

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

Date of decision: 14.11.2023

NAME OF THE BUILDER		M/s Vatika Limited	
PROJECT NAME		"Vatika INXT City Centre"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4882/2021	Dr. Poonam Mukim V/s M/s Vatika Limited	Shri Abhijit Gupta Advocate and Ms. Ankur Berry Advocate
2.	CR/4973/2021	Dr. Poonam Mukim V/s M/s Vatika Limited	Shri Abhijit Gupta Advocate and Ms. Ankur Berry Advocate

CORAM:

Shri Ashok Sangwan

Member

Shri Sanjeev Kumar Arora

Member

1. This order shall dispose of both the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Vatika INXT City Centre" being developed by the same



respondent/promoter i.e., M/s Vatika Limited. The terms and conditions of the allotment letter against the allotment of unit in the said project of the respondent/builder and fulcrum of the issues involved in these cases pertains to failure on the part of the promoter to complete the construction of the project, seeking unpaid assured return along with interest at the prescribed rate, delay possession charges and the execution of the conveyance deeds.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location		"Vatika INXT City Centre", Sector 83, Gurugram, Haryana,				
Clause 5 of the allotment letter dated 23.06.2008						
<i>5. The Developer shall handover the final possession on or before 15th June 2011, failing which the Developer shall be liable to pay a penalty of Rs. 50/- per sq. ft. per month or its part thereof to the Allottee.</i>						
1	2	3	4	5	6	7
S. no.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of allotment letter	Due date of possession	Total sale consideration and amount paid	Relief sought
1.	CR/4882/2021 Dr. Poonam Mukim V/s M/s Vatika Limited DOF-14.12.2021 Reply-22.04.2022	Unit no-202, second floor, admeasuring 1500 sq. ft. (super area) [Page 19 of the complaint]	23.06.2008	15.06.2011	TC- Rs. 50,75,000 AP- Rs. Rs. 48,21,250	<ul style="list-style-type: none"> To handover the actual, physical, vacant possession of the subject commercial unit. To direct the respondent to pay assured return as per the agreement. To direct the respondent to execute the sale deed of the subject unit in favour of the complainant. To direct the respondent to pay the delay penalty charges with interest as per provisions of the Act.



2.	CR/4973/ 2021 Dr. Poonam Mukim V/s M/s Vatika Limited DOF- 14.12.2021 Reply- 07.12.2022	Unit no- 201, 2 nd floor admeasur ing 1500 sq. fts. (super area) [Page 21 of the complaint]	23.06.2008	15.06.2011	TC- Rs. 50,75,000 AP- Rs. 48,21,250	<ul style="list-style-type: none">• To handover the actual, physical, vacant possession of the subject commercial unit.• To direct the respondent to pay assured return as per the agreement.• To direct the respondent to execute the sale deed of the subject unit in favour of the complainant.• To direct the respondent to pay the delay penalty charges with interest as per provisions of the Act.
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing complaint
TC	Total consideration
AP	Amount paid by the allottee(s)

4. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4882/2021 Dr. Poonam Mukim V/s M/s Vatika Limited** are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the allottee.

A. Project and unit related details

5. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:



CR/4882/2021 titled DR. Poonam Mukim Vs. Vatika Limited

S.no.	Particulars	Details
1.	Name of the project	Vatika Trade centre (INXT City Centre), Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	10.718 acres
4.	DTCP license no and valid till	122 of 2008 dated 14.06.2008 Valid up to- 13.06.2016
5.	HRERA registered or not	Not registered Note: Suo-moto proceedings vide no. 909-2023 already initiated
6.	Allotment letter dated	23.06.2008 [Page 19 of complaint]
7.	Date of builder buyer agreement	Annexed but not executed.
8.	Unit no. as per the allotment letter dated 23.06.2008	202, 2 nd floor, tower D admeasuring 1500 sq. ft. (super area) [Page 19 of complaint]
9.	Possession clause	Clause 5 of the allotment letter dated 23.06.2008 <i>5. The Developer shall handover the final possession on or before 15th June 2011, failing which the Developer shall be liable to pay a penalty of Rs. 50/- per sq. ft. per month or its part thereof to the Allottee.</i>
10.	Due date of handing over possession as per clause 5 of the allotment letter dated 23.06.2008	15.06.2011
11.	Assured return/ committed return	No document placed on record

12.	Total sale consideration as per allotment letter	Rs. 50,75,000/-
13.	Amount paid by the complainant as per receipt at page 47-49 of complaint	Rs. 48,21,250/- [As per calculation sheet filed by the respondent]
14.	Letter by which the respondent intimated 'Completion of construction for Block D'	26.03.2018 [Page 33 of reply]
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained
17.	Assured return paid by the respondent to the complainant	Paid till September 2018

B. Facts of the complaint

6. The complainant has made following submissions in the complaint:

- i. That, the respondent i.e., Vatika Limited is a company incorporated under the provisions of Companies Act, 1956 and is inter alia engaged in the business activities relating to construction, development, marketing & sales of various types of residential & commercial properties to its various customers/ clients and works for gain.
- ii. That, pursuant to the elaborate advertisements, assurances, representations and promises made by respondent in the brochure circulated by them about the timely completion of a premium project with impeccable facilities and believing the same to be correct and true, the complainant considered the commercial unit bearing no. 202 admeasuring 1500 sq. fts. super area on 2nd floor with two reserved car park slots in the basement, in Vatika Trade Center,

Sector 82A, NH-8, Gurugram, Haryana. It was represented and assured by the respondent that the project including the flat of the complainant would be completed by end of 2013. The booking of the said unit was confirmed by the respondent by issuing an allotment letter dated 23.06.2008.

- iii. That the respondent paid the stipulated assured return at the given rate to the complainant till the year 2018. However, after that the respondent has wilfully avoided the payment of assured return to the complainant.
- iv. That the complainant was shocked and appalled when respondent did not hand over the possession of the said commercial unit on or before the stipulated time, as agreed upon by the parties. That it is not out the place to mention that this act of respondent is arbitrary and in contravention to various provisions of the agreements agreed between the parties.
- v. After getting zero response from the respondent, the complainant visited the construction site but were shocked and appalled to see that construction that had not been completed. Despite respondent promising the complainant to provide him with world class project with impeccable facilities, the complainant is shocked to see incomplete construction being done at the construction site and the purpose of the complainant to book the unit is completely not fulfilled.
- vi. That the respondent at various instances violated the terms and condition agreed between them, firstly by not handing over the peaceful and vacant possession of the abovesaid allotted unit and



secondly by not providing the complainant with the payments on account of assured payments. Thirdly, by not executing the sale deed of the abovesaid unit. That, even at the time of the filing of the present complaint, the respondent has not got the project registered with the Authority and for the same reason, the respondent has violated the provisions of section 3 and section 4 of the Act and therefore liable to be punished under section 59 & 60 of the Act.

vii. That the respondent is not only guilty of deficiency of services and for unfair trade policy along with the breach of contractual obligations, mental torture, but harassment of the complainant by also misguiding them, keeping them in dark and putting their future at risk by engaging their hard-earned money. The complainant herein is constrained and left with no option but to file this present complaint seeking the following reliefs:

C. Relief sought by the complainant:

- a. To handover the actual, physical, vacant possession of the subject commercial unit.
- b. To direct the respondent to execute the sale deed of the subject unit in favour of the complainant.
- c. To direct the respondent to pay the delay penalty charges with interest as per the provisions of the Act.
- d. To direct the respondent to pay assured return as per the agreement.

D. Reply by the respondent

7. The respondent contested the complaint on the following grounds:



- i. That the present complaint is not maintainable or tenable in the eyes of law.

The complainant has misdirected himself in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by the complainant cannot be said to fall within the realm of jurisdiction of this authority. It is humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'Assured Return' and/ or any "committed returns" on the deposit schemes have been banned. The respondent 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".

- ii. That section 2(4) defines the term "Deposit" to include an amount of money received by way of an advance or loan or in any form, by any deposit taker and the *Explanation* to the section 2(4) further expands the definition of the "Deposit" in respect of company, to have same meaning as defined within the Companies Act, 2013. The Companies Act, 2013 in section 2 (31) defines "Deposit" as "*deposit includes any receipt of money by way of deposit or loan*



or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India”.

The Legislature while defining the term “*deposit*” intentionally used the term *prescribed* so as to further clarify and connect the same to be read with rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014. Further the Explanation for the clause (c) of section 2(1) states that any amount: - received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, shall be treated as a deposit. Thus, the simultaneous reading of the 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 illegal.

- iii. That Section 2(17) of the Banning of Unregulated Deposit Schemes Act, 2019 defines the “Unregulated Deposit Scheme” as *‘means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified under column (3) of the First Schedule’*. Thus, the ‘Assured Return Scheme’ proposed and floated by the respondent has become infructuous



due to operation of law, thus the relief prayed for in the present complaint cannot survive due to operation of law.

iv. That as per section 3 of the BUDS Act, all Unregulated Deposit Scheme have been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any advertisements soliciting participation or enrolment in; or accept deposit. Thus, the section 3 of the BUDS Act, makes the assured return schemes, of the builders and promoter, illegal and punishable under law. Further as per the Securities Exchange Board of India Act, 1992 (hereinafter referred as SEBI Act) Collective Investment Schemes as defined under Section 11 AA can only be run and operated by a registered person/company. Hence, the assured return scheme of the respondent has become illegal by the operation of law and the respondent cannot be made to run a scheme which has become infructuous by law.

v. That the complainant has not come before the Hon'ble Authority with clean hands. That the complaint has been filed by the complainant just to harass the opposite parties / respondent and to gain the unjust enrichment. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainant requires detailed deliberation by leading the

evidence and cross-examination, thus only the Civil Court has jurisdiction to deal with the cases required detailed evidence for proper and fair adjudication.

- vi. That the present complaint is not maintainable before the Hon'ble Authority as it is apparent from the prayers sought in the complaint. That further it is crystal clear from reading the complaint that the complainant is not an 'allottee', but purely is an 'investor', who is only seeking committed return from the opposite parties / respondent, by way of present petition, which is not maintainable under the provisions of the Act. Further the complainant has prayed for relief of damages and compensation which comes within the purview and ambit of the ld. adjudicating officer and not the hon'ble authority.
- vii. That in view of the judgment and order dated 16.10.2017 passed by the Maharashtra RERA Authority in the complaint titled *Mahesh Pariani vs. Monarch Solitaire* order, Complaint No: CC00600000000078 of 2017 wherein it has been observed that in case where the complainant has invested money in the project with sole intention of gaining profits out of the project, then the complainant is in the position of co-promoter and cannot be treated as 'allottee'.



- viii. That further in the matter of *Bharam Singh & Ors. vs. Venetian, LDF Projects LLP* (Complaint No. 175 of 2018) and *Jasjit Kaur Grewal vs. M/s MVL Ltd.* (Complaint No. 58 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram has taken upheld its earlier decision of not entertaining any matter related to assured returns.
- ix. That the complaint has been filed by the complainant just to harass the respondent and to gain the unjust enrichment. The actual reason for filing of the present 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. For the fair adjudication of grievance as alleged by the complainant, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.
- x. That the complainant entered into an agreement i.e., builder buyers agreement with respondent company owing to the name, good will and reputation of the respondent. That according to the terms of the agreement, the committed return was to be paid to the complainant, upto 3 years after



the construction of unit was completed and the construction was duly completed and informed to the complainant vide letter dated 26.03.2018. That due to external circumstance which were not in control of the respondent minor timeline alterations occurred in completion of the project. That even though the respondents suffered from setback due to external circumstances, yet the respondents managed to complete the construction.

- xi. That further the prayer for delayed possession charges by the complainant is untenable since the delayed possession charges can only be implied where possession is to be granted and is delayed. That the present terms of the agreement do not provide for any possession and even committed return was due till the completion of construction which was duly intimated to the complainant on 26.03.2018.
- xii. That in matter titled *Anoop Kumar Rath Vs M/S Sheth Infraworld Pvt. Ltd.* in Appeal No. AT00600000010822 vide order dated 30.08.2019 the Maharashtra Appellate Tribunal while adjudicating points be considered while granting relief and the spirit and object behind the enactment of the Act of 2016 in para 24 and para 25 discussed in detail the actual purpose of maintaining a fine balance between the rights and duties of the promoter as



well as the allottee. The Ld. Appellate Tribunal vide the said judgment discussed the aim and object of RERA Act, 2016.

xiii. That the respondent company was facing umpteen roadblocks in construction and development work in projects comprised in township 'Vatika India Next' beyond the control of the respondent such as the follows:

- (a) Construction, laying down and/ or re-routing of Chainsa-Gurgaon-Jhajjar-Hissar **Gas Pipeline** by Gas Authority of India Limited (Gail) for supplying natural gas and the consequent litigation for the same, due to which the respondent was forced to change its building plans, project drawings, green areas, laying down of the connecting roads and complete lay-out of the Township, including that of independent floors.
- (b) Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of **Sector roads** 75 mtr. and 60 mtr. wide and the consequent litigation for the same, the issue is even yet not settled completely.
- (c) *Labour issue, disruptions/delays in supply of stone aggregate and sand due to court orders of the Courts, unusually heavy rains, delay in supply of cement and steel, declaration of Gurgaon as 'Notified Area' for the purpose of Ground Water,*
- (d) Delay in removal/ re-routing of **defunct High-Tension Line of 66KVA** in Licenses Land, despite deposition of charges/ fee with HVBPNL, Haryana.
- (e) Total and partial *ban on construction* due to the directives issued by the National Green Tribunal during various times since 2015.
- (f) The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in Air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete

ban on construction activities for a total of 70 days over various periods from November 2015 to December 2019.

- (g) **Additionally**, it imposed a set of **partial restrictions**, which are-
- i. No construction activities between 6 pm till 6 am (174 days)
 - ii. Stop the usage of Diesel Generator Sets (128 days).
 - iii. Stop entry of Truck Traffic into Delhi.
 - iv. Close brick kilns, Hot Mix plants and Stone Crushers.
 - v. Stringently enforced rules for dust control in construction activities and close non-compliant sites.
 - vi. This year, partial restrictions continued to be in place in NCR region.
- (h) The several stretches of total and partial construction **restrictions** have led to **significant loss of productivity in construction** of our projects. We have also suffered from demobilization of the labour working on the projects, and it took several additional weeks to resume the construction activities with the required momentum.
- (i) That the Respondent had been issued the license, by the Director Town & Country Planning, Haryana, for the development and completion of an integrated township, in terms with the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter HUDA Rules, 1976) in terms of form LC-IV-A, which were timely renewed as per the HUDA Rules, 1976. The said HUDA Act, 1975 and the Rules of 1976 prescribe a duty upon the HUDA and the Director Town and Country Planning to provide External Development Works & Infrastructure Development Works. Upon the issuance of the DTCP license, the concerned government department levied a certain fee in order to fulfil the EDC and IDC development work, which has been delayed and not completed by the Government authorities. The incompleteness of such development works resulted in minor alterations in timelines of the project, however the respondent yet managed to complete the project.

Since, the hurdles faced by the respondent company were beyond the control of the respondent, there was unintentional delay in completion of



the project. It is further submitted that, it was never the intention of the respondent company to not complete the project, and the only effect of all the obstructions was that the timelines as proposed initially could not be fulfilled.

- xiv. That the Hon'ble Maharashtra Real Estate Regulatory Authority, in Complaint No. CC006000000001071, titled *Mr. Sharan Lund and Mrs. Vandana Sharan Lund versus M/s Epitome Residency Private Limited*, while considering the reasons for delay being beyond the control of the promoter, the Hon'ble Maha RERA Authority condoned the delay in giving possession. In the present case, there has not been one single delay causing event which can be attributed to the respondent and hence the respondent prays for the respondent not be held liable for timeline changes.
- xv. 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 respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the complainant and against the respondent and hence, the complaint deserves to be dismissed.

xvi. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought, hence the present complaint filed by the complainant deserves to be dismissed with heavy costs.

E. Jurisdiction of the authority

8. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

9. 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

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)(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.

F. Findings on the relief sought by the complainant

F.I Assured return

12. The complainant is seeking unpaid assured returns on monthly basis as per the terms and conditions agreed between the parties.
13. On clarification from the bench with respect to the clause in the BBA/MoU/Agreement w.r.t payment of assured return, the counsel for the complainant states that he is unable to produce any such agreement/addendum or any other document in terms of which assured return is payable.



14. Though in para 7 of the complaint, a specific plea has been taken by the complainant w.r.t payment of assured return at the rates given in the buyer's agreement and that fact having been admitted by the respondent/ builder but neither any supportive document in this regard has been placed on the file by the complainant nor the execution of the buyer's agreement between the parties is proved. There is an unsigned buyer's agreement on record and clause 12 of that document deals with assured return and lease agreement. But the words NA have been specifically mentioned in the heading meaning thereby that that clause is not applicable in the case in hand. The respondent builder placed on record certain documents on 24.08.2022 w.r.t payment of assured returns in both the matters at the rate of Rs.65/- per sq. ft. per month w.e.f 25.02.2008 till 01.04.2018 but the basis of those payments has not been disclosed.
15. The counsel for the respondent states that the amount of assured return has been paid as mutually agreed between the parties and there is no outstanding amount towards assured return. The complainant was given ample opportunities to submit the details of outstanding amount of assured return but neither any document nor any specific details have been supplied except a statement of account of the Bank and receipt of assured return received by the respondent, but these does not clarify as to what is outstanding amount of assured return and neither basis of seeking the



balance amount of assured return is clarified as it only reflect the receipt of assured return.

16. In view of the discussion made above and in absence of sufficient documents on record to substantiate the claim of the complainant, the present relief is declined.

F. II Possession and delay possession charges

17. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

"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, —

*.....
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."*

18. The counsel for the complainant stated that the delay possession charges may be allowed as per the allotment letter wherein it has been stated in para 5 that the developer shall handover the final possession on or before 15.06.2011 failing which the developer shall be liable to pay a penalty of Rs.50/- per sq. ft. per month thereof to the allottee.
19. The counsel for the respondent invited attention to para 7 of the allotment letter wherein it is stated that in the event of the intending allottee failing to execute the BBA within the stipulated time frame indicated in para 6



above, the letter of allotment shall be deemed as withdrawn and the booking amount paid by the intending allottee failed to execute the BBA that send to her for execution. Thus, the said allotment letter stands withdrawn.

20. The authority is of the view that the contention of the respondent does not hold good in the facts and circumstances of the present case. On one hand, the respondent is alleging that that the said allotment letter stands withdrawn due to non-execution of the BBA and on the other hand, the respondent had been paying assured return for more than 10 years i.e. up to September 2018. The respondent cannot blow hot and cold at the same time. Also, the payment of assured return is ample proof that the allotment continued to be in existence.

21. An allotment letter dated 23.06.2008 was issued by the respondent in favour of the complainant thereby allotting the subject unit to the complainant. The due date is calculated as per clause 5 of the said allotment letter. Therefore, the possession was to be handed over by 15.06.2011. The relevant clause is reproduced below:

"5. The Developer shall handover the final possession on or before 15th June 2011, failing which the Developer shall be liable to pay a penalty of Rs. 50/- per sq. ft. per month or its part thereof to the Allottee."

22. However, the respondent has failed to handover possession of the subject unit to the complainant within the stipulated time period. Thus, the matter is squarely covered under proviso to section 18(1) of the Act.

23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to

section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

“Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”

24. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. 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., 14.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
25. The definition of term ‘interest’ as defined under section 2(z a) of the Act provides that 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. The relevant section is reproduced below:

“(z a) “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—
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;
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;”*

26. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. As per the allotment letter dated 23.06.2008, the possession of the subject unit was to be delivered within stipulated time i.e., 15.06.2011.
27. In the present complaint, vide letter dated 26.03.2018, the respondent has intimated the complainant that the construction of Block D is complete wherein the subject unit is located. However, admittedly, OC/CC for that block has not been received by the promoter till this date. The authority is of the view that the construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondent promoter for the said project. The complainant is seeking relief of possession. The respondent is directed to offer the possession of the allotted unit within compliance of section 11(4)(b) read with section 17 of the Act after obtaining the completion certificate or occupation certificate from the relevant competent authority. Further, the complainant is also directed to take the possession of the allotted unit in compliance of



obligation conferred upon her under section 19(10) of Act within two months of the occupation certificate after payment of such outstanding dues.

28. Therefore, considering the facts of the present case, the respondent is directed to pay delay possession charges at prescribed rate of the interest @ 10.75 % p.a. w.e.f. due date of possession i.e., 15.06.2011 till actual handing over of possession or offer of possession plus two months, whichever is earlier, after adjusting the amount of assured return already received by the complainant as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
29. The arrears of such interest accrued from due date of possession till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the respondent-promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.

F. III Conveyance deed

30. With respect to the conveyance deed, section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to



the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

31. The authority observes that OC/CC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months from the final offer of possession after the receipt of the OC/CC from the concerned authority and upon receipt of requisite stamp duty by the complainant as per norms of the state government.

G. Directions of the authority

32. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:
- i. The respondent is directed to pay delay possession charges at prescribed rate of the interest @ 10.75 % p.a. w.e.f. due date of possession i.e.,




- 15.06.2011 till actual handing over of possession or offer of possession plus two months, whichever is earlier after adjusting the amount of assured return already received by the complainant as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of such interest accrued from due date of possession till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the respondent-promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent shall execute the conveyance deed of the allotted unit within the 3 months from the final offer of possession after the receipt of the OC/CC from the concerned authority and upon receipt of requisite stamp duty by the complainant as per norms of the state government.
33. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
34. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
35. File be consigned to the registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.11.2023


(Ashok Sangwan)

Member