BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**1426 of 2021**
Date of filing complaint:		**06.04.2021**
First date of hearing	**:**	**06.07.2021**
Order reserved on	**:**	**10.11.2022**
Order pronounced on	**:**	**24.01.2023**

Yogesh Kumar **R/o:** 90/22, Patel Marg, Jaipur Mansarovar, Rajasthan-302020	**Complainant**
Versus	
M/s Vatika Limited **address:** Vatika Triangle, 4th Floor, Sushant Lok, Phase-I, Block A, Mehrauli-Gurugram Road, Gurgaon-Haryana	**Respondent**

CORAM:	
Shri Vijay Kumar Goyal	**Member**
Shri Ashok Sangwan	**Member**
Shri Sanjeev Kumar Arora	**Member**
APPEARANCE:	
Complainant in person with Ms. Niharika Sharma proxy counsel	Complainant
Sh. Harshit Batra (Advocate)	Respondent

ORDER

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

obligations, responsibilities and functions under the provisions of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

	Heads	Information
1.	Project name and location	"Tranquil Heights Ph.-I" at Sector 82A, Gurgaon, Haryana.
2.	Project area	11.218 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP License	22 of 2011 dated 24.03.2011 valid upto 23.03.2019
5.	Name of the licensee	M/s Ganesh Buildtech Pvt. Ltd. & others, C/o Vatika Ltd
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 dated 17.12.2017 for area admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Unit no.	2904, 29th floor, building A (page 40 of complaint)
8.	Unit area admeasuring	1635 sq. ft. (super area)
9.	Date of builder buyer agreement	**20.08.2015** (annexure P-6, page 37 of complaint)
10.	Due date of possession	20.08.2019
11.	Possession clause	***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 oy any failure on the part of the Allottee(s) to abide by any of the terms or conditions off this agreement.* ***Emphasis supplied***
12.	Total sale consideration	Rs. 1,16,08,500/- [page 40 of complaint]
13.	Amount paid by the complainant	Rs. 48,61,380/- [as alleged by the complainant]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

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

a. The complainant has booked a unit in the respondent's project namely "Tranquil heights" on 04.11.2013. On 20.08.2015, a buyers' agreement was executed between the parties. An apartment bearing no. 2904, 29th floor, building A admeasuring 1635 sq.ft. allotted to him for a total sale consideration of Rs. 1,16,08,500/- against which the complainant paid an amount of Rs. 48,61,380/-.

b. That despite having raised money through booking and executing agreement to sell with the complainant and other home buyers, the respondent on 23.07.2015 filed a written

representation before DTCP, Haryana falsely stating that it had not realized any amount from the allottees till 31.03.2015. It actively concealed and misstated before DTCP, Haryana the fact that it had already booked various units with the allottees.

c. On 07.08.2015, the respondent once again filed a representation before DTCP, Haryana that the project had not yet been launched. A deliberate and careful attempt was made in pursuance to an illegal design to place false facts before DTCP, Haryana. Based upon false representations made by the it, DTCP, Haryana also filed its report regarding compliance of rule 24, 26, 27 and 28 of Haryana Development and Regulation of Urban Area Rules, 1976 whereby several incorrect findings, with respect to the accounts maintained and the total funds received from allottees, were made thereby rendering the report completely incorrect, illegal, null and void.

d. In fact, the respondent continued with its false representations by placing an undertaking on the record of DTCP, Haryana dated 24.08.2017, whereby it has stated that it has not received any amount from its customers till 31.03.2016. The said undertaking then states that by 31.03.2017, it had collected Rs.135,40,49,008/- from its customers, suggesting that Rs.135 crores were received within a year. However, no document supporting the same was ever submitted with DTCP, Haryana to the knowledge of the complainant.

e. The respondent has now also applied for a fresh registration under the scheme of Act, 2016 vide application no. RERA-GRG-506-2019 wherein it has filed a cash flow statement stating that

the money received up till date of 31.07.2017 is Rs. 47.61 crores.

f. It was in 2016 that the proposed building plan was submitted for approval by the respondent to DTCP, Haryana wherein a large portion of the land is mentioned as 'vacant area to be planned later'. As such, agreement to sell with the complainant was executed even before the proposed building plan was submitted for approval by the respondent thereby making the sale illegal.

g. On 16.02.2017, the respondent received its approval for the building plan and therefore it was from the date that the respondent ought to have marketed and sold the units in "Vatika Tranquil Heights" project.

h. The application for fresh registration under RERA filed by the respondent now mentions that the start date of the construction work is 18.02.2017 for the already booked apartments whereas the payment ledger would show and represented to the complainant that the same had begun way back in November 2015.

i. It is worthwhile to mention herein that as per the agreement to sell, the date for completion and handing over of the possession was promised as 48 months from execution of the agreement to sell expired in 2019 and whereas now the date for completion has been mentioned in the fresh RERA registration as 30.01.2022, without any intimation of the same to the complainant which is yet another deliberate attempt to mislead him.

j. At the time of booking or agreement to sell, the respondent never communicated to the complainant that the project is being developed in different phases and that the RERA registration for the said project is obtained solely for 5.59 acres of the land and not the entire land of 11.218 acres as was promised to the complainant to be developed and handed over to him.

k. Due to the enormous delay caused in the development of the said project, the complainant time and again approached the respondent to requested for copies of various approvals and registrations. However, to their utter dismay, there was no response provided to them and rather, he was asked to wait on one pretext or another and were made to run from pillar to post.

l. The complainant through the route of RTI came in possession of certain documents that have uncovered the grave illegality and criminality with which the said project is being marketed and developed. Due to the efforts put in by the complainant, it has come to light that the respondent has misrepresented before DTCP, Haryana while obtaining license no.22 of 2011 that it has the developmental rights over the entire 11.218 acres of land.

m. The complainant was also able to obtain two agreements by way of RTI query from DTCP, Haryana's Gurgaon office. The said agreements are LC-IV agreements, i.e. unregistered agreement by owner of land intending to set up a group housing colony dated 24.03.2011 and form LC-IV-A, unregistered bilateral agreement by owner of land intending to set up a group housing

colony dated 24.03.2011. However, it is interesting to note that both the agreements have been singularly signed by the director of the respondent Sh. Gautam Bhalla and the same is not accompanied by any power of attorney from any of the landowners.

n. It is submitted that the complainant has also filed a criminal complaint against the respondent and its directors under the offences of 406, 420, 463, 465, 467, 471 IPC before EOW, Gurugram.

C. Relief sought by the complainant:

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

i. Direct the respondent to refund to the complainant the principle amount deposited, i.e. Rs. 48,61,380/- along with interest at the rate of 10.75% p.a. from the date of the deposit.

D. Reply by respondent:

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

(a) That the present complainant is filed before the authority for refund of the amount paid by the complainant to the respondent along with interest on the amount to be refunded.

(b) That it is submitted that the complainant has taken a loan from SBI bank, and a tri-partite agreement dated 31.10.2016 was executed in this regard. It is a matter of fact and record that SBI bank has a lien over the unit and the complaint cannot be entertained without impleadment of SBI bank.

(c) That the allottee, Yogesh Kumar, being interested in the real estate development of the respondent under the name

"Tranquil Heights", situated at Sector-82A, Gurugram, Haryana tentatively booked a unit in the project of the respondent on 04.11.2013, bearing no. A-2904, tower A having a tentative area admeasuring 1635 Sq.ft. and subsequently the buyer's agreement was executed on 20.08.2015 between the parties. It submitted that the respondent, on 23.06.2015, sent two copies of the buyer's agreement to the complainant for execution. However, he delayed in the execution of the agreement.

(d) That according to clause 13 of the buyer's agreement, the delivery of possession of the unit was proposed to be within 48 months from the date of execution of the agreement. However, it was specifically mentioned that the same is subject to failure of respondent/builder due to the reasons mentioned in the clauses 14 to 17 and 37 or due to failure of the allottee(s) to pay in time. The due date of delivery of possession was subject to *force majeure*. It is pertinent to note that the project of the respondent has been gravely hit by the various *force majeure* conditions which are directly consequential to the timely completion of the construction of the project.

(e) That it is pertinent to mention that the construction and development of the project was affected by various force majeure circumstances, which are as follows.

a. That there was an unforeseeable and unexpected development of Gas Authority of India (GAIL) pipelines through the project land of the respondent. It is submitted that the township of respondent developer was planned prior to the notification of GAIL and thereafter, the same affected the

layout of the project. The respondent also submitted a detailed representation to GAIL and HUDA. GAIL also wrote a letter to the Department of Town and Country Planning (DTCP) for re-routing of Gas pipelines of GAIL in Gurugram concerned sectors. In reply to the letter of GAIL, DTCP wrote that the revised routing should be through the green belt. Thereafter, writ petitions were filed in the High Court of Punjab and Haryana relating to revised routing of GAIL pipeline in Gurugram, which was denied by the Hon'ble High Court in its joint order in ***CWP16532/2009(O&M) titled as Shivam Infratech V, Union of India*** *and* ***CWP18173/2009 titled as Vatika Ltd V. Union of India,*** as a result of which GAIL completed its work as per the original schedule. That GAIL also reduced the rights of users from 30m to 20m which led to respondent losing a number of plots including the said project land.

b. That it is also pertinent to mention here that subsequent to the booking of the unit, the respondent faced difficulties in the construction and development of the said project due to the presence of sector roads in the main entrance of the project which has not been constructed till date. It is submitted that there was a de-notification of sector road, after which the government introduced the land acquisition policies such as Transfer of Development Rights (TDR). Under the TDR policy, farmers had to surrender their land fully, obtain a TDR certificate and sell it to the developers. Subsequently, the respondent tried to purchase the land but due to reasons beyond its control, could not do so. That at present, two sector roads (24 mtr.) are falling in the project land and due to the reason of non-acquisition of the same, the respondent has lost road connectivity and supply of construction materials etc to the project land.

c. That the delay in delivery of possession of the unit has also been affected by the land dispute.

d. Various NCT and High Court order affecting the supply of raw materials for construction of the project, demonetization, Covid-19.

e. All this process had caused a considerable amount of delay and this hampered the construction of the project in question which are beyond the control and ambit of the developer.

6. That from the facts indicated above and documents appended, it is comprehensively established that a period of 377 days was

consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above. Thus, it has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the agreement. In a similar case where such orders were brought before the authority in the ***Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022***, the authority was pleased to allow the grace period and hence, the benefit of the above affected 377 days need to be rightly given to the respondent builder.

7. That the due date of possession was extended due to the *force majeure* conditions and events outside the power of the respondent. There arose no cause of action whatsoever, in the present instance. It has not defaulted the agreement or the Act, in any manner whatsoever as the respondent is not in control of the *force majeure* conditions. Owning to the *force majeure* conditions described in detail above, the respondent was unable to complete the development of the said project. The breakdown of COVID -19 pandemic further hampered the development of the project even more to the point of no return.

8. That it is further submitted that the complainants himself is at default and cannot benefit from his own wrongs. 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. It is submitted that each and every real estate project is subject to timely payments by the allottees and it is because of the allottees like the present complainant, that the real estate projects get delayed. Despite facing grave force majeure events, the respondent *bonafidely* tried to complete the construction of the project.

9. That without admitting or acknowledging in any manner the truth or legality of the allegations put forth by the complainant 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 account 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.

10. That the instant complaint has been preferred on absolutely baseless, unfounded, and legally and factually unsustainable surmises which can never inspire the confidence of the authority. The accusations levelled up by the complainant are completely void and baseless and devoid of merit. Thus, the instant complaint needs/deserves to be dismissed. It is a matter of fact that the complainant has caused delay in making the timely payments of instalments as evident from the statement of accounts annexed herewith and reminders for payment dated 25.03.2016,

16.05.2016, 03.08.2016, 02.09.2016, 23.05.2018, 05.06.2018, issued by it, thereby violating section 19(6) of the Act.

11. That the instant complaint has been preferred on absolutely baseless, unfounded, and legally and factually unsustainable surmises which can never inspire the confidence of the authority. The accusations levelled up by him are completely void and baseless and devoid of merits. Thus, the instant complaint deserves to be dismissed.

12. 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:

13. 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

14. 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

15. 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.*

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

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

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

F. Findings on the objections raised by the respondent

F.I Objection regarding force majeure conditions:

20. 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 demonetization, 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 20.08.2015 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 20.08.2019. The events such as demonetization 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 wrong.

21. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s***

Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020 has observed that-

> *"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."*

22. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 20.08.2019 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession

G. Findings on the relief sought by the complainant:

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

19. The complainant booked a unit bearing no. 2904, 29th floor, building A admeasuring 1635 sq. ft in the above-mentioned project of respondent and the same led to execution of buyers' agreement on **20.08.2015**. He paid a sum of Rs. 48,61,380/- to the respondent against the total sale consideration of Rs. 1,16,08,500/- but due to misrepresentations w.r.t. the project he did not pay the remaining

amount and is seeking refund of the paid-up amount besides interest from the respondent. Section 18(1) of the Act is reproduced below for ready reference:

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-*
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
> ***he shall be liable on demand to the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act:*
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*
>
> *(Emphasis supplied)*

20. Clause 13 of the buyer's agreement dated 20.08.2015 provides for schedule for possession of unit in question and is reproduced below for the reference:

> ***13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT***
>
> *The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said **Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement** unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses 14 to 17 & 37 or due to failure of Allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure -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. **Emphasis supplied***

21. **Entitlement of the complainant for refund**: The respondent has proposed to hand over the possession of the apartment within a period of 48 months from date of execution of builder buyer's agreement. The builder buyer's agreement was executed *inter se* parties on 20.08.2015, therefore, the due date of possession comes out to be 20.08.2019.

22. It is not disputed that the complainants are allottees of the respondent having been allotted a unit no. 2904, 29th floor, building A admeasuring 1635 sq. ft. of the project known as "Tranquil Heights, Phase I, Sector 82A, Gurugram for a total sale consideration of Rs. 1,16,08,500/-. 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.

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. and*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (supra)*** 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. **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:

> ***"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."*

26. 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.

27. 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., **24.01.2023** is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.

28. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 48,61,380/- with interest at the rate of 10.60% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the rules ibid.

H. Directions of the Authority:

29. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i. The respondent/promoter is directed to refund the entire amount of Rs. 48,61,380/- paid by the complainant along with prescribed rate of interest @ 10.60% p.a. as prescribed under rule 15 of the rules from the date of each payment till the actual date of refund of the amount.

ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

30. Complaint stands disposed of.

31. File be consigned to the registry.

Sanjeev Kumar Arora	Ashok Sangwan	Vijay Kumar Goyal
Member	Member	Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.01.2023