

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

Complaint no. :	1002 of 2021
Date of filing complaint:	18.02.2021
First date of hearing:	25.03.2021
Date of decision :	21.03.2023

Manohar Khera R/o: E A-82, Inder Puri, New Delhi-110012.	Complainant
Versus	
M/s Vatika Limited address: Vatika Triangle, 4th floor, Sushant Lok, Phase-i, Block-A, M. G. Road, Gurugram-122 002.	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri. Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Amberish Kharbanda	Complainant
Sh. Dhurv 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:

S.no	Heads	Information
1.	Project name and location	"Vatika India Next, Sector 81, 82A, 83, 84 and 85 Gurugram.
2.	Project area	393.358 acres
3.	Nature of the project	Residential plotted colony
4.	DTCP License	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 0.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2017
5.	RERA Registered/ not registered	Not registered
6.	Plot no.	5, block E2 (Page 16 of complaint)
7.	Unit area admeasuring	1725 sq.yds.
8.	Date of allotment letter	N/A
9.	Date of builder buyer agreement	30.04.2014 (Page 13 of complaint)
10.	Possession clause	15. Schedule for possession of the said residential plot

		<i>The Developer based on its present plans and estimates and subject to all just exceptions, force majeure and delays due to reasons beyond the control of the Company contemplates to complete development of the said residential plot within a period of 4 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 clauses herein..... Emphasis supplied.</i>
11.	Due date of possession	30.04.2018 (due date of possession calculated from the date of execution of agreement)
12.	Total sale consideration	Rs. 1,46,11,246/- (as per SOA dated 24.05.2019, annexure B, page 46 of complaint)
13.	Amount paid by the complainant	Rs. 53,55,650/- (as per SOA dated 24.05.2019, annexure B, page 46 of complaint)
14.	Occupation certificate	Not obtained as confirmed by the counsel of the respondent during proceedings.
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - a. That the complainant in the year 2014 was looking to purchase a residential property for the residential purposes, and was approached by the respondent for purchasing a plot in the residential plotted colony being developed by it named "Vatika India Next" located at Sector 82, Gurugram. The respondent



presented a very rosy picture of the project and assured that the project was going to be one of its kind with world class facilities, luxury and comfort. Believing on its representations, the complainant decided to book a plot in the project and made an advanced payment of Rs. 3,00,000/-. Thereafter a buyer's agreement was executed between the parties on 30.04.2014 whereby plot bearing no. 5, bloc E-2 admeasuring 1725 sq.ft. was allotted to the complainant.

- b. That the agreement contained one-sided, unreasonable and arbitrary clauses, But the complainant could not negotiate on any of the clauses, as the respondent had already collected substantial amount of money towards the consideration of the unit by then, and any disagreement would have led to cancellation of the unit and forfeiture of the earnest money i.e., 10% of the total consideration and brokerage. Further, as per clause 15 of the agreement, the possession of the unit was promised to be offered within a period 4 years from the date of execution of the agreement i.e, by 30.04.2018. However, despite the lapse of almost 3 years, the project is nowhere near completion. It utterly failed to provide possession of the unit within the promised time period and the possibility of offer of possession in the near future seems impossible.
- c. That the total sale consideration of the plot is Rs. 1,46,11,246/- and out of which the respondent has collected a substantial amount of Rs. 53,55,650/- The complainant has timely paid all the demands raised by it hoping that the project would be



- completed within the promised time period but the respondent has only made false promises to enrich itself with huge amount.
- d. That the respondent has filed form A-H with Authority, Gurugram on 23.05.2019 and registered the project vide RERA-GRG-PROJ-217-2019 wherein it has stated that the tentative date of completion of the project is 31.03.2024 i.e., a delay of almost 6 years from the promised date of delivery of possession.
- e. That the complainant is bonafide buyer and made the booking on the representation and assurance given by the respondent of providing timely possession of the unit. The possession of the unit was promised to be offered by 30.04.2018. Despite an inordinate delay of almost 3 years from the promised date of possession, the respondent has utterly failed to complete the project in all respects and offer the unit for possession. Further till date, the project is only 59% complete and as per its own admission, the possession would be offered by March 2024.
- f. It is submitted that in addition to grave financial loss, the complainants also had to waste valuable time in visiting the office of the respondent and making other representations to it, which have clearly been of no avail. While at the time of selling the unit, it gave a rosy picture of the project, the complainant has only received false promises and now feel cheated by it. For the past 6 years, the complainant has been running from pillar to post, seeking accountability of his money and dream home which has now been further delayed to the year 2022. He has suffered grave financial loss, mental pressure, harassment and



agony at the hands of the respondent and seek compensation with interest, penalties and damages. It is respectfully submitted that innocent consumers cannot be left at the behest of unscrupulous organization such as the respondent.

C. Relief sought by the complainant:

4. The complainant sought following relief(s):

- i. Direct the respondent to refund the entire amount paid by the complainant.

D. Reply by respondent:

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 made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts.
- (b) That the reliefs sought by the complainant appears 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.
- (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) That it has been categorically agreed between the parties that subject to the complainant has complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions, formalities, documentation etc., and subject to force majeure conditions, the developer contemplates to complete construction of the said plot within 4 years from the date of execution of the agreement unless there shall be delay due to failure of allottee to pay in time the price of the said plot.
- (e) 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 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 it 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 landowners.
 - 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 labour 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 labour 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. Manufacturers of construction material were prevented from making use of close brick kilns, hot mix plants and stone crushers.
- f. Disruptions caused by unusually heavy rains in Gurgaon every year.
- g. Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.
- h. 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.
- i. Delayed re-routing by DHBVN of a 66KVA high-tension electricity line passing over the project.
- j. 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.
- k. 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 was 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
- (f) 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.

- (g) The Government of India imposed lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic. This 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.
- (h) Due to the above said reasons, the unit of the complainant could not be completed and the same is already been communicated to the complainant vide email dated 21.10.2020. It has already been provided various alternate options but till date complainant has not agreed for any alternate unit.
- (i) That the complainant has failed to make payment 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. He deliberately concealed



the fact that on 20.03.2014, He wrote a letter to the respondent that due to financial constraints he is unable to pay installments on time and requested for extension. He cannot expect timely delivery of possession when they themselves are at fault.

- (j) That the complainant is real estate investor who have 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 their calculations and planning have gone wrong on account of severe slump in the real estate market and the complainants are now raising several untenable pleas on highly flimsy and baseless grounds. The complainants 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 present complainants.
- (k) 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 important to understand that one particular buyer who makes payments 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. The slow pace of work affects the interest of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. The irregular and insufficient payment by the prospective buyers such as the complainants 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.

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.

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 complainant 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. Findings 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 30.04.2014 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be



30.04.2018. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than 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 wrongs.

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 IAs 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 30.04.2018 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.

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

15. 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 consumer 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 consumer 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 complainant is buyer and they



have paid total price of Rs. 53,55,650/-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

16. 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 complainant, 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 allottee being investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant:



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

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

"Section 18: - Return of amount and compensation

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

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

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

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

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

(Emphasis supplied)

18. Clause 15 of the buyer's agreement dated 30.04.2014 provides for the handing over of possession and is reproduced below for the reference:

"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 4 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 Clauses herein..... Emphasis supplied."

19. **Entitlement of the complainant for refund:** The respondent has proposed to hand over the possession of the apartment within a period of 4 years from date of execution of builder buyer's agreement. The buyer's agreement was executed *inter se* parties on 30.04.2014. Therefore, the due date of possession comes out to be 30.04.2018.
20. The complainant booked a unit in the above said project for a total sale consideration of Rs. 1,46,11,26/-. A buyer's agreement was executed between the parties on 30.04.2014 and a plot bearing no. 5, block E2 allotted to him. As per clause 15 of the said agreement, the unit was to be handed over within 4 years from the signing of the agreement i.e., by 30.04.2018.
21. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and is 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.
22. The due date of possession as per agreement for sale as mentioned in the table above is 30.04.2018 and there is delay of 2 years 9 months 19 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 he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019***, decided on 11.01.2021.

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

23. 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 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."

24. 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 he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
25. This is without prejudice to any other remedy available to the allottee including compensation for which he 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.
26. The authority hereby directs the promoter to return to the complainant the amount received by him i.e., Rs. 53,55,650/- with interest at the rate of 10.70% (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*.

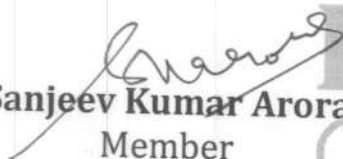
H. Directions of the Authority:

27. 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 to the complainant the entire amount of Rs.53,55,650/- paid by him along with prescribed rate of interest @ 10.70% 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.

28. Complaint stands disposed of.

29. File be consigned to the registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.03.2023