

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

Complaint no. : 1075 of 2022
Date of filing complaint: 21.03.2022
First date of hearing : 09.08.2022
Order reserve on : 10.11.2022
Order pronounce on : 31.01.2023

Rekha Devi

R/o:-1202-B, Palm Springs, Sector 54,
Gurugram (HR.)

Complainant

Versus

M/s Vatika Limited

R/o: Vatika Limited Inxt City Centre, GF, tower
A, sctor 83, Vatika India Next, Gurugaon-(Hr.)
122012.

Respondent

CORAM:

Shri. Ashok Sangwan
Shri. Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

Mr. Sanjeev Sharma
Mr. Harshit Batra

Advocate for the complainant
Advocates for the 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 to the allottees as per the agreement for sale executed inter-se them.

A. Project and unit 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, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	Vatika India Next, Sector 82,82A,83,84 and 85 Gurgaon (Hr.)
2.	Nature of the project	Residential colony
3.	Project area	NA
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid upto 31.05.2008
5.	RERA Registered/ not registered	Not registered
6.	Date of allotment	N/A
7.	Date of builder buyer agreement	29.04.2011 (page 20 of complaint)
8.	Plot no.	27, second floor, 4 th street, block E (page 23 of complaint)
	Re-allotment of independent floors dated 04.10.2016	HSG-014, plot no. 27/ST, 83E-4/180/SF/82E/VIN (annexure R3, page 130 of reply)
9.	Possession clause	10.1 Schedule for possession of the said independent dwelling unit That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building



		/said independent dwelling unit within a period of three years from the date of execution of this agreement..... (Emphasis supplied)
10.	Due date of possession	29.04.2014
11.	Total consideration	Rs. 23,04,859/- (page 23 of complaint)
12.	Total amount paid by the complainant	Rs. 9,40,443/- (as per receipts at page 66-69 of complaint)
13.	Termination of BBA	06.11.2018 (page 131 of reply)
13.	Date of offer of possession to the complainant	Not offered
14.	Occupation certificate	Not obtained

B. Facts of the complaint

3. That the complainant and the respondent executed buyers' agreement dated 29.04.2011 whereby the complainant was allotted unit no. 27, 2nd floor, 4th street, block-E, at Sector-83, admeasuring 781.25 sq. ft. as the built-up area with car parking no. TBA for a total consideration of Rs. 23,04,859/- along with other charges as specified in clause 1.2 of the buyers' agreement.
4. That the complainant had paid a total amount of Rs. 9,40,442/- from December 2009 till January 2012. It is submitted that the possession was to be handed over within 3 years from the date of execution of the buyers' agreement, i.e., by 29.04.2014 but the same has not happened till today.
5. That since the respondent failed to offer possession of the unit in question, the complainant while exercising the right approached

the authority seeks refund of the monies along with interest as all the requests made by her has gone to the deaf ears of the respondent.

C. Relief sought by the complainant:

6. The complainant has sought following relief(s):
 - i. The respondent/developer be directed to refund the entire sum of Rs. 9,40,442/.
 - ii. The respondent/developer be further directed to pay interest as per rule 15 of HRERA from the date of payments till realization.
7. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

The respondent has contested the complaint on the following grounds.

8. That 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.
9. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act and 2017 rules, has been executed between the parties. Rather, the

agreement that has been referred to for the purpose of getting the adjudication of the complaint though without jurisdiction is the builder buyer's agreement, executed much prior to coming into force of 2017 rules.

10. The adjudication of the complaint for refund, interest and compensation, as provided under sections 12, 14, 18 and 19 of 2016 Act, if any, has to be in reference to the agreement for sale executed in terms of 2016 Act and 2017 rules and no other agreement. This submission of the respondent *inter alia*, finds support from reading of the provisions of 2016 Act as well as 2017 rules, including the aforementioned submissions. Thus, in view of the submissions made above, no relief much less as claimed can be granted to her.
11. That apparently the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to her.
12. That it has been categorically agreed between the parties that subject to the complainant having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplated to complete construction of the said building/ said apartment unit within a period of 3 years from the date of execution of the agreement and which period would automatically

stand extended. Further, it had been also agreed and accepted that in case of any default/delay in payment as per the schedule of payments as provided in annexure III to the buyer's agreement, the date of handing over of the possession shall be extended accordingly. Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond its control, then it would be automatically entitled to the extension of time for delivery of possession. Further the company may also suspend the project for such period as it may consider expedient.

13. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:
- a. Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project of the respondent which constrained it 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 land-owners.
 - c. Re-routing of High-Tension lines passing through the land resulting in inevitable change in the lay out plans and causing unnecessary delay in development.
 - d. 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 ban imposed on construction activities for a total period of 70 days between November,2016 to December,2019.

- e. 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.
- f. Disruptions caused in the supply of stone and sand aggregated, 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.
- g. Disruptions caused by unusually heavy rains in Gurgaon every year.
- h. Due to the slump in real estate sector, major financial institutions are facing difficulty in providing funding to the developers. As a result, developers are facing financial crunch.
- i. Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.
- j. 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.
- k. Delayed re-routing by DHBVN of a 66KVA high-tension electricity line passing over the project.
- l. 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 trucks into Delhi were restricted.

- iv. Manufacturers of construction material were prevented from making use of close brick kilns, Hot Mix plants, and stone crushers.
 - v. Stringently enforced rules for dust control in construction activities and close non-compliant sites.
14. 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 group 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.
15. That the respondent had already terminated the builder buyer agreement dated 29.04.2011 vide termination letter dated 06.11.2018 due to various reasons but not limited to change in the layout plan due to initiation of the GAIL corridor, non-removal or shifting of the defunct high-tension lines and non-acquisition of sector roads by HUDA. It is submitted that the respondent also offered alternate unit to the complainant vide letter dated 04.10.2016. However, she did not accept this alternate option and thus the respondent was constrained to terminate the agreement. It is submitted that as per clause 11.5 of the agreement, it has been

agreed that in the event of failure to handover the possession, the company shall be entitled to terminate the agreement and refund the amount. It is pertinent to mention here that the respondent also offered to refund the amount to the complainant along with 6% interest p.a. However, it was the complainant who did not come forward to collect the money.

16. That the total sale consideration of the flat booked by the complainant was increased to Rs. 26,80,943/- due to increase in area. However, it is submitted that the total sale consideration amount exclusive of the STP, gas pipeline, stamp duty etc. and other charges to be paid by the complainant at the applicable stage. It is denied that the possession was to be handed over by 29.04.2014. It is submitted that the period specified in the buyer's agreement was proposed and the same was subject to the buyer fulfilling its obligations to make payment of outstanding dues on time and not being in default under the terms and conditions of the buyer's agreement. The covenants incorporated in the builder buyer's agreement are to be cumulatively considered in their entirety and selected clauses of the same cannot be considered and read in isolation. The indicated timelines contained in the agreement were subject to occurrence of various eventualities and also to other circumstances mentioned therein which have not been reproduced for the sake of brevity. It is submitted that the alleged delay has been occasioned due to the reasons beyond the control of the

respondent for which it was entitled to the extension of time as per the agreement.

17. The complainant has filed a false and frivolous complaint. Therefore, all the reliefs as claimed by the complainant are false and misleading and hence denied, and she is not entitled for any of such reliefs.
18. Copies of all the relevant documents have been filed and placed on the 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

19. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

20. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

21. 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 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;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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.

24. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
25. 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.”

26. Hence, in view of the authoritative pronouncement of the Hon’ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.
27. The respondent moved an application for dismissal of the complaint on the ground of maintainability of complaint due to limitation. He contended that the allotment of the complainant was terminated on 06.11.2018 and the present complaint was filed on 21.03.2022 which is beyond limitation i.e., 3 years 4 months 16 days. The counsel for the complainant took plea of order of

Supreme Court in "*suo-moto writ petition (C) no. 3 of 2020*" wherein taking cognizance of extension of limitation from 15.03.2020 to 28.02.2022. The authority observes that the allotment of the complainant was cancelled on 06.11.2018 and the said period would have expired on 06.11.2021. However, the said period from 15.03.2020 to 28.02.2022 was excluded from the purview of limitation and calculation w.r.t. to left over period is also explained in said order by Hon'ble Apex Court of the land. Keeping in view the same, period of 1 year 7 month and 22 days has been expired from date of termination i.e., 06.11.2018 till 15.03.2020. As per para 5(III) of said order for the remaining period, after expiry of 28.02.2022, a period of 90 days be given to the applicant whose limitation period expires between specified period of 15.03.2020 till 28.02.2022 and where such period is more than of 90 days, then such longer period be allowed. Therefore, after 28.02.2022, a period of more than 90 days was left and thus the complaint filed on 21.03.2022 is well within limitation.

F. Findings on the objections raised by the respondent

F.I Objection regarding force majeure conditions:

28. 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 29.04.2011 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 29.04.2014. 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 wrongs.

29. 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."

30. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 29.04.2014 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants:

G.I Refund entire amount paid by the complainant along with the interest

31. In the present complaint, the complainants intend to withdraw from the project and is seeking return of the amount paid by her in

respect of subject unit along with interest at @24% p.a. 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)

32. Clause 10.1 of the buyer’s agreement dated 29.04.2011 provides for the handing over of possession and is reproduced below for the reference:

*“The Company 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 three 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 (11.1),(11.2),(11.3) and clause (38) 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 -III 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 of this agreement. **Emphasis supplied”***

33. **Entitlement of the complainants for refund:** The respondent has proposed to hand over the possession of the apartment within a period of 3 years from date of execution of builder buyer's agreement. The builder buyer's agreement was executed *inter se* parties on 29.04.2011, therefore, the due date of possession comes out to be 29.04.2014.
34. In the present complaint, the complainants booked a unit in the above said project for a total sale consideration of Rs. 23,04,859/-. But, on 04.10.2016, the unit was changed vide letter of re-allotment and allotted unit bearing no. HSG-014, plot no. 27/ST, 83E-4/180/SF/82E/VIN. A buyer's agreement was already executed between the parties on 29.04.2011. As per clause 10.1 of the said agreement, the unit was to be handed over within 3 years from the signing of the agreement i.e., by 29.04.2014.
35. The total sale consideration of the said unit is Rs. 23,04,859/- and the complainant has paid an amount of Rs. 9,40,443/-. It is pertinent to mention here that the respondent has terminated the said buyer's agreement dated 29.04.2011 vide termination letter dated 06.11.2018 due to various reasons but not limited to change in the layout plan, initiation of the GAIL corridor and non-acquisition of sector roads by HUDA etc. Moreover, it has been observed that vide termination letter dated 06.11.2018, the respondent offered the refund of the amount to the complainants along with 6% interest p.a. but the same was not collected by her.

The relevant portion of the letter dated 06.11.2018 is reproduced below:

"5. Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the Company, it is unable to execute and carry out all the necessary work for the completion of your unit in the above said Project. These subsequent developments have repeatedly marred and adversely impacted the progress of the Company's projects. To further add to the woes of the Company, in addition to the reasons stated above, non-acquisition of sector roads by HUDA to enable accessibility to the various corner of the project, forceful unauthorised occupation of certain parcels by some farmers coupled with other regular obstructions and impediments beyond the control of the Company have resulted in the Company being unable to deliver. Therefore, in the backdrop of the uncertainties involved as detailed herein above and keeping in mind your interests, the Company offered in various discussions to you an alternate unit in the same Project, however, you did not accept this alternate option despite our subsequent numerous discussions with you. Thus, the Company is constrained and left with no choice but to terminate the Agreement.

6. We take this opportunity to state that as per terms of the Agreement, the Company is required to pay interest @6% pa on the refund amount. As such, in furtherance of our obligations under the Agreement and in order to make up for o inability to deliver in view of the extraordinary circumstances attending upon this unfortunate event, as a bonafide measure we are hereby willing to return the principal amount paid by you from your own resources) in respect of the booking along with an interest of 6% per annum calculated thereon till 05.11.2018.

You are requested to kindly get the above refund cheque collected from our office at Vatika Triangle, 5th Floor, Sushant Lok Phase 1, Gurugram, Haryana after 30 days with prior appointment of receipt of this letter

36. Upon perusal of the above-mentioned paragraphs, the authority observes that the subject unit has already been cancelled and the said buyer agreement has been terminated on 06.11.2018,



narrating the detailed reasons for cancellation of the unit and termination of builder buyer agreement on account of inability of the promoter to make available the said unit. The promoter has failed to develop the unit and cancelled it on account of his own fault/omissions.

37. 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."

38. 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 she wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

39. **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]

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

40. 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.

41. 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., **31.01.2023** is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.
42. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 9,40,443/- 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*.

G. Directions of the authority

40. 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 promoter 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.9,40,443/- paid by the complainant along with prescribed rate of interest @ 10.60% p.a. as per 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-builder to comply with the directions given in this order and failing which legal consequences would follow.

41. Complaint stands disposed of.

42. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Ashok Sangwan)

Member

Dated: 31.01.2023