

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

Complaint no. : 5200 of 2022
First date of hearing: 20.09.2022
Date of decision : 14.07.2023

Mohammad Shafi
R/o: C-154, Second floor, Greater Kailash-I, New
Delhi-110048

Complainant

Versus

M/s Vatika Limited
Office: Vatika Triangle, 4th Floor, Sushant Lok-
Phase-I, Block-A, Mehrauli-Gurgaon Road,
Gurgaon-122002.

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Garvit Gupta (Advocate)

Sh. Ankur Berry (Advocate)

Counsel for the complainant

Counsels for the Respondent

ORDER

1. The present complaint dated 21.07.2022 has been filed by the complainants/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 provision 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 complainants, 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 Inxt City Center at Sector 83, Gurugram, Haryana.
2.	Nature of the project	Commercial complex
3.	Project area	1.60 acres
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018
5.	RERA Registered/ not registered	40 of 2021 valid upto 31.03.2022
6.	Unit no.	305B, 3 rd floor, tower A
7.	Unit admeasuring	500 sq. ft.
8.	Date of allocation of new unit no.	31.07.2013 (annexure C3, page 40 of complaint)
9.	New unit no.	128, 1 st floor, block D (annexure C3, page 40 of complaint)
10.	Date of builder buyer agreement	22.05.2012
11.	Due date of possession	22.05.2016
12.	Total sale consideration	Rs. 25,00,000/-
13.	Amount paid by the complainant	Rs. 25,64,075/-



14.	Provision regarding assured return	<p>Clause 12 Assured Return and Leasing Arrangement</p> <p><i>Since the Buyer has paid the full basic sale consideration for the said commercial unit upon signing of this agreement and has also requested for putting the same on lease in combination with other adjoining units/spaces of other owners after the said Building is ready for occupation and use, the Developer has agreed to pay Rs. 65/- per sq.ft. super area of the said commercial unit per month by way of assured return to the Buyer from the date of execution of this agreement till the completion of construction of the said Building. The buyer hereby gives full authority and powers to the Developer to put the said Commercial Unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the Buyer, as and when the said Building/said commercial Unit is ready and fit for occupation. The buyer has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Developer or the confirm party. It is further agreed that:</i></p> <p><i>i. The Developer will pay to the Buyers Rs. 65/- per sq.ft. super area of the said commercial unit as committed return for upto three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier. After the</i></p>
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said commercial unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the Buyer will start receiving lease rental in respect of the said commercial unit in accordance with the lease document as may be executed and as described hereinafter.

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v. The developer expects to lease out the said commercial unit (individually or in combination with other adjoining units) at a minimum lease rental of Rs. 65/- per sq.ft. super area per month for the first term (of whatsoever period). If on account of any reason the lease rent achieved in respect of the first term of the lease is less than the aforesaid Rs. 65/- per sq.ft. super area per month, then the Developer shall pay to Buyer a one time compensation calculated at the rate of @Rs. 120/- per sq.ft. super area for every one rupee drop in the lease rental below Rs. 65/- per sq.ft. super area per month. This provision shall not apply in case of second and subsequent leases/lease terms of the said Commercial unit.

vi. However, if the lease rental in respect of the aforesaid first term of the lease exceeds the aforesaid minimum lease rental of Rs. 65/- per sq.ft. super area, then, the buyer shall pay to the Developer additional basic sale consideration calculated at RS. 60/- per sq.ft. super area of the said commercial unit for every one rupee increase in the lease

		<i>rental over and above the said minimum lease rental of Rs. 65/- per sq.ft. super area per month. This provision is confined only to the first term of the lease and shall not be applicable in case of second and subsequent leases/lease terms of the said commercial unit.</i>
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - I. That the complainant received a marketing call from the office of respondent in the month of February 2012 for booking in the project of the respondent. The complainant had also been attracted towards the project namely 'India Next City Centre' on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. He visited the sales gallery and consulted with the marketing staff of the respondent. Its marketing staff painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in its project. The marketing staff of the respondent assured that it would throughout adhere to its contractual obligations, rules, regulations and the provisions laid down by law.
 - II. That the complainant, induced by the assurances and representations made by the respondent, decided to book a commercial unit in the aforesaid project of the respondent. The complainant on demands of the respondent, made the payment of Rs. 4,00,000/- & Rs. 21,64,075/- on 30.03.2012 & 27.04.2012. The complainant signed several blank and

printed papers at the instance of the respondent who obtained the same on the ground that the same were required for completing the booking formalities. The complainant was not given chance to read or understand the said documents and he signed and completed the formalities as desired by the respondent.

- III. That based on the application made by the complainant, the respondent vide its letter dated 03.05.2012 allotted unit no. 305B, tower A measuring 500 sq.ft. in the said project of the respondent. Since, the entire basic sale consideration of the unit was paid by the complainant, a leasing arrangement was to be arrived at between the complainant and the respondent. It was specifically assured vide the said letter that the unit would be completed and ready for lease by 30.09.2014.
- IV. That a copy of the agreement was sent to the complainant, which was a wholly one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favoring the respondent and was totally against the interest of the purchaser, including the complainant herein.
- V. That moreover the fact that the respondent was in a completely dominant position and wanted to deliberately exploit the same at the cost of the innocent purchasers including the complainant is further evident from clause 1 of the agreement wherein it had given itself unlimited powers to such an extent that the respondent made it non-obligatory on its part to even send demand notices/reminders regarding the payments to be made by the complainant.
- VI. That the complainant made vocal his objections to the arbitrary and unilateral clauses of the agreement to the respondent. Prior to the signing

of the agreement, the complainant had made complete payment of the basic sale consideration of Rs. 25,00,000/- and the same was admitted by it in clause 12 of the agreement. The respondent categorically assured the complainant that he need not worry and that the respondent would complete the project on time, offer the possession and would keep on making payment towards the committed returns and thereafter the lease returns, after the unit was leased out. Since the complainant had already parted with a huge amount, he was left with no other option but to accept the lopsided and one-sided terms of the agreement. The complainant felt trapped and had no other option but to sign the dotted lines.

- VII. That the respondent vide its letter dated 31.07.2013 unilaterally changed the unit number as well as the tower in which the unit was allotted to the complainant. It was intimated to the complainant vide the said letter that all the rights, interest, lien, charge has been shifted from unit no. 305B on the third floor of tower A to unit no. 128 on the first floor of tower D. The said unilateral change was done by the respondent without any intimation and without taking any consent from the complainant. When the complainant confronted the respondent about the said unilateral act on its part, it took the shelter of arbitrary and completely one-sided builder buyer agreement to justify its acts. The complainant had no option but to accept the same for unit in tower D instead for unit in tower A as the respondent threatened the complainant about forfeiture of the basic sale consideration paid by the complainant if the terms of the letter would not be agreeable to the complainant. The respondent at the time said assured that no matter what, it would at no stage stop the committed returns agreed upon as per the terms of the agreement. The respondent started

making payment towards the committed returns as per the terms of the agreement and the complainant had no other option but to accept the same.

- VIII. That the complainant has made the entire payment strictly as per the terms of the allotment and the payment plan and no default in making timely payment towards the instalment demands was committed by the complainant.
- IX. That as per clause 12 of the builder buyer agreement dated 22.05.2012, the respondent had agreed to pay Rs. 65/- per sq.ft. super area of the commercial unit per month by way of assured return to the complainant from the date of execution of the agreement till the completion of construction of the building. It was further agreed vide clause 12(i) of the said agreement that the respondent would pay to the complainant Rs. 65/- per sq.ft. super area of the commercial unit as committed returns for upto three years from the date of completion of construction of the building or till the commercial unit was put on lease, whichever was earlier. It was mutually decided between the parties vide clause 12(v) of the agreement that after the completion of the construction, the respondent would lease out the commercial unit at a minimum lease rental of Rs. 65/- per sq.ft. super area per month. If on account of any reason, the lease rent achieved was less than the said amount, then the respondent would pay to the complainant a onetime compensation calculated at the rate of Rs. 120/- per sq. ft. super area for every one rupee drop in the lease rental below Rs. 65/- per sq. ft. super area per month.
- X. That despite having made the builder buyer agreement dated 22.05.2012 containing terms very much favorable as per the wishes of the respondent,

still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter even failed to perform the most fundamental obligation of the agreement which was to complete the construction of the unit within the promised time frame, which in the present case was delayed for an extremely long period of time. The failure of the respondent and the fraud played by it is writ large. It was also decided that after the completion of the unit, an offer of possession would be made by the respondent to the complainant and the same is evident from clause 3 of the agreement. The due date of completing the construction as per clause 10 of the builder buyer agreement was 21.05.2016. The complainant along with his daughter went to the office of the respondent and met its representatives who assured the complainant that they would soon issue an offer of possession after completing the construction and that they would keep on making payment towards the committed returns as per the terms of the agreement.

- XI. That the complainant requested the respondent telephonically, and by visiting the office of the respondent to update him about the date of handing over of the possession. However, the respondent, in order to dilly-dally the matter continuously misled the complainant by giving incorrect information and timelines within which it would issue an offer of possession to the complainant.
- XII. That vide letter dated 12.03.2018, the respondent intimated to the complainant that the construction of the tower in which the complainant had unilaterally allotted a unit was completed and that the same was offered for leasing. It was informed to the complainant vide the said letter that from 01.03.2018, all the payouts against the unit would be booked as

rent payments. When the complainant went to the project site to inspect the unit in question and to enquire about the execution of the lease deed, the complainant was shocked to see the construction status. No construction activities were going on at the project site and it was clear that the work has been at standstill since several months. The actual ground reality at the construction site was way different than what the respondent had claimed to the complainant regarding the completion of the project in its letter dated 12.03.2018. The representatives of the respondent were not able to even respond properly to the queries of the complainant regarding execution of a lease deed on account of which the respondent was to payout the rent payments as per the terms of the agreement. The respondent yet again, with mala fide motives, gave an assurance that it would soon execute a lease deed with a prospective lessee after completing the construction of the unit in question. However, yet again, the assurances made by the respondent turned out to be false. No concrete steps were taken by the respondent for completion of the unit in question or for execution of a lease deed. The respondent kept on misleading the complainant by giving incorrect information and assurances.

- XIII. That the respondent in blatant violation of the agreed terms and conditions laid down in the agreement suddenly stopped making payments towards the committed returns/lease rent from October, 2018 onwards. The respondent deliberately, mischievously, fraudulently and with malafide motives cheated the complainant. When the complainant confronted the respondent about the illegal stopping of the payments which reflected nothing but deliberate lethargy, negligence and unfair

trade practice by the respondent, its representatives started making excuses for non-disbursal of the amount and assured that the due amount would be credited in the bank account of the complainant in the due course of time. However, the assurances of the respondent again turned out to be incorrect and false. The high headedness of the respondent is an illustration of how the respondent conducts its business which was only to maximize the profits with no concern towards the buyers including the complainant.

- XIV. That the respondent has miserably failed to disburse any other amount for the period of last 3.5 years from the date of disbursal of last amount in September, 2018. Moreover, the respondent has not raised construction within the agreed time frame. There has been virtually no progress and the construction activity are lying suspended since long. The complainant has a strong apprehension that the false claim of completion of the project made by the respondent in its letter dated 12.03.2018 was nothing but a dishonest attempt of the respondent to stop making payment towards the committed returns as per clause 12 of the buyer agreement. It is reasserted that the complainant has made the payment towards the full sale consideration as demanded by the respondent and the respondent has done nothing but has only utilized the hard earned amount of the complainant for its own use and purposes. The fact that no intimation regarding the application for the grant of the occupation certificate was given by the respondent to the complainant speaks about the volume of illegalities and deficiencies on the part of the respondent/promoter. There is inordinate delay in developing the project well beyond what was promised and assured to the complainant.

- XV. That the respondent has committed various acts of omission and commission by making incorrect and false statements in the advertisements issued by it at the time of booking. There is an inordinate delay of 6 years calculated upto June, 2022 and till date the possession of the allotted unit has not been offered by the respondent to the complainant. The respondent has failed to make any payment towards the committed returns to the complainant from October 2018 onwards despite the complainant making full and final payment towards the total sale consideration of the amount. The respondent/promoter had represented and warranted at the time of booking that it would offer the possession of the dream unit of the complainant to him in a timely manner along with committed returns. However, the failure of the respondent company has resulted in serious consequences being borne by the complainant.
- XVI. That the respondent has misused and converted to its own use the huge hard-earned amounts received from the complainant and other buyers in the project in a totally illegal and unprofessional manner and the respondent was least bothered about the timely finishing of the project and offering of possession of the apartment in question to the complainant as per the terms of the buyer's agreement. The complainant has been duped of his hard-earned money paid to the respondent regarding the unit in question. The complainant requested the respondent to either continue making payments towards the committed returns along with interest till the time of offer the possession of the allotted unit to him or to refund back the entire amount paid by him along with interest on account of inordinate delay, but the respondent has been dilly-dallying the

matter. The complainant has been running from pillar to post and has been mentally and financially harassed by the conduct of the respondent.

- XVII. That it is unambiguously lucid that no force majeure was involved and that the project has been at standstill since several years. Despite making full payment, the respondent has failed to adhere to the terms and conditions of the buyer agreement and the promises, assurances and representations which it made to the complainant at the time of the booking.
- XVIII. That due to the fault of the respondent, the complainant has been deprived of a commercial unit for a long time and has suffered very badly. The respondent has continuously been misleading the complainant by giving incorrect information and assurances that it would handover the possession to the complainant very soon along with committed returns for the duration from October 2018 till the date of handing over of the possession. The complainant visited the project site in March, 2022 and was shocked to see that no construction activity is currently going on there. The complainant intimated to the respondent that he doesn't want any association with the respondent on account of blatant violations committed by the respondent and requested the representatives of the respondent to refund the entire amount paid by him along with interest to the complainant. The respondent has been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the complainant and are unconcerned about the return of the amount.
- XIX. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations. The cause of action arose when the respondent failed to complete the

construction within the time limit prescribed, offer possession and committed returns from October 2018 onwards and finally about a week ago, when the respondent refused to refund the amount paid by the complainant along with compensation/damages and interest.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 1. Direct the respondent to refund the paid-up amount.
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 present complaint being filed for refund of consideration amount paid for the commercial unit, cannot be allowed by the Authority in view of the fact that the respondent had duly paid assured return/monthly committed return as per the BBA, at the rate of Rs. 65/- per sq.ft. from the year 2012 till October 2018. Thus, the respondent having paid nearly the entire consideration amount the present complaint out to be dismissed.
 - b. That the complainant has got no locus standi or cause of action to file the present complaint. It is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 22.05.2012, as shall be evident from the submissions made in the following paras of the present reply.

- c. That at the very outset it is submitted that the complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected themselves in filing the above captioned complaint before the authority as the reliefs being claimed by him cannot be said to fall within the realm of jurisdiction of the authority. It is humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, the 'assured return' and or any "committed returns" on the deposit schemes have been banned. The respondents having not taken registration from SEBI Board cannot run, operate, continue an assured return scheme. The implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "deposit".
- d. As per section 3 of the BUDS Act, all unregulated deposit scheme has been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposit. Thus, section 3 of the BUDS Act, makes the assured return schemes, of the builders and promoters, illegal and punishable under law.
- e. That the commercial unit of the complainant is not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income. Furthermore, as per the clause 12 of the agreement, the said commercial space shall be deemed to be legally possessed by the complainant and he could not take the physical



- possession. Hence, the commercial space booked by the complainant is not meant for physical possession.
- f. That the complainants have come before the Authority with unclean hands. The complaint has been filed by the complainants just to harass the respondent and to gain unjust enrichment. The actual reason for filing of the complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. The complainants have instituted the present false and vexatious complaint against the respondent who has already fulfilled its obligation as defined under the buyer's agreement dated 22.05.2012.
- g. That the complainants entered into an agreement i.e., buyer's agreement dated 22.05.2012 with respondent owing to the name, good will and reputation of the respondent. The respondent duly paid the assured return to the complainant till October 2018. Due to external circumstance which were not in control of the respondent, construction got deferred.
- h. The present complaint has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act 2016. The legislature in its great wisdom, understanding the catalytic role played by the real estate sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and



promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while sections 11 to section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/developer, section 19 provides the rights and duties of allottee. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the allottee, rather the intent was to ensure that both the allottee and the developer be kept at par and either of the party should not be made to suffer due to act or omission of part of the other.

- i. That it is brought to the knowledge of the Authority that the complainants are guilty of placing untrue facts and is attempting to hide the true colour of the intention of the complainants. That before buying the property from the erstwhile allottees, the complainants were aware of the status of the project and the fact that the commercial unit was only intended for lease and never for physical possession.
- j. That the complainant is attempting to seek an advantage of the slowdown in the real estate sector, and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondents by engaging and igniting frivolous issues with ulterior motives to pressurize the respondents. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of him and against the respondents and hence, the complaint deserves to be dismissed.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. 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

10. 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.

11. 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 complainant at a later stage.
12. 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 ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

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

13. 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.

F. Findings on the relief sought by the complainants.

F. I Direct the respondent to refund of the entire amount of paid by the complainants to the respondent for the said unit.

14. The complainants have submitted that they booked a unit in the respondent's project namely "Vatika Inxt City Center and allotted a unit bearing no. 305B, 3rd floor, tower A admeasuring 500 sq.ft. for a total sale consideration of Rs. 25,00,000/- against which they paid an amount of Rs. 25,64,075/-. Thereafter, the unit number was changed to 128, 1st floor, block D vide letter dated 31.07.2013. As per terms and conditions of the buyer's agreement the complainants were entitled for assured return. It is pertinent to mention here that as per the terms and conditions of buyer's agreement 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.b
15. 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.
16. The due date of possession as per agreement for sale as mentioned in the table above is 22.05.2016 and there is delay of 6 years 1 months 29 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

17. 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"

18. 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 they wish 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.

19. 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.
20. **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

21. 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.

22. 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., **14.07.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
23. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 25,64,075/- with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of 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 adjusted from the refundable amount.

G. Directions of the authority

24. 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):
 - i. The respondent/promoter is directed to refund the entire amount of Rs. 25,64,075/- paid by the complainant along with prescribed rate of interest @ 10.70% 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 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-complainant.
- 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.
25. Complaint stands disposed of.
26. File be consigned to registry.



(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

14.07.2023

HARERA
GURUGRAM