

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

Complaint no. :	1300 of 2023
Date of filing complaint:	13.04.2023
First date of hearing:	01.09.2023
Date of decision :	06.10.2023

1. Sadhna Gupta 2. Sumedha Gupta 3. Aahana Gupta All are r/o: 103/87, Silver Oaks, DLF City Phase - I, Gurugram, Haryana	Complainants
Versus	
M/s Vatika Limited Address: Vatika Triangle, 4th floor, Sushant lok, Phase-I, Block-A, Mehrauli-Gurgaon Road, Gurgaon- 122002	Respondent
CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Ms. Niharika (Advocate)	Complainants
Sh. Mayank Grover (Advocate)	Respondent

HARERA
GURUGRAM
ORDER

1. The present complaint 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 provisions of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Tranquil Heights Ph.-I" at sector 82A, Gurgaon, Haryana
2.	Nature of the project	Group housing
3.	Project area	11.218 acres
4.	DTCP license no.	22 of 2011 dated 24.03.2011 valid upto 23.03.2019
5.	Name of licensee	M/s Ganesh buildtech Pvt. Ltd. & others, C/o Vatika Ltd.
6.	RERA Registered/ not registered	Registered vide no. 359 of 2017 area admeasuring 22646.293 sqm. Valid upto 30.04.2021
7.	Unit no.	2001, building E (Page no. 51 of complaint)
8.	Unit area admeasuring	2265 sq. ft. (Page no. 51 of complaint)
9.	Date of booking	18.12.2013 (Page 22 of complaint)

10.	Date of allotment	13.10.2014 (page 23 of reply)
11.	Date of builder buyer agreement	16.12.2015 (page 48 of complaint)
12.	Possession clause	<p>13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT</p> <p>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses 14 to 17 & 37 or due to failure of Allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure -I or as per the demands raised by the developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this agreement.</p> <p>Emphasis supplied</p>
13.	Due date of possession	16.12.2019
14.	Total sale consideration	Rs. 1,46,23,406/- [Page 24 of complaint]
15.	Amount paid by the complainants	Rs. 63,94,958/- [Page 24 of complaint]

16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
- On 24.03.2011, DTCP granted License No. 22 of 2011 under the provisions of Haryana Development and Regulation of Urban Areas Act, 1974 to various landowners c/o M/s Vatika Ltd. to develop a residential group housing colony on the land measuring 11.218 acres falling in the revenue estates of village Shikohpur, Sector 82A, Tehsil and District Gurgaon (hereinafter referred to as the 'Said License'). On 06.07.2011, the respondent got approved the demarcation plan from DTCP, Haryana. The said demarcation plan was approved vide letter dated 01.09.2011.
 - It is pertinent to mention that the complainants herein had booked their unit in the said project on 18.12.2013 and as such was a pre-launch booking. They paid the initial booking amount on 18.12.2013 towards the total sale consideration of the said unit. The respondent also demanded Rs. 43,48,737/- from them even before the BBA was executed giving false promise of timely hand over of possession, unmatched services, etc. They duly paid the above-mentioned amount to the respondent.

- After the booking was done, there was delay in the execution of the builder buyer agreement (BBA) and the respondent failed to share a copy of the BBA in time with them. The respondent even failed to provide a formal letter of allotment and said that it was only after the allotment letter was given that the BBA would be executed. Considering the attitude of the respondent, they stopped paying any further money as the respondent failed to execute a builder buyer agreement. It was then the BBA was finally given to them on 16.12.2015, i.e., nearly 2 years after the booking of the unit, which stipulated a further period of 48 months for delivery of possession. Accordingly, the possession of the unit had to be delivered in 2017. They agreed to the proposal of the respondent and an addendum to the builder buyer agreement was executed between the parties. Pursuant to the said addendum unit No. A-1501 was allotted to them having super area of 1925 sq. ft.
- Seeing the abysmal level of development in the project, they again approached the respondent's office with a request to initiate refund and cancel the allotment of Unit A-1501 in the said project. The respondent's officials agreed for the refund to be made to them. For the purpose of initiating a refund, respondent's officials asked the them to send a signed undertaking which contained a detailed schedule of payments already made by the respondent subject to which the allotment of the unit No. A-1501 would stand cancelled.

On 19.04.2022, Ms. Nidhi Bhatnagar who is a senior member of Vatika Ltd.'s CRM team had even sent an email confirming the manner in which refund will be offered to them. The said undertaking was, upon insistence of respondent's officials, signed and sent by them on 02.05.2022. According to the said undertaking, the total refund along with 4% interest rate was to be paid to them which amounted to Rs. 80,54,477/- by June 2022 and it was agreed that upon the final payment being made to them, the allotment of the said unit would stand cancelled. Several officials from respondent's office, particularly Mr. Gautam Bhalla and Ms. Nidhi Bhatnagar time and again confirmed the agreement arrived at between the parties. After the execution of the undertaking, Ms. Nidhi Bhatnagar informed them that the payment would be made in six instalments instead of five as stated in the undertaking, which was agreeable to them. However, till July 2022, no payment was received. Hence, the respondent stood in breach of the agreement arrived at between the parties. Subsequently, they received an amount of Rs. 13,42,412/-

- on 02.08.2022 which was signed by Mr. Gautam Bhalla and one more authorised signatory of Vatika Ltd. vide cheque no. 2447 drawn at HDFC Bank, Sector 53, Gurugram. However, thereafter, they have not received a single penny from the respondent thereby rendering in complete and utter breach of the agreement between the parties.

- Despite having raised money through booking and without executing agreement to Sell with them and other homebuyers, the respondent on 23.07.2015 filed a written representation before DTCP, Haryana falsely stating that it had not realised any amount from the customers till 31.03.2015. The respondent actively concealed and misstated before DTCP, Haryana the fact that it had already booked various units with the customers.
- On 17.11.2017, the respondent got the project registered under RERA having registration certificate No. 359 of 2017. Pertinently, the said registration is for "Tranquil Heights" (for Phase-I) being developed over an area of 22646.293 sq. metres of 5.59 Acres approximately instead of 11.218 Acres over which the license has been obtained and the project is promised to be developed as per the agreement to sell. It has now also come to the knowledge of them that the said project is being deregistered. As such, there is no scope for them to receive the unit allotted to them in 2015. In view of the above, they are seeking refund along with interest as applicable under RERA, 2016.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
 - i. Direct the respondent to refund to them, the principle amount deposited, i.e. Rs. 63,94,958/- along with interest at the rate of 12% p.a. from the date of the deposit;

- ii. Penalise the respondent on account of violation of Section 12 of Real Estate Regulation Act, 2016 for making false statements in advertisements/prospectus relating to Vatika Tranquil Heights Project.
- iii. Penalise the respondent on account of violation of Section 14(2) of the Real Estate Regulation Act, 2016 for failing to provide details of approved plans, layout plans and other approvals which is the right of them under Section 19 of the Act.
- iv. Pay the complainants Rs. 5,00,000/- towards the cost of legal expenses.

D. Reply by respondent:

5. The respondent made the following submissions in its reply:
 - (a) That the contents of the complaint herein, deliberately failed to mention the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainants is raising false, frivolous, misleading and baseless allegations against the respondent with intent to acquire unlawful gains.
 - (b) That the Complainants have not approached the Ld. Authority with clean hands and has suppressed/concealed the relevant facts with the intent to mislead this Ld. Authority through the representation of the one-sided facts. It is submitted that the

complaint under reply is devoid of merits and the same should be dismissed with cost.

- (c) That in around the year 2013, the Complainants herein, learned about Project and approached the Respondent to know the details of the said project. The Complainants further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
- (d) It is pertinent to bring into the knowledge of this Ld. Authority that as per the agreement so signed and acknowledged by the Respondent herein provided and estimated time period of 48 (Forty-Eight) months for completing of the construction for the Project i.e., "**Tranquil Heights**", and the same could not be proceeded further and was stopped in the mid-way due to various hindrances in construction of the project, which were unavoidable and purely beyond the control of the Respondent.
- (e) It is further submitted that considering the request of the complainant, the respondent cancelled the allotment and refunded an amount of Rs. 13,42,412/- as admitted by the complainants.
- (f) That the delay in completing the project is due to the reasons beyond the control of the developer. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:
- a. Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned

project of the Respondent which further constrained the Respondent to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the Respondent were adversely affected and the Respondent was forced to reevaluate its construction plans which caused a long delay.

- b. Delay caused by the Haryana Development Urban Authority (HUDA) in acquisition of land for laying down sector roads for connecting the Project. The matter has been further embroiled in sundry litigations between HUDA and land-owners.
- c. Due to the implementation of MNREGA Schemes by the Central Government, the construction industry as a whole has been facing shortage of labour supply, due to labourers regularly travelling away from Delhi-NCR to avail benefits of the scheme. This has directly caused a detrimental impact to the Respondent, as it has been difficult to retain labourers for longer and stable periods of time and complete construction in a smooth flow.
- d. Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana.
- e. Disruptions caused by unusually heavy rains in Gurgaon every year.
- f. Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.
- g. Declaration of Gurgaon as a Notified Area for the purpose of Groundwater and restrictions imposed by the state government on its extraction for construction purposes.
- h. Delayed re-routing by DHBVN of a 66KVA high-tension electricity line passing over the project.
- i. The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in Air Quality in the Delhi-NCR region, especially during winter months. Among these measures were bans imposed on construction activities for a

total period of 70 days between November 2016 to December 2019.

- j. Additionally, imposition of several partial restrictions from time to time prevented the Respondent from continuing construction work and ensuring fast construction. Some of these partial restrictions are:
- i. Construction activities could not be carried out between 6 p.m. to 6 a.m. for 174 days.
 - ii. The usage of Diesel Generator Sets was prohibited for 128 days.
 - iii. The entries of truck traffic into Delhi were restricted.
 - iv. Manufacturers of construction material were prevented from making use of close brick kilns, Hot Mix plants, and stone crushers.
 - v. Stringently enforced rules for dust control in construction activities and close non-compliant sites.
- k. The imposition of several total and partial restrictions on construction activities and suppliers as well as manufacturers of necessary material required, has rendered the Respondent with no option but to incur delay in completing construction of its projects. This has furthermore led to significant loss of productivity and continuity in construction as the Respondent was continuously stopped from dedicatedly completing the Project. The several restrictions have also resulted in regular demobilization of labour, as the Respondent would have to disband the groups of workers from time to time, which created difficulty in being able to resume construction activities with required momentum and added many additional weeks to the stipulated time of construction.
- (g) The Government of India imposed lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic. That severely impacted the respondent as it was constrained to shut down all construction activities for the sake of workers' safety, most of the labour workforce migrated back to their villages and home states, leaving the respondent in a state where there is still a struggle to mobilize adequate number of workers to start and complete the construction of the project

due to lack of manpower. Furthermore, some suppliers of the respondent, located in Maharashtra, are still unable to process orders which inadvertently have led to more delay.

(h) Further it is not disputed that due to the outbreak of Covid 19, the entire world went into lockdown and all the construction activities were halted and no labour was available. Infact, all the developers are still facing hardship because of acute shortage of labourers and even the HRERA, Gurugram has vide order dated 26.05.2020 declared the Covid 19 as a calamity under the Force Majeure clause and therefore, there cannot be said to be any delay in delivering the possession by the Respondent.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties. The written submissions made by both the parties along with documents have also been perused by the authority.

E. Jurisdiction of the authority:

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, the jurisdiction of Real

Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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.*** SCC Online SC 1044 decided on 11.11.2021 wherein it has been laid down as under:

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

F. Finding on the objections raised by the respondent.

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

12. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention

that the construction of the project was delayed due to force majeure conditions such as shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 16.12.2015 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 16.12.2019. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no 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.

that the construction of the project was delayed due to force majeure conditions such as shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 16.12.2015 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 16.12.2019. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no 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.

13. 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 IAs 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."

14. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 16.12.2019 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was 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 complainant:

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

15. The complainants booked a unit bearing no. 2001, building E admeasuring 2265 sq. ft in the above-mentioned project of respondent and the same led to execution of buyers' agreement on 16.12.2015. They have paid a sum of Rs. 63,94,958/- to the respondent against the total sale consideration of Rs. 1,46,23,406/- but due to misrepresentations w.r.t. the project, they did not pay the remaining amount and are seeking refund of the paid-up amount besides interest from the respondent. Section 18(1) of the Act is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

16. Clause 13 of the buyer's agreement dated 16.12.2015 provides for schedule for possession of unit in question and is reproduced below for the reference:

13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT

The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said Apartment within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses 14 to 17 & 37 or due to failure of Allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure -I or as per the demands raised by the developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this agreement.

(Emphasis supplied)

17. **Entitlement of the complainants for refund:** The respondent has proposed to hand over the possession of the apartment within a period of 48 months from date of execution of builder buyer's agreement. The builder buyer's agreement was executed *inter se* parties on 16.12.2015 and therefore, the due date of possession comes out to be 16.12.2019.
18. It is not disputed that the complainants are an allottee of the respondent having been allotted a unit no. 2001, building A admeasuring 2265 sq. ft. of the project known as Tranquil Heights, Phase I, Sector 82A, Gurugram for a total sale consideration of Rs. 1,46,23,406/-. The respondent in the reply has admitted that the project could not be delivered due to various reasons and it has filed a proposal for de-registration of the project in question. As of now, there is no progress in project at the site. Thus, the complainants are right in withdrawing from the project and seeking refund of the paid-up amount besides interest as the promoter has failed to raise construction as per the schedule of

construction despite demands being raised from them and the project being abandoned.

19. 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***, observed as under:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

20. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee,

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

21. Admissibility of refund along with prescribed rate of interest:

Section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by him 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."

22. 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.

23. 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., **06.10.2023** is 8.75%. Accordingly, the prescribed

rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

24. The authority hereby directs the respondent/promoter to return to the complainants the amount received by it i.e., Rs. 63,94,958/- after deducting the amount already returned by the respondent i.e., Rs. 13,42,412/- with interest at the rate of 10.75% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the rules *ibid*.

G.II Penalise the respondent on account of violation of Section 12 of Real Estate Regulation Act, 2016 for making false statements in advertisements/prospectus relating to Vatika Tranquil Heights Project and penalise the respondent on account of violation of Section 14(2) of the Real Estate Regulation Act, 2016 for failing to provide details of approved plans, layout plans and other approvals which is the right of them under Section 19 of the Act.

25. The aforesaid reliefs have not been pressed by the complainants during the course of proceeding. Hence, no direction to this effect are required to be issued.

G.III Direct the respondent to award compensation of Rs. 5,00,000/-

26. The complainants are seeking relief w.r.t. compensation in the above-mentioned relief. *Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.(supra)*, has held that an allottee due date is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority:

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

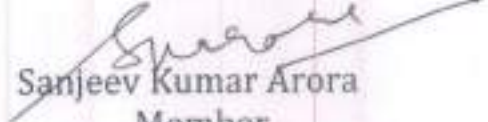
- i. The respondent/promoter is directed to refund the amount paid by the complainants after deducting the amount already returned by it i.e., Rs. 13,42,412/- along with prescribed rate of interest @ 10.75% p.a. from the date of each payment till the actual date of refund of the amount.

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

28. Complaint stands disposed of.

29. File be consigned to the registry.




Sanjeev Kumar Arora
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.10.2023



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