huge investment, nor, in the absence of any builder buyer agreement, she received possession/title in her favour even after more than four years of making payments.

However, as per the voluntary declaration made by the respondent at the time of seeking registration, the project was to be completed by 14.09.2022. Therefore, even if the date declared by the respondent promoter is considered, respondent promoter failed to offer possession of the unit to the complainant till date and apparently there is a delay of five months and twenty-three days in handing over of possession on the date of decision. This is a clear violation of the provisions of section 11(4)(a) read with section 18(1) of the RERA Act, 2016.

20. As stated in the complaint, complainant in the present case had invested a huge amount of ₹3,10,67,528/- in commercial units to earn monthly returns, however, to her dismay she has neither received possession of her units nor did she received monthly returns as promised by the respondent promoter. The respondent's reply is silent to the effect that by when will it offer possession of the units to the complainant. Even if it is considered that no date of handing over of possession was provided in the document signed between the parties, the respondent promoter is obligated to deliver possession of the unit as per the timeline declared at the time of seeking registration of the project or within a reasonable period of three years from when the payments were made, whichever is earlier, however, in the present case, the respondent promoter has failed in its obligation to deliver the units by the date as was voluntarily declared by it or three years from the date of making payments i.e on 30.04.2018 and therefore, it is established that there is clear violation of section 11(4)(a) which provides that

the promoter is responsible for all obligations/responsibilities under the Act including timely delivery of the units.

21. Since the promoter has failed in its obligation to hand over the possession and other benefits annexed thereto as promised, the allottee cannot be made to wait endlessly and by virtue of Section 18 of the RERA Act, 2016, allottee is within her right to ask for refund when unit is not ready and no timeline is committed by the respondent for handing over of possession. In this regard the Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and Others" has observed that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done on agreed date. Relevant Para 25 of ibid judgement is reproduced below:

"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.”

Thus, Authority deems it a fit case for allowing relief of refund along with interest in favour of complainant.

22. The promoter is responsible for all obligations, responsibilities and function under the provisions of the Act 2016 or the Rules and the Regulations made thereunder or to the allottee as per agreement for sale under section 11 (4)(a) of the RERA Act 2016. The promoter has failed to complete or unable to hand over the possession of the unit on the date as voluntarily declared by it under section 4 (2)(I)(D) of the RERA Act 2016. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the units with interest at such rate as may be prescribed.

23. The complainant is seeking refund of the amount paid along with interest @ 24% per annum from the date of investment made by her. However, section 18 of the RERA Act 2016 provides that interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (1) of Section 18 or the promoter fails to give possession

of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:

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 Haryana Real Estate (Regulation and Development) Rules 2017 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 interest, it will ensure uniform practice in all cases.

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. 09.03.2023 is 10.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%. Hence, Authority directs respondent to return the amounts along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e., at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.70% (8.70% + 2.00%) from the date amounts were paid till the actual realization of the amount. For calculation of interest, dates of making payments are pivotal. In this regard, it is

stated that since the complainant has placed on record receipt for the amount of ₹3,07,03,943.17/- dated 13.06.2018, interest for this amount is calculated from 13.06.2018 till the date of order i.e., 09.03.2023. For the balance amount of ₹3,63,584.83/-, no receipt has been placed on record. However, statement of accounts dated 20.11.2019 issued by the respondent shows that total amount of ₹3,10,67,528/- was paid against the booking of 5 units in the project 'Vatika Mindscape', therefore, interest on the balance amount of ₹3,63,584.83/- is calculated from the date of issuance of statement of account by the respondent i.e., 20.11.2019 till 09.03.2023. Complainant in her complaint has stated to have paid ₹10,00,000/- over and above ₹3,10,67,528/- at the time of reallocation of units to the project, however the complainant has not placed on record any receipts or statement of accounts with respect to this amount. Therefore, payment of this amount could not be counted towards the paid amount to the respondent.

Authority has got calculated the total amount along with interest at the rate of 10.70% till the date of this order as per detail given in the table below:

S.no.	Principal amount	Date of payment	Interest till 09.03.2023	Total payable amount
1.	₹3,07,03,943.17/-	13.06.2018 (as per receipt submitted by complainant)	₹1,55,80,527/-	₹4,62,84,470.17/-
2.	₹3,63,584.83/-	20.11.2019 (as per statement of account issued by respondent)	₹1,28,542/-	₹4,92,126.83/-
Total	₹3,10,67,528/-		₹1,57,09,069/-	₹4,67,76,597/-

25. With respect to relief of payment of assured returns, the Authority is of the view that where an allottee does not want to continue with the project and wishes to withdraw from the same on account of non-delivery of possession by the due date, shall be entitled for the relief of refund of amounts along with interest strictly in terms of Section 18(1), after deduction of payment of assured returns already received. Since, neither of the parties have placed on record documents and statement of accounts to show the entire assured returns amount availed by the complainant/allottee from the respondent promoter, therefore, only refundable amounts could be calculated by the account branch of the Authority.

26. Regarding relief of compensation sought by the complainant under the heads: mental agony, harassment and litigation expenses, it is made clear that nothing stated in this order shall debar the complainant from filing a complaint before the Adjudicating Officer to claim such compensations as she may be entitled under the law.

I. DIRECTIONS OF THE AUTHORITY:

27. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Since the complainant is withdrawing from the project, respondent is directed to refund the amounts as mentioned in the




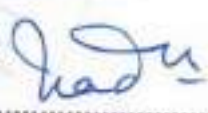
above table to the complainant. The amount paid on account of assured return, if any, may be deducted/adjusted from the refundable amounts.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

(iii) The respondent is further directed not to create any third-party rights against the subject units till full realization of paid amount along with interest thereon to the complainant.

28. The complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading order on the website of the Authority.


.....
DR. GEETA RATHIE SINGH
(MEMBER)


.....
NADIM AKHTAR
(MEMBER)