BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 894 of 2020
First date of hearing: 25.03.2020
Date of decision : 17.02.2023

1. Ram Chander
2. Ravinder
Both RR/o: H.no: 274, Vill. Pattli Hazipur, Distt. Gurgaon,

Complainants

Versus

M/s Vatika Limited
Office: 5th floor, Vatika Triangle, Mehrauli-Gurugaon Road, Sushant Lok Phase-I, Gurugram, Haryana-122002.

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Complainant in person with Sh. R.N. Dixit (Advocate)

Complainants

S/Sh. Venket Rao & Pankaj Chandola (Advocate)

Respondent

ORDER

1. The present complaint dated 20.02.2020 has been filed by the complainant/allottees 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 allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. 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:

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika Tower", Golf Course Road, Gurugram.
2.	Nature of the project	Commercial unit.
3.	DTCP license no. and validity status	NA
4.	RERA Registered/ not registered	Not registered
5.	Unit no.	P-254 admeasuring 500 sq.ft. (Page no. 21 of complaint)
6.	Application for allotment of unit	15.05.2015 (Page no. 21 of complaint)
7.	Date of builder buyer agreement	**Not executed**
8.	Due date of possession	15.05.2018 ***Fortune Infrastructure and Ors' vs' Trevor D' Lima and Ors.*** (12.03.2078 SC); MANU/SC/0253/2078observed that"a person cannot be made to wait indefinitely for 'the possession of the Flats allotted to them, and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period 'stipulated in the agreement" a reasonable time has to be taken into consideration' In the facts and circumstances of this case' a time period of 3 years would have been reasonable

			lor completion of the contract' In view of the above-mentioned reasoning' the date of signing of application for allotment of shop, ought to be taken as the date for calculating due date of possession' Therefore, the due date of handing over of the possession of the unit comes out to be 15.05.2018
9.		Total sale consideration	Rs. 77,84,000/- [as per SOA dated 10.12.2018, annexure vii, page 65 of complaint]
10.		Amount paid by the complainants	Rs. 81,09,013/- [as per SOA dated 10.12.2018, annexure vii, page 65 of complaint]
11.		Occupation certificate	Not obtained
12.		Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

I. That believing the representations and promises made by the respondent, the complainants agreed to purchase a shop in the project for a total consideration of Rs. 77,84,000/- against which they paid an amount of Rs. 81,09,013/-. They were allotted a unit no. P-254 admeasuring 500 sq. ft., having a super area of 500sq. ft. vide allotment letter dated 15.05.2015.

II. The builder was supposed to offer the possession of the shop after deposit of final amount which arrived at 30.12.2018 and it has to pay rental of Rs. 60,000/- p.a. till the possession of the shop. The developer did not handover the possession of the shop till date and paid rentals only upto October 2018 only. Neither it paid the rentals from the month of November 2018 nor handed over the possession of said shop.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).

a. Direct the respondent to refund the entire amount paid by the complainants.

5. 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

6. The respondent has contested the complaint on the following grounds.

a. That the complainants, has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. The complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.

b. It is submitted that the complainants had not approached the authority with clean hands and suppressed the relevant material facts. It is submitted that the complaint is devoid of merit and the same should be dismissed with cost.

c. At the outset, the complainants have erred gravely in filing the complaint and misconstrued the provisions of the Act. It is imperative to bring the attention of the authority that the Act, 2016 was passed with the sole intention of regularisation of real estate projects, promoters and the dispute resolution between the parties.

d. That it is an admitted fact that by no stretch of imagination, it can be concluded that the complainants are "consumers". It is a matter of fact, that they are simply investors who approached the respondent for investment opportunities and for a steady rental income.

e. That in the year 2015, the complainants learnt about the commercial project launched by the respondent tilted as "Vatika Tower" situated

at Sector 54, Gurugram and visited its office to know the details of the said project. The complainants further inquired about the specifications and veracity of the commercial project and were satisfied with every proposal deemed necessary for the development.

f. That after having interest in the proposed commercial project of the respondent, they booked a unit vide application for allotment of shops dated 15.05.2015 and paid an amount of Rs. 8,07,270/- for further registration on their own judgement and investigation. It is evident that the complainants were aware of each and every term of the application form and agreed to sign upon the same without any protest or demur.

g. That on 15.05.2015, an allotment letter was issued to the complainants for the unit bearing no. P-254, admeasuring to 500 sq.ft. for a total sale consideration of Rs. 77,84,000/- in the aforesaid project.

h. It is a matter of fact, that the said commercial unit in question was deemed to be leased out upon completion. It is imperative to note, that the complainants have mutually agreed and acknowledged that upon completion for the said unit the same shall be leased out. The said application form clearly stipulated provisions for "lease" and admittedly contained a "lease clause". In the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the complainants herein are not "consumers" or "allottees".

i. That the complainants are trying to mislead the authority by concealing facts detrimental to the complaint. The application form executed between the parties on 15.05.2015 was in the form of an "investment agreement". The complainants had approached the respondent as investors looking for certain investment opportunities.

Therefore, the said allotment of the said unit contained a "lease clause" which empowers the developer to put a unit of the complainants along with the other commercial space unit on lease and does not have "possession clauses", for physical possession.

j. That the complainants misguided themselves in filing the complaint before the wrong forum. The complainants are praying for the relief of "assured returns" which is beyond the jurisdiction that the authority has been vested in. From the bare perusal of the Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute arise between the parties with respect to the development of the project as per the application form/agreement. Such remedy is provided under section 18 of the Act, 2016 for violation of any provisions of the Act. The said remedies are of "refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the allottees.

k. It is pertinent to note that nowhere in the said provision the authority has been vested with jurisdiction to grant assured returns or any other arrangement between the parties with respect to investment and returns. Therefore, the complaint is filed with grave illegalities and the same is liable to be dismissed at the very outset and the complainants be directed to pursue their complaint before the civil court for any dispute arises from the application form/agreement pertaining to assured returns.

l. That the respondent cannot pay "assured returns" to the complainants by any stretch of imagination in the view of prevailing laws. On 21.02.2019 the Central Government passed an ordinance

'Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits and payments of return on such unregulated deposits. Under the said Act all the unregulated deposit schemes have been banned and made punishable with strict penal provisions. Being a law- abiding company and by no stretch of imagination, the respondent could have continued to make the payments of the said assured returns in violation of the BUDS Act.

m. Further, it pertinent to mention herein that the BUDS Act provides two forms of deposits schemes, namely regulated deposit schemes and unregulated deposit schemes. Thus, for any deposit scheme, for not to fall upon of the provisions of the Act, it must satisfy the requirement of being a "regulated Deposit Scheme" as opposed to unregulated deposit scheme. Hence, the main object of the BUDS Act is to provide for comprehensive mechanism to ban unregulated deposit scheme.

n. Further, any order or continuation of payment of any assured return or any directions thereof may be completely contrary to the subsequent Act passed post the Act, which is not violating the obligations or provisions of the Act. Therefore, enforcing an obligation on a promoter against a central Act specifically banned, may be contrary to the central legislation which has come up to stop the menace of unregulated deposit.

o. It is pertinent to apprise to the authority that the development work of the said project was slightly decelerated for the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetization in last quarter of 2016 stretching its adverse effect in various industrial, construction, business area even in 2019. The respondent also had to

undergo huge obstacle due to effect of demonetization and implementation of the GST.

p. The world was hit by the covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the said period be added while computing the delay.

q. That the current covid-19 pandemic resulted in serious challenges to the project with no available labor, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated 24.03.2020 bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of covid-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. By virtue of various subsequent notification the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Government, including the government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated 13.05.2020 regarding extension of registration of real estate projects under the provisions of the Act, 2016 due to "Force Majeure", the authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after 25.03.2020. Despite, after above stated obstructions, the nation was yet again hit by the second wave of covid-19 pandemic and again all the activities

in the real estate sector were force to stop. It is pertinent to mention, that considering the wide spread of covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. Period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State.

r. It is a matter of fact, that right from the date of booking of the commercial unit the respondent herein had been paying the committed return of RS. 64,860/- every month to the complainants without any delay. It is to note, that as on Oct 2018 the complainants herein have already received an amount of Rs. 27,24,120/- as assured return as agreed by it under the aforesaid application form. It is imperative to bring into the knowledge of the authority that since starting the complainants have always been in advantage of getting assured return as agreed by the respondent. It is an admitted fact that the complainants have received an amount of Rs. 64,860/-.

s. It is an admitted fact that since starting the respondent has always tried level best to comply with the terms of the application form and has always intimated the exact status of the project. However, the delay is caused in the payment was bonafide and purely out of the control of the respondent and the same has been explained in detail herein below.

t. That further, the complainants in the instant complaint has harped that the respondent has failed to offer timely possession of the respective unit. It is pertinent to note herein that the said application form/agreement was of the nature of an "investment agreement". The same does not stipulate about possession, in fact it clearly specified and as mutually agreed by the complainants.

u. That, it is evident that the entire case of the complainants are nothing but a web of lies, false and frivolous allegations made against the respondent. The complainants have not approached the authority with clean hands. Hence, the present complaint deserves to be dismissed with heavy costs. It is brought to the knowledge of the authority that the complainants are guilty of placing untrue facts and are attempting to hide the true colour of their intention.

v. That the complainants, have suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead the authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before the authority and in the interest of justice. Hence, the complaint under reply is an utter abuse of the process of law. Hence deserves to be dismissed.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*" 2021-2022(1)RCR(C), 357** and followed in case of ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 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."

12. 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 entitlement of refund on ground of complainants being investors.

13. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules

or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of Rs.81,09,013/-to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference.

> *2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent*

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottees as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr***. has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

F.II Objection w.r.t. force majeure.

15. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as, shortage of labour, various orders passed by various Authorities 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 not executed between the parties. The due date is calculated as per the judgment passed by the hon'ble Supreme Court in case titled as ***Fortune Infrastructure and Ors. Versus Trevor D 'Lima and Ors (12.03.2018)*** and the period for delivery of possession may be taken as 3 years) therefore, the due date is calculated from the date of allotment i.e., 15.05.2015 which comes out to be 15.05.2018. The events such as and various orders by Authorities 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.

16. 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."*

17. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 15.05.2018 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants.

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

18. The complainants have submitted that they booked a unit in the respondent's project namely "Vatika Tower". An allotment letter was issued in favour of the complainants on 15.05.2015 and allotted a unit bearing no. P-254 admeasuring 500 sq.ft. for a total sale consideration of Rs. 77,84,000/- against which they paid an amount of Rs. 81,09,013/-. An allotment was issued in favour of complainants on 15.05.2015. As per terms and conditions of the application form the complainants were entitled for assured return. It is pertinent to mention here that as per the terms and conditions of application form the respondent paid the assured return amount for some period of time and thereafter, they stopped the payment of assured return by taking a plea of BUDS Act.

19. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the

terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

20. The due date of possession as per agreement for sale as mentioned in the table above is 15.05.2018 and there is delay of 1 years 9 months 5 days on the date of filing of the complaint. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019***, decided on 11.01.2021

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

21. 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:

> *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

22. 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). 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.

23. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

24. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund of the amount paid along with interest. However, 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."*

25. 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.

26. 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., **17.02.2023** is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.

27. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 81,09,013/- 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 realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid. The amount paid on account of assured return may be deducted/adjusted from the refundable amount.

F. Directions of the authority

28. 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) of the Act of 2016:

i. The respondent/promoter is directed to refund the entire amount of Rs. 81,09,013/- paid by the complainants along with prescribed rate of interest @ 10.60% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount. The amount paid on account of assured return may be deducted/ adjusted from the refundable amount.

ii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottees-complainants.

iii. 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.

29. Complaint stands disposed of.

30. File be consigned to registry.

(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 17.02.2023