

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

Date of Decision 13.04.2023

NAME OF THE BUILDER		VATIKA LIMITED			
PROJECT NAME		Tranquil Heights			
SR. NO.	COMPLAINT Nos.	Complainant		Respondents	Appearance
1.	CR/3165/2021	Parul Upadhyay	V/s	Vatika limited	C: Saurabh Gauba R: Harshit Batra
2.	CR/3194/2021	Anand Singh Bisht	V/s	Vatika limited	C: K.K. Kohli R: Harshit Batra
3.	CR/1677/2021	Abhinav Jain & Anr.	V/s	Vatika Limited	C: Paramjeet Bhati R: Harshit Batra

CORAM:

Shri Vijay Kumar Goyal

Member

ORDER

1. This order shall dispose of all the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between the parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely "Tranquil Heights" (Group Housing Colony), Sector 82A,



Gurugram (Hr.) being developed by the same respondent-promoter i.e., Vatika Ltd. The terms and conditions of the builder buyer's agreements, fulcrum of the issues involved in these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund with interest, & litigation expenses.

3. The details of the complaints, reply to status, unit no., date of allotment, date of agreement, total sale consideration, amount paid up & relief sought are given in the table below:

Vatika Limited							
Project Name		Tranquil Heights (Group Housing Colony)					
Sr. No	Complaint No./Title/Date of filing	Reply status	Unit no.	Allotment letter	Date of execution of builder buyer's agreement Due Date	Total sale consideration Amount Paid up	Relief sought
1.	CR/3165/2021 Parul Upadhyay Vs. Vatika Limited & Anr.	Received	1002, 10 th floor, building A (Page 59 of complaint)	12.09.2014	10.07.2015 [page no.22 of complaint] 10.07.2019	TC- Rs.1,19,57,044 /- AP- Rs. 49,35,644/-	Refund.
2.	CR/3194/2021 Anand Singh Bisht Vs. Vatika Limited	Received	804, tower A (page 64 of complaint)	12.09.2014	06.10.2015 (page 66 of complaint) 06.10.2019	TC- Rs. 1,13,80,110/- AP- Rs. 66,13,521/-	Refund
3.	CR/1677/2021 Abhinav Jain & Anr. Vs. Vatika Limited	Received	1203, tower E (page 36 of complaint)	NA	01.04.2016 (page 66 of complaint) 01.04.2020	TC- Rs. 1,53,96,379/- AP- Rs. 41,64,878/-	Refund

4. The above-mentioned complaints were filed under section 31 of the Act read with rule 28 of the rules by the complainants against the promoter M/s Vatika Limited on account of violation of the builder buyer's

agreement executed between the parties *inter se* in respect of said units for not handing over the possession by the due date which is an obligation on the part of the promoter under section 11(4)(a) of the Act *ibid* apart from contractual obligations. In some of the complaints, issues other than refund or independent issues have been raised and consequential reliefs have been sought.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant/allottees are also similar. However, out of the above-mentioned cases, the particulars of lead cases bearing ***Parul Upadhyay versus Vatika Ltd.*** are being taken into consideration for determining the rights of the allottee(s).

A. Unit and project related details

7. 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:

CR/3165/2022, titled as Parul Upadhyay versus Vatika Ltd.

S. No.	Heads	Description
1.	Name and location of the project	"Tranquil Heights Ph.-I" at sector 82A, Gurgaon, Haryana
2.	Nature of the project	Group housing
3.	Project area	11.218 acres
4.	DTCP license no.	22 of 2011 dated 24.03.2011 valid upto 23.03.2019



5.	Name of licensee	M/s Stanway Developers Pvt. Limited & 3 others.
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 area admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Allotment letter	12.09.2014 (annexure C, page 50 of complaint)
8.	Unit no.	1002, tower A (annexure C, page 50 of complaint)
10.	Unit area admeasuring	1645 sq.ft. (annexure C, page 50 of complaint)
11.	Date of builder buyer agreement	10.07.2015 (page 56 of complaint)
12.	Due date of possession	10.07.2019
13.	Possession clause	<p>13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT</p> <p><i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses 14 to 17 & 37 or due to failure of Allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure -I or as per the demands raised by the developer from time to time oy any failure on the part of the Allottee(s) to abide by any of the terms or conditions off this agreement.</i></p> <p>Emphasis supplied</p>
14.	Total sale consideration	Rs. 1,19,57,044/-

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		as admitted by the respondent (page 2 of reply)
15.	Amount paid by the complainant	Rs. 49,35,644/- as admitted by the respondent (page 2 of reply)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

The complainant submitted as under: -

8. That the complainant has booked a unit in the respondent project namely "Tranquil Heights". On 12.09.2014 an allotment letter was issued in favour of complainant, wherein a unit no. 1002, tower A, admeasuring 1645 sq.ft. A builder buyer agreement was executed on 10.07.2015, wherein the total sale price was mentioned as Rs. 1,19,57,044/- against which they paid an amount of Rs. 49,35,644/-.
9. Pursuant to the terms agreed upon between the respondent and the complainants in the buyer's agreement, in accordance with clause 13 of the buyer's agreement, the respondent was to provide possession of the unit to the complainants within forty-eight months, from the date of execution of the buyer's agreement i.e., by 10.07.2019. The respondent has abjectly failed to perform its part of the obligations as it has failed to complete the construction and hand over the possession of the unit to the complainants till date.
10. The complainants further bring to the notice of the Authority that clause 18 of the agreement, wherein in the event of abandonment of the project by the respondent a meagre compensation as fixed by the respondent to be paid by it is @12% per annum for the period the amounts paid by the complainant were lying with it, when in fact the



respondent has been charging enormous interest at the rate of 18% per annum on the delayed payments as stated in clause 7 of the agreement. It is submitted that the said clause is ex-facie one-sided, unfair, arbitrary and unreasonable.

11. The complainants submits that a bare reading of the clauses of buyer's agreement points to the mala fide of the respondent in never originally intending to hold good to the representations and promises made by it to the complainants at the time of booking with regards to the delivery of the possession of the unit. The buyer's agreement is so vaguely drafted wherein it seeks to accept absolutely no responsibility, liability or obligation whatsoever with regards to providing a timely delivery of the project.
12. The complainants, despite the issues as explained above, continued to make all the payments as demanded and prescribed by the respondent, honoring the promises made by them, and hoping that the respondent would hold good on its promises as well, especially with regards to timely possession of the unit.
13. The complainants showing faith in the bona fide of the respondent to deliver the unit and hoping to get the dream home they worked so hard for years and years to afford, continued to make payments as and when called by the respondent. It has abjectly failed to deliver the possession as promised within 48 months of the date of execution of the builder buyer agreement i.e., by 10.07.2019. It may not be out of place to mention herein that even after a lapse of 21 months from the original date of possession, the respondent has failed to issue any intimation for possession to the complainant. By this time, she had deposited with the

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respondent payments to the tune of Rs. 49,35,644/- as per the customer ledger provided by the respondent itself.

14. It is submitted that the complainants are entitled for delayed interest @ 18% per annum at the same rate as charged by the respondent for delayed payment. Aforementioned submission of the complainant is made in the light of the rationale laid down by Hon'ble Apex Court through a judgment in the case of ***Wg. Cdr. Arifur Rehman Khan & Aleya Sultana & ors. V DLF Southern Homes Pvt. Ltd & ors, Being Civil Appeal No. 6239 of 2019***, wherein Just. Dr. D.Y. Chandrachud held in his judgment that "If the delay on the part of the developer is gross in nature i.e., ranging between two to four years from the promised date of possession, then the meagre compensation provided in the ABA would not be sufficient recompense to the purchaser.
15. The complainants submit that the respondent is liable to pay to them an interest amount totaling to Rs. 54,84,745/- till date on account of the delay caused by the respondent in delivering the possession of the unit.
16. It is submitted that various calls were made by the complainants to the officials of the respondent and their customer relationship personnel's. However, they were shocked to see that there was no clear intimation regarding the delivery of possession. It is submitted that the work of construction at the site of the said project has been halted since 2017, which shows its malafide intention to not give possession of the said unit to the complainant and reap wrongful gain out of the payments made towards the purchase of the said unit by the complainant to it.
17. That the complainants are greatly aggrieved by this long delay caused by the respondent in delivering the unit, and seek the same quantum of interest from the respondent for the delay in delivering the possession



of the unit as it seeks from them for delay in making payments, i.e., @18% p.a. The complainants submit that the respondent is liable to pay to them an interest @ 18% from the date of payment of the booking amount i.e., 01.11.2013 till the date of making of refund. As such, it is liable to pay delayed interest @18 % on a sum of Rs. 49,35,644/- paid by the complainant towards the installments for purchase of the said unit.

18. That the present complaint has been made bona fide and in the interest of justice and the balance of convenience is also in the favour of the passing of orders as prayed for herein. Further, it is submitted that the complainant would suffer irreparable loss and injury if the reliefs as prayed for through the complaint are not granted by the Authority.

C. Relief sought by the complainant(s):

19. The complainant(s) has sought following relief(s):

- (i) Direct the respondent to refund the principal amount of the complainants alongwith interest @ 18% p.a

D. Reply by the respondent:

20. That even otherwise, the complainants have no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the contractual terms and conditions, as shall be evident from the submissions made in the following paragraphs of the present reply.

21. That the complainants have not approached the Authority with clean hands and has suppressed relevant facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with costs.

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22. That the complainants being interested in the real estate development of the respondent under the name and style of **“Tranquil Heights”**, situated at **Sector-82A, Gurugram**, Gurugram Haryana (**“Project”**) tentatively booked a unit in the project of the respondent on 01.11.2013, bearing no. 1002, 10th floor, tower A, having an area admeasuring 1645 Sq.ft.. The project is duly registered with Haryana RERA with registration no. 359 of 2017 dated 17.11.2017.
23. That the builder buyer agreement dated 10.07.2015 was executed between the parties for the unit bearing no. 1002, 10th floor admeasuring super area 1645 sq.ft. for a total sale consideration of Rs. 1,19,57,044/- against which the complainant paid an amount of Rs. 46,33,644/-. As per clause 13 of the agreement in the complaint, the due date for handing over of possession to the complainant was within 48 months from the date of execution of the buyer’s agreement. Accordingly, the handing over of possession was supposed to be delivered on or before 10.07.2019.
24. It is pertinent to bring into the knowledge of this authority that as per the agreement so signed and acknowledged by, the respondent provided and estimated time period of 48 months for completing of the construction for the project i.e., **“Tranquil Heights”**, and the same could not be proceeded further and was stopped in the mid-way due to various hindrances in construction of the project and which were unavoidable and purely beyond the control of it. Further, it is pertinent to mention that the project could not be completed and developed on time due to various hindrance such as government notifications from time to time force majeure conditions, breakdown of Covid-19 pandemic, laying of GAIL pipe line, acquisition of sector road land

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parcels in the township and other such reasons stated above and which miserably affected the construction and development of the above said project as per the proposed plans and layout plans, which were unavoidable and beyond the control of it.

25. That it is further submitted that the complainants themselves are at default and cannot benefit from their own wrongs. The complainant has caused delay in making the timely payments of the instalments as evident from the statement of accounts annexed herewith, thereby violating section 19(6) of the Act. It is pertinent to mention here that the one of the main factors that caused delay in the project of the respondent was delayed payments by the allottees like the present complainant. Each and every real estate project is subject to timely payments by the allottees and it is because of the allottees like the complainant, that the real estate projects get delayed. Despite facing grave force majeure events, it *bonafidely* tried to complete the construction of the project.
26. That without admitting or acknowledging in any manner the truth or legality of the allegations put forth by the complainants and without prejudice to any of the contentions of the respondent, it is submitted that only such allottees, who have complied with all the terms and conditions of the agreement including making timely payment of instalments can approach the Authority to claim any refund. However, it is evident from the statement of accounts so annexed that the present allottee complainant is a chronic defaulter and not a bonafide allottee, thus, his complaint is liable to be dismissed from the very outset.
27. That the instant complaint has been preferred on absolutely baseless, unfounded, and legally and factually unsustainable surmises which can

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never inspire the confidence of the Authority. The accusations levelled up by the complainants are completely void and baseless and devoid of merits. Thus, the instant complaint needs/deserves to be dismissed.

28. 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.

E. Jurisdiction of the authority

29. 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

30. 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, the authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

31. 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)(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

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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.

32. 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 and followed in ***M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

33. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of ***M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** and ***M/s Sana Realtors Private Limited & others V/s Union of India & others***

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(supra), the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

G. Findings on the relief sought by the complainant(s).

G.I Direct the respondent to refund the entire amount paid by the complainant.

34. The complainants booked a unit bearing no. 1002, tower A admeasuring 1645 sq. ft in the above-mentioned project of respondent and the same led to execution of buyers' agreement on 10.07.2015. They paid a sum of Rs. 49,35,644/- to the respondent against the total sale consideration of Rs. 1,19,57,044/- but due to misrepresentations w.r.t. the project they did not pay the remaining amount and are seeking refund of the paid-up amount besides interest from the respondent. Section 18(1) of the Act is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

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

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

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

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

(Emphasis supplied)

35. Clause 13 of the buyer's agreement dated 10.07.2015 provides for schedule for possession of unit in question and is reproduced below for the reference:

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13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT

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

36. **Entitlement of the complainants for refund:** The respondent has proposed to hand over the possession of the apartment within a period of 48 months from date of execution of builder buyer's agreement. The builder buyer's agreement was executed *inter se* parties on 10.07.2015, therefore, the due date of possession comes out to be 10.07.2019.
37. It is not disputed that the complainants are allottees of the respondent having been allotted a unit no. 1002, tower A admeasuring 1645 sq. ft. of the project known as Tranquil Heights, Phase I, Sector 82A, Gurugram for a total sale consideration of Rs. 1,91,57,044/-. The respondent in the reply has admitted that the project could not be delivered due to various reasons and thus the respondent has filed a proposal for de-registration of the project in question. As of now, there is no progress of project at the site. Thus, the complainants are right in withdrawing from the project and seeking refund of the paid-up amount besides interest as the promoter has failed to raise construction as per the schedule of construction despite demands being raised from them and the project being abandoned.
38. 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***

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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.”

39. 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 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 unit with interest at such rate as may be prescribed.

40. **Admissibility of refund along with prescribed rate of interest:** Section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by 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:

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"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."

41. 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.
42. 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., **13.04.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
43. The authority hereby directs the promoter to return the amount received by him 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 refund of the amount within the timelines provided in rule 16 of the rules *ibid*.

H. Directions of the authority

44. 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):

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- i. The respondent-builder is directed to refund the paid-up amount received from each of the allottee(s) deposited by them against their allotted units along with interest at the prescribed rate of 10.70% per annum from the date of each payment till the date of actual realization.
 - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow
45. These directions shall *mutatis mutandis* apply to cases mentioned in para 3 of this order.
 46. The complaint stand disposed of. True certified copies of this order be placed in the file of each case.
 47. Files be consigned to registry.

v.1 - 3
Vijay Kumar Goyal
Member
13.04.2023

Haryana Real Estate Regulatory Authority