



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

DATE OF DECISION:09.02.2023

Sr. No.	Complaint No.	Complainant's Name
1.	836 of 2021	Alpana Jain R/o 4532/2, Kunta Bhavan, 9, Darya Ganj, New Delhi-110002.
2.	837 of 2021	Amar Singh Rawat R/o 1596, Near Shiv Mandir, Sector 28, Faridabad.
3.	838 of 2021	Ajay Ahuja and Geeta Ahuja R/o 6394, Sector C-6, Vasant Kunj, New Delhi.
4.	839 of 2021	Sakshi Jain and Rajat Gupta R/o 4532/2, Kunta Bhavan, 9, Darya Ganj, New Delhi-110002.

Versus

S. No.	Respondent name	Respondent address
1.	Vatika Limited	registered office at Unit no. A-002, INXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next, Gurugram-122012, Haryana.

Present: - Mr. Amitabh Narayan, Counsel for complainants through VC (in all complaints)

Mr. Paritosh Vaid, Counsel for respondent through VC (in all complaints)

S. Sathar

ORDER: (DR. GEETA RATHEE SINGH-MEMBER)

Initially, present complaints were filed before Hon'ble Adjudicating Officer under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottees as per the terms agreed between them.

Vide order dated 03.03.2023, the Adjudicating Officer transferred the above said complaints to the Authority in view of observations of the Hon'ble Apex Court in CWP no.6745-6749 of 2021 titled as Newtech Promoters and Developers Pvt Ltd. versus State of UP and Others and observations of Punjab and Haryana High Court in CWP No.6688 of 2021 titled as Ramprastha Promoters and Developers Pvt Ltd. versus Union Of India and others regarding jurisdiction of Authority with respect to matters concerning possession and refund.

2. Above captioned four complaints have been taken up together as bunch matters and shall be disposed of passing this common order as facts of the cases and grievances of the complainants are similar in nature and also concerns the same project of the respondent promoter i.e. Vatika Mindscapes,

Sector-27, Faridabad. Facts of complaint no.836 of 2021 titled as Alpana Jain versus Vatika Ltd. have been taken as lead case.

A. UNIT AND PROJECT RELATED DETAILS IN LEAD CASE NO. 836 OF 2021:

3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over possession, delay period, if any, in lead complaint case no.836 of 2021 have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	Vatika Mindscapes, Sector-27, Faridabad
2.	Nature of the Project	Commercial Space
3.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)
4.	Date of booking of unit	14.04.2014
5.	Date of allotment of unit	13.05.2014
5.	Unit No.	728, 7 th floor, Tower-C
6.	Unit Area	500 sq. ft.
7.	Date of execution of Builder buyer agreement	12.05.2014
8.	Total Sale Consideration	₹22,50,000/- (as per BBA at page 33 of complaint)
9.	Paid by the Complainants	₹23,33,430/- (mentioned in the BBA at page 33 of complaint)
10.	Deemed date of possession	31.12.2015 (as mentioned in the pleadings at page no.8 of the complaint and allotment letter dated 13.05.2014)

11.	Offer of possession	Not offered
12.	Provision regarding assured returns	Clause 15 of the builder buyer agreement provides assured return in full down payment cases @₹71.50 per sq. ft. from the date of execution of the agreement till construction of the said unit is complete (page 41-42 of BBA)
13.	Occupation certificate	Not obtained
14.	Delay in handing over of possession	7 years 1 month 9 days

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT IN COMPLAINT NO.836 OF 2021:

4. Complainant booked a commercial unit bearing no.728 measuring 500 sq. ft. on 7th floor, tower C of the project namely, 'Vatika Mindscapes' located at Sector-27, Faridabad being promoted by respondent at agreed sale consideration of ₹22,50,000/- on 14.04.2014. Allotment of the unit was made on 13.05.2014, copy of allotment letter is annexed at page 65 of the complaint. Complainant paid total consideration i.e. ₹23,33,430/-, copy of receipts have been placed at Annexure-A, page nos.17-18 of the complaint book. Builder-buyer agreement dated 12.05.2014 was executed between both parties, copy of which has been placed at page no.30-53 of the complaint book. Clause 15 of Agreement provides that assured return committed at the rate of ₹71.50/- per sq. ft. per month i.e. ₹35,750/- per month will be paid to complainant till construction of the allotted unit is complete. Respondent had promised to

complete the project up to 31.12.2015 as per its letter dated 13.05.2014, copy of which has been annexed at Annexure-F at page 65 of the complaint. Complainant submitted that respondent had failed to complete project and hand over possession of the unit up to 31.12.2015 and started paying assured returns at the rate promised in the builder buyer agreement. Complainant allege that respondent paid assured return @ ₹71.50 per sq. ft. till September, 2018, but suddenly stopped making payment thereafter. Complainant further submitted that a sum of ₹97,000/- was paid to the complainant in cash in October 2019 and ₹30,000/- on 30.03.2021 through net banking till date. The complainant alleged that when complainant visited office of respondent in the year 2019 with regard to payment of assured returns, respondent informed that they have received occupation certificate of the building, therefore, from now onwards they will not give assured returns. Further, respondent had executed an addendum dated 28.06.2019 to the builder buyer agreement resiling from its promise to pay commitment charges, copy of addendum is annexed at Annexure-I, page no.82 of the complaint. Complainant, however, alleged that even till now, the possession of the unit has not been offered and the project is not ready for occupation which is clear from the documents submitted by the respondent before Authority in the year 2021.

5. Due to inability of the respondent promoter to complete the project in time and give possession of the unit to the complainant, present complaint has been filed seeking refund of the entire paid amount along with

5 G. Rathore

interest and compensation @₹71.50/- per sq. ft. @₹35,750/- per month from 01.10.2018 till date.

C. RELIEF SOUGHT:

6. The complainant in his complaint has sought following reliefs:
- i. To direct the respondent to refund the sum of ₹23,33,430/- deposited with the respondent along with interest.
 - ii. To direct the respondent to pay compensation @₹71.50 sq. ft. @₹35,750/- per month from 01.10.2018 till date.
 - iii. To award compensation in favour of complainant under section 72 of the RERA Act for mental agony and harassment caused to the complainant to the tune of ₹30,00,000/-.
 - iv. Cost of the complaint.
 - v. Any other relief which is deemed fit and proper by this Hon'ble Authority.

D. REPLY:

7. Respondent in written submissions submitted that as far as project namely, "Vatika Mindscape" is concerned, it consists of four towers i.e. Tower A, B, C and D. Occupation certificate has already been received for Towers A, B and D and these four towers are fully operational. As far as tower C is concerned, it is almost complete as per documents annexed by complainant

6
Rathee

with her complaint. Respondent company has obtained registration certificate vide memo no. HRERA-313/2017/1082 bearing registration no.196 of 2017 dated 15.09.2017 which was valid till 14.09.2022. Due to covid pandemic and force majeure situation, last date of completion of project was extended. Respondent submitted that complainant had invested her money in an assured return scheme of the respondent company and in terms of builder buyer agreement, respondent had already made payments of assured return till September 2018.

8. Respondent cannot pay assured returns to complainant due to prevailing laws. Respondent argue that on 21.02.2019, Central Government issued an ordinance "Banning of Unregulated Deposit 2019" ordinance, by virtue of which payment of assured returns became wholly illegal. Said ordinance was converted into an Act named "Banning of Unregulated Deposit Scheme Act, 2019" (BUDS Act in brief) on 31.07.2019. Respondent argue that on account of enactment of BUDS Act, they are prohibited from granting assured returns to complainant. Further, complainant had executed addendum dated 28.06.2019 to the builder buyer agreement whereby assured return was not payable any further. Respondent submitted that as far as construction of tower C is concerned, it has already been constructed and is at final stages. Accordingly, refund in no manner be allowed as the same shall effect the project as well as developer.


G. Rathee

9. Further, respondent contended that alleged violation of delay in handing over possession is not in contravention of the RERA Act and rules and regulations made thereunder as the registration granted by HRERA Panchkula was valid up to 14.09.2022. The said date had not arrived when the complaint was filed. Respondent further referred Section 19(3), (4) of the RERA Act, 2016 making out ground that complainant is entitled to claim refund along with interest and compensation once the possession has not been handed over as per declaration given by promoter under subclause (C) of clause (l) of sub section 2 of Section 4. As per Section 19(3) the complainant is not legally entitled to claim possession till 14.09.2022. Claim of the complainant would only arise after 14.09.2022 and/or extended time as granted by HRERA Panchkula. It is also stated that unit of the complainant is non-possession able as categorically stated in the builder buyer agreement and as such physical possession of the unit was never to be handed over to the complainant.

10. Respondent has further taken a plea that complainants are speculative buyers, who invested in the project of the respondent company for monetary returns and since the real estate market is showing downward tendency, complainant cannot take it as a weapon by way of taking undue advantage of provisions of RERA Act 2016. Agreement duly signed between the parties is binding on both parties as held in Bharti Knitting vs DHL by Hon'ble Apex Court.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

11. Learned counsel for complainant has submitted his written submissions and argued that complainant has sought possession of the unit and wanted to lease it out after taking over the possession of the unit. In his written submissions, he submitted that complainant has withdrawn from the project vide email dated 06.07.2021 and is not desirous of taking over possession and wants refund of the entire paid amount. Possession was to be handed over by 31.12.2015, however, till date project is not complete. Occupation certificate has not been issued with respect to tower in question i.e. tower C. Property has been mortgaged time and again with banks and financial institutions, resultantly conveyance deed cannot be executed. Without prejudice to interest of the complainant, it is averred that complainant is not desirous of taking possession and is praying for relief of refund along with interest and compensation @₹71.50/- per sq. ft @₹35,750/- per month as compensation.

12. At the outset, learned counsel for complainant verbally argued that complainant do not want to continue with the project. Complainant has pressed for relief of refund of the paid amount along with interest and he wants to forgo relief of assured returns.

F. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT:

13. Learned counsel for respondent argued that complainant is an investor. As per clause 15 of the builder buyer agreement, a leasing arrangement was agreed between the parties. The agreement is in the form of

investment/lease agreement. The conditions precedent for exercising jurisdiction of this Authority of this subject are not fulfilled, therefore, Authority is precluded from proceedings ahead with the matter. The question of assured returns is squarely covered by the BUDS Act. On account of provisions of the said Act, the jurisdiction will be of any other appropriate forum but not of this Authority. Further, learned counsel for respondent verbally argued that question of assured return is already pending before Hon'ble High Court in writ petition no.647 of 2021 titled as "M/s Vatika Ltd. versus Vinod Aggarwal" which is listed for hearing on 18.05.2023. These complaints are also connected with the matter pending before Hon'ble High Court.

14. Learned counsel for respondent argued that as per Section 19(3) of RERA Act 2016, the complainant is not legally entitled to claim possession till 14.09.2022 i.e. the date granted by HRERA Panchkula at the time of registration of the project. Claim of the complainant would only arise after 14.09.2022 and/or extended time as granted by HRERA Panchkula. It is also contended that unit of the complainant is non-possession able as categorically stated in the builder buyer agreement and as such physical possession of the unit was never to be handed over to the complainant. Respondent argued that complainants are speculative buyers, who invested in the project of the respondent company for monetary returns and since the real estate market is showing downward inclination, complainant cannot take it as a weapon by

taking undue advantage of provisions of RERA Act 2016. The agreement duly signed between the parties is binding on both parties as held in Bharti Knitting

vs DHL by Hon'ble Apex Court.

G. ISSUES FOR ADJUDICATION:

- i. Whether complainant is entitled to refund of the paid amount along with interest?
- ii. Whether complainants are entitled to assured returns?

H. OBSERVATIONS OF THE AUTHORITY:

15. Authority has gone through the facts of the case and the submissions made by parties. The respondent has taken a stand that the complainant are "speculative buyers" who have invested in the project for monetary returns and taking undue advantage of RERA Act, 2016 as a weapon during the present down side conditions in the real estate market and therefore she is not entitled to the protection of the Act of 2016. In this regard, Authority observes that the complainant is an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter M/s Vatika Ltd. for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. At this stage, it is important to emphasize upon the definition of terms allottee under the RERA Act of 2016, same is reproduced below for ready reference: -

Section 2(d) of the RERA Act:

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

16. In view of the above-mentioned definition of allottee as well as upon careful perusal of all terms and conditions of the builder buyer agreement, it is clear that complainant is an "allottee" as the subject unit no.728 in the real estate project "Vatika Mindscape" Sector 27, Faridabad, was allotted to her by the promoter on payment of ₹23,33,430/-. The definition of allottee as provided under RERA Act, 2016 does not distinguish whether an allottee is a consumer allottee or an investor allottee who has invested in the real estate project for earning profits.

17. Further, the respondent promoter contended that as per section 19(3) of the RERA Act, 2016, an allottee is entitled to claim possession of the plot, apartment or building, as the case may be, as per declaration given by the promoter under sub clause (c) of (1) of Sub Section 2 of Section 4 and in the instant complaint as per declaration submitted by the promoter at the time of registration of the project with HRERA, Panchkula, the completion time of the project, was 14.09.2022, therefore the same may be considered as the deemed date of possession. In this regard, Authority observes that the allottee and the respondent-promoter entered into a builder buyer agreement on 12.05.2014 and subsequently, the respondent issued a letter of allotment dated 13.05.2014 in

favour of complainant (before the RERA Act, 2016 coming into force) wherein, at clause (iv), it was committed that the flat would be completed and ready for lease by 31.12.2015 and the allottee would be paid lease rental of ₹65 per sq. ft. of space w.e.f. 31.12.2015 or from the date the building is ready, whichever is later. After the RERA Act of 2016 coming into force the terms of allotment cannot be re-written, the Authority only ensures that whatever was agreed between the allottee and the promoter by way of agreement for sale is adhered to the allottee. In the captioned complaint, the promoter entered into a contract with the allottee by way of execution of a builder buyer agreement and subsequently, vide allotment letter dated 13.05.2014, committed to hand over the possession of the unit by 31.12.2015 and is, therefore, bound by the date for handing over possession, agreed upon between the parties. This issue has been dealt by the Hon'ble Bombay High Court in the case titled as **Neelkamal Realtors Pvt. Ltd. versus Union of India and Others** in OS-WP-2737-17 & Ors. wherein, it was held that the RERA Act, 2016 does not contemplate re-writing of contract between the allottee and the promoter. The relevant para of the judgement is reproduced below: -

"119. Under the provisions of Section 18, the delay in handing over of possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of project and declare the same under section 4. The RERA does not contemplate re-writing of the contract."

G. Kothari

18. After RERA Act of 2016 coming into force, under Section 3, a promoter is obligated to register every new as well as ongoing real estate project (for which completion certificate was not issued at the time of commencement of the RERA Act of 2016) prior to marketing, adverting, selling or offering to sell the same. In case of new real estate projects launched after commencement of RERA Act of 2016, the promoter at the time of making application for grant of registration under Section 4(2)(1)(C), voluntarily declares a date for completion of the project and on grant of RERA registration the promoter mentions the same date at the time of entering into a builder buyer agreement. However, since in case of ongoing project, the promoter had already promised/agreed to a date with the allottee at the time of executing the agreement for sale, the same does not change by way of mere declaration at the time of seeking grant of registration for such ongoing project after the commencement of Act. The date mentioned in the agreement for sale is a date agreed between allottee and the promoter, whereas the date declared at the time of seeking registration of ongoing project is one sided declaration by the respondent promoter. The RERA Act, 2016 nowhere provides that a date for handing over of possession as agreed in the agreement for sale will stand changed/altered by way of declaration at the time of seeking registration of ongoing project and, therefore, the promoter remains liable for all the consequences and obligations arise out of failure in handing over of possession by due date as committed by him in the agreement for sale. Henceforth, an

allottee, as per Section 18 of the RERA Act of 2016, on demand, is entitled for refund of amounts along with interest in case where **the promoter fails in his obligation to hand over possession of the units as per agreement for sale.**

In this case, as per allotment letter dated 13.05.2014, the deemed date for handing over possession is 31.12.2015 and the same remains unchanged subsequent to commencement of RERA Act, 2016 coming into force and the promoter has failed to hand over the possession of unit till date. Further, it is admitted by the respondent promoter that occupation certificate has been received for Tower A, B and D and the same are fully operational, whereas, regarding Tower C, it is submitted that it is almost complete. There is nothing on record placed by the respondent promoter to show that occupation certificate has been issued by competent authority for Tower C. Therefore, it is presumed that till date no occupation certificate has been issued by competent authorities for Tower C. Furthermore, the respondent has contended that due to force majeure conditions (outbreak of covid-19), it could not complete the project on time.

19. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case **M/s Halliburton Offshore Services Inc. Versus Vedanta Limited and Another** bearing no.O.M.P(I)(Comm.) no.88/2020 and I.As 3696-3697/2020 dated 29.05.2020 had observed that:

"69. The past non-performance of the contactor cannot be condoned due to the covid-19 lockdown in March 2020 in India.

The contractor was in breach since 2019. Opportunities were given to the contractors 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."

20. The Authority is of the view that since the deemed date possession in present complaint was 31.12.2015 whereas the pandemic stormed in the country in March 2020 i.e., after the lapse of deemed date of possession, therefore, the plea of force majeure advanced by the respondent is devoid of merits as, concession of force majeure cannot be allowed to be availed by the errant respondent promoter.

21. In view of the above facts and circumstances of the case, the Authority observes that the promoter, has failed in his obligation to hand over possession of the unit to the complainant on the date as promised by it in the allotment letter i.e. up to 31.12.2015 and if the complainant wishes to withdraw from the project under Section 18(1) of the Act, promoter is liable, on demand, to return the amount received by it in respect of the unit along with interest.

22. Furthermore, the Authority observes that respondent/promoter in its reply has stated that as per the agreement for sale assured returns have been paid to the complainant upto September, 2018. Further, a sum of ₹97,000/- was paid to the complainant in cash on October, 2019 and ₹30,000/- on 30.03.2021 through net banking. However, after promulgation of the Banning of Unregulated Scheme Ordinance 2019(the BUDS Ordinance), the respondent

promoter signed an addendum agreement dated 28.06.2019 with the complainant whereby the parties owing to certain developments and circumstances mutually agreed to revise certain terms and conditions of the agreement and consequently the promoter stopped making payments of assured return. With respect to this issue of payment of assured returns the Authority is of the view that where an allottee does not want to continue with the project and wishes to withdraw from the same on account of non-delivery of possession on agreed date as per agreement for sale, shall be entitled for the relief of refund of amounts along with interest strictly in terms of Section 18(1). It is pertinent to mention here that during the course of hearing today i.e., 09.02.2023, the counsel for the complainant orally submitted before the Authority that the complainants (in all four captioned complaints) are only pressing for the relief of refund of the paid amount along with interest and want to forgo the relief of assured return.

23. The fact that the allottee/complainant wishes to withdraw from the project and is demanding return of the amount of ₹23,33,430/- received by promoter in respect of unit no.728, admeasuring 500 sq. ft. along with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein are proved on record as such, the matter is squarely covered under Section 18(1) of RERA Act of 2016. Perusal of record shows that allottee had accepted certain amounts as assured returns in terms of builder

buyer agreement till September 2018 and few payments subsequently. Since, now the complainant is choosing to withdraw from the project and is demanding relief of refund, he shall not be entitled to any benefits that were promised in the builder buyer agreement. Complainant as per Section 18(1) is entitled to refund of the amounts paid along with prescribed rate of interest. Therefore, the amount paid as assured returns should be deducted from the refundable amount.

24. The due date of possession as per the allotment letter dated 13.05.2014 (issued one day subsequent to execution of builder buyer agreement dated 12.05.2014) was 31.12.2015 and there is a delay of seven years one month nine days on the date of decision of the complaint. The occupation certificate/completion certificate of the tower/project where the unit is situated has still not been obtained by respondent promoter. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit for which she has paid an amount more than the basic sale price (allottee has paid an amount of ₹23,33,430/p- against basic sale price of ₹22,50,000/-) and as observed by the Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt Ltd. Versus Abhishek Khanna and Others, 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 allottee cannot be allowed to wait indefinitely for possession of the

Rathee

apartment allotted to them, nor can they be bound to take apartments in phase 1 of the project.....”

25. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and Others" has observed that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done on agreed date. Relevant Para 25 of ibid judgement is reproduced below:

“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.”

26. The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of non-delivery of possession of the unit on agreed date.

27. Therefore, Authority finds it to be fit case for allowing refund in favour of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: Interest payable by promoter and Allottee. [Section 19]
- An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus, or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (I) of Section 18 or the promoter fails to give possession of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:

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.”

28. 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. 09.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.

29. The term ‘interest’ is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. -For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

30. Accordingly, respondent will be liable to pay the complainants interest from the date, amounts were paid by her till the actual realization of the amount. Hence, Authority directs the respondent to refund to the complainants, the paid amounts in each case along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.60% (8.60% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated in all captioned complaints, the total amounts along with interest at the rate of 10.60% till the date of this order as per detail given in the table below:

In complaint no.836 of 2021:

S.No.	Principal Amount	Date of payment	Interest Accrued till 09.02.2023	TOTAL
1.	₹5,00,000/-	15.04.2014	₹4,67,997/-	₹9,68,142/-

Rathee

2.	₹18,33,430/-	05.05.2014	₹17,05,431/-	₹35,38,861/-
Total	₹23,33,430/-		₹21,73,428/-	₹45,06,858/-

In complaint no.837 of 2021:

S.No.	Principal Amount	Date of payment	Interest Accrued till 09.02.2023	TOTAL
1.	₹5,00,000/-	04.07.2016	₹3,50,236/-	₹8,50,236/-
2.	₹40,52,020/-	19.07.2016	₹28,20,672/-	₹68,72,692/-
Total	₹45,52,020/-		₹31,70,908/-	₹77,22,928/-

In complaint no.838 of 2021:

S.No.	Principal Amount	Date of payment	Interest Accrued till 09.02.2023	TOTAL
1.	₹2,00,000/-	20.06.2014	₹1,83,365/-	₹3,83,365/-
2.	₹21,33,430/-	07.07.2014	₹19,45,454/-	₹40,78,884/-
Total	₹23,33,430/-		₹21,28,819/-	₹44,62,249/-

In complaint no.839 of 2021:

S.No.	Principal Amount	Date of payment	Interest Accrued till 09.02.2023	TOTAL
1.	₹2,50,000/-	30.06.2014	₹2,28,481/-	₹4,78,481/-
2.	₹36,93,397/-	23.07.2014	₹33,50,812/-	₹70,44,209/-
Total	₹39,43,397/-		₹35,79,293/-	₹75,22,690/-

Since, neither of the parties have placed on record documents and statement of accounts to show the entire assured returns amount availed by the complainants/allottees from the respondent promoter. Therefore, only refundable amounts could be calculated by the account branch of the Authority.

31. Regarding relief of compensation sought by the complainants under the heads: mental agony, harassment and litigation expenses etc., it is made clear that nothing stated in this order shall debar the complainants from filing a complaint before the Adjudicating Officer to claim such compensations as they may be entitled under the law.

Rattree

I. DIRECTIONS OF THE AUTHORITY:

32. Taking into account above facts and circumstances, the Authority hereby passes this common order in this bunch of four captioned complaints and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Since the complainant is withdrawing from the project, respondent is directed to refund the amounts as mentioned in the above tables to each complainant respectively. The amount paid on account of assured return, if any, may be deducted/adjusted from the refundable amounts.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.
- (iii) The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid amount along with interest thereon to the complaints, and even if any transfer has already been initiated with respect to subject unit prior to passing of this order, the receivables shall be first utilized for clearing dues of the complainants/allottees.

33. The complaints are, accordingly, **disposed of**. Files be consigned to the record room and order be uploaded on the website of the Authority.


.....
NADIM AKHTAR
(MEMBER)


.....
DR. GEETA RATHEE SINGH
(MEMBER)

