

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

Complaint no. : 2799 of 2021
Complaint filed on : 16.07.2021
Date of decision : 31.10.2023

1. Ms. Kamlesh Sawhney
 2. Late Sh. Vijay Rattan Sawhney
- RR/o: 1202, Tower 5, The Close-North, Nirvana Country,
Sector-50, Gurugram, Haryana.

Complainants

Versus

M/s Vatika Ltd.
(Through its Managing Director/Director/AR)
Regd. Office: Vatika Triangle, 4th floor, Sushant Lok,
Phase -1, Block A, M.G. Road, Gurugram-122002,
Haryana.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

Appearance:

Ms. Akansha Srivastava

Advocate for the
complainants

Ms. Ankur Berry

Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

2. 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:

S.no.	Particulars	Details
1.	Name of the project	Vatika INXT City Centre at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	10.48 acres
4.	DTCP license no.	122 of 2008 dated 14.06.2008
	Valid up to	13.06.2016
5.	HRERA registered or not	Not registered
6.	Allotment letter dated	21.10.2008 [Page 20 of complaint]
7.	Date of builder buyer agreement	22.10.2008 [Page 22 of complaint]
8.	Addendum to BBA dated 22.10.2008 executed on	30.11.2011



		[Page 41 of complaint]
9.	Unit no. as per the BBA dated 22.10.2008	810A, 8 th floor, tower no. A admeasuring 500 sq. ft. in Vatika Trade Centre [Page 24 of complaint]
10.	Shifting of unit vide letter dated	31.07.2013 [Page 44 of complaint]
11.	New unit no. as per letter dated 31.07.2013	318, 3 rd floor, block D admeasuring 500 sq. ft. in INXT City Centre [Page 44 of complaint]
12.	Possession clause as per BBA dated 22.10.2008	Clause 2. Since the unit would be completed and handed over by 1st October, 2010 , and since the Allottee has paid part/full sale consideration on signing of this agreement, the Developer hereby undertakes to make a payment by way of committed return during construction period, as under; which the Allottee duly accepts.
13.	Due date of handing over possession as per BBA dated 22.10.2008	01.10.2010
14.	Assured return/ committed return as per clause 2 of BBA	Rs. 32,000/- [It is hereby specifically clarified that the committed return would be paid by the Developer up to 30.09.2010 or in the event of any delay in completion of

		the project, up to the date of offer for handing over of completed unit to the Allottee] Page 25 of complaint
15.	Letter 'Completion of construction for Block D' dated	26.03.2018 [Page 46 of complaint]
16.	Total sale consideration as per clause 1 of BBA dated 22.10.2008	Rs. 31,51,500/- [Page 24 of complaint]
17.	Amount paid by the complainants as per clause 2 of BBA dated 22.10.2008	Rs. 31,51,500/- [Page 24 of complaint]
18.	Offer of possession	Not offered
19.	Occupation certificate	Not obtained
20.	Amount of assured return paid by the respondent to the complainants till September 2018	Rs. 38,18,959/- [Page 6 of reply filed by the respondent]

B. Facts of the complaint

4. The complainants have made the following submissions in the complaint: -
- a. That complainants, Mrs. Kamlesh Sawhney & Late Vijay Rattan Sawhney booked a unit measuring 500 sq. ft. on 8th floor, bearing unit no. 810A, in project called Vatika Trade Centre, Gurgaon to be developed by the respondent. The builder buyer agreement for the aforesaid commercial project was executed on 22.10.2008. Towards

advance booking, a sum of Rs.1,00,000/- was paid on 01.10.2008 and on 20.10.2008 the entire consideration of Rs.30,51,500/- was paid. Therefore, the complainants have fully paid for the unit booked with the respondent even before the execution of the builder buyer agreement. According to clause N: Leasing Arrangement of the builder buyer agreement, the promoter/ respondent undertook to lease out the booked unit on completion by employing its own resources. It was agreed that the lease rent would be paid to the allottee by the lessee through the agency of promoter even though the promoter was not to be a party to such lease agreement between the allottee and 3rd party. The booked unit was agreed to be legally possessed by the allottee. The minimum lease rent was agreed to be Rs.64/sq. ft. pm. The date of completion and lease out was stated to be 30.09.2010.

- b. That since the entire consideration was paid up at the time of execution of builder buyer agreement, the builder/ developer undertook to make payments by way of committed return during construction period as per schedule provided in the agreement. However, the same was not adhered to and no returns were ever paid to the buyer/ complainants.
- c. That vide letter dated 27.07.2011, the respondent informed the complainants about the relocation of the commercial project within the same Village Sikhopur but nearer to National Highway 8 (Delhi-Jaipur Expressway) and the Dwarka Expressway and the renaming of the booked commercial complex colony from "Vatika Trade Centre" to "INXT City Centre" (herein referred as 'changed complex'). It was further informed that M/s Trishul Industries a partnership firm wholly owned by the developer was the owner in possession of land parcels



where the commercial project was reallocated within the revenue confines of Village Sikhopur and it was having licence no. 122 of 2008 issued on 14.06.2008 to construct a commercial colony upon the aforesaid land parcels and that the clauses A & B of the builder buyer agreement was proposed to be suitably amended to this effect. The changes notified by letter dated 27.07.2011 of the respondent were reflected in the addendum dated 30.11.2011 to the builder buyer agreement dated 22.10.2008.

- d. That as a result of the reallocation of the site as well as the introduction of M/s Trishul Industries, a new unit no. was allotted to the complainants in the alternative project, the details of which are as follows: Unit No. 318 on Third Floor of Block D admeasuring 500 sq. ft. in India Next City Center, NH-8, Sector-83, Gurugram, Haryana.
- e. That vide letter dated 26.03.2018, the respondent informed the complainants that the booked premises were fully constructed and completed and were ready for leasing out to prospective clients in the last week of February, 2018. However, till date construction activity has not been completed and possession has not been offered even after 11 years of stipulated date of possession. It is submitted that the respondent vide its letter dated 26.03.2018 misled the buyers to believe that the project is completed and ready for occupation. The conduct of promoter has raised suspicion in the mind of the buyer that even after 11 years, the promoter has not managed to complete the project as per its RERA registration information which states the time schedule of completion of already booked apartments. It states the start date to be 31.01.2013 and revised date of completion is stated to

be 31.10.2020. The project type is status is "Ongoing". Complainant no. 1 is 78 years old women and is unable to keep track of the activities of the promoter. Complainant no. 2 has died due to Covid-19 complications on 08.05.2021. The promoter has maintained complete silence over the status of completion of the project and handing over of the title. In these circumstances, the complainant no.1 has lost all hope with the promoter and seeks the interference of this Hon'ble authority in getting the refund of the invested amount.

C. Relief sought by the complainants:

5. The complainants have sought following relief(s)

- a. Direct the respondent to refund the complete paid-up amount of Rs.31,51,500/- along with interest @ 9% from the stipulated date of possession in respect of the booked unit measuring 500 sq. ft. unit no. 318, 3rd floor, Block D, sector 83, Gurgaon.
- b. Such other or any other relief/direction as may be deemed expedient in the interest of the complainants.

6. 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

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

- a. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint 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 builder buyers' agreement dated 22.10.2008.
- b. 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 and continue an assured return scheme. Thus, the assured return scheme proposed and floated by the respondent has become infructuous due to operation of law. Also the respondent company has already paid an amount of Rs. 38,18,959/- whereas the complainants have paid a sum of Rs. 31,51,500/-.
 - c. That the complainants has come before the Hon'ble 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 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.
 - d. That the bare reading of the agreement executed between the complainants and the respondent, clearly shows that the intention of the complainants has never been to take possession and only to gain assured returns. That as per clause N of the builder buyer agreement,

the complainants/ allottee have authorized the respondent/ developer to negotiate and finalize leasing arrangement with suitable tenants.

- e. That further there is not even a single clause within the agreement dated 22.10.2008 which discusses or promises a due date of delivery of possession. The commercial project wherein the complainants invested was never intended to be delivery possession off and rather the sole object was to gain financial benefits. The complainants having invested Rs. 31,51,500/- have already received back from the respondent Rs. 38,18,959/- till 2018, when the complainants were informed about the completion.
- f. That 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 Act of 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 section 11 to section 18 of the Act describes and prescribes the function and duties

of the promoter/developer, section 19 provides the rights and duties of allottees. Hence, the Act was never intended to be biased legislation preferring the allottees, 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 and/or omission of part of the other.

g. That the respondent company was facing umpteen roadblocks in construction and development work in its projects which have been beyond the control of the respondent such as the follows:

- 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.
- Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of **Sector roads** 75 mtrs. and 60 mtrs. wide and the consequent litigation for the same, the issue is even yet not settled completely.
- 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.
- Delay in removal/ re-routing of **defunct High Tension Line of 66KVA** in licenses land, despite deposition of charges/ fee with HVBPNL, Haryana.

- Total and partial ban on construction due to the directives issued by the National Green Tribunal during various times since 2015.
 - 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
 - Additionally NGT imposed a set of partial restrictions
 - Several stretches of total and partial construction restrictions have led to significant loss of productivity in construction of the projects. The respondent has also suffered from demobilization of the labor working on the projects, and it took several additional weeks to resume the construction activities with the required momentum.
- h. 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.

- i. That 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. It is pertinent to mention that in the matter titled, *Credai-NCR vs. Department of Town and Country Planning, Government of Haryana & Anr.* before the Competition Commission of India – Case No. 40 of 2017 it has been opined and well conveyed by the Hon'ble Commission that there is a dependency of a project vis-à-vis the concerned department's responsibilities and failure of government departments in providing the necessary development work subsequently, impact the project timelines. Thus, the altered timelines were never intended and the respondent lacked any control in the subsequent deference of the project.
- j. That since the hurdles faced by the respondent company were beyond the control of the respondent, there are unintentional delays 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.

- k. That the complainants are 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 company. 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.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainants.

E. Jurisdiction of the authority

9. 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

10. 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

11. 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.

12. 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.
13. 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 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*** and 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."

14. 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 To refund the entire amount deposited alongwith prescribed rate of interest.

15. The counsel for the complainants states that the complainants are seeking relief of refund of the amount deposited with the respondent against the

unit allotted by the respondent under section 18(1) of the Act, 2016 on account of failure of the respondent to handover the allotted unit as per the terms of the BBA dated 22.10.2008. The due date for handing over of the unit was 1.10.2010 and the occupation certificate for the project is yet to be received even after more than 12 years.

16. The counsel for the respondent states that the matter is barred by limitation as the cause of action arose in 2010. Moreover, the complainants have received an amount of Rs. 38,18,959/- as assured return upto September, 2018. The jurisdiction of the authority is under question in the Hon'ble High Court and the authority may not decide the matter pending adjudication in the Hon'ble High Court.
17. The authority has complete jurisdiction to decide such matters as has already been comprehensively decided by the authority in complaint bearing no. 2522 of 2021 titled as **Gurdeep Singh Guglani and anr. Vs. Vatika Ltd.** vide order dated 05.04.2022.
18. The complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. 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)

19. Clause 2 of the builder buyer agreement provides for handing over of possession and is reproduced below:

"Since the unit would be completed and handed over by 1st October, 2010, and since the Allottee has paid part/full sale consideration on signing of this agreement, the Developer hereby undertakes to make a payment by way of committed return during construction period, as under; which the Allottee duly accepts:..."

20. **Due date of handing over possession:** As per clause 2 of the buyer's agreement dated 22.10.2008, the respondent has committed to complete the unit and handover the same by 01.10.2010. In view of the aforesaid clause, the due date of possession comes out to be 01.10.2010.
21. The brief facts of the case are that vide allotment letter dated 21.10.2008, the respondent has allotted a unit bearing no. 810A, 8th floor, tower no. A in the project Vatika Trade centre in favour of the complainants i.e., Kamlesh Sawhney and Vijay Rattan Sawhney and thereafter, a builder buyer agreement was executed inter se parties on 22.10.2008. Booking amount of Rs.1,00,000/- was paid by the complainants on 01.10.2008 and thereafter,

a sum of Rs. 30,51,500/- was paid by the complainants on 20.10.2008. In this way, the complainants have paid a sum of Rs. 31,51,500/- against the total sale consideration of Rs. 31,51,500/-. The due date as computed above was 01.10.2010. Later an addendum to the agreement dated 22.10.2008 was executed on 30.11.2011 whereby the respondent has relocated the unit allotted to the complainants in the project "Vatika INXT City Centre". The addendum also stated that '*all other terms and conditions of the Builder Buyer Agreement shall invariably remain same until amended in writing.*' Subsequently, vide letter dated 31.07.2013, the respondent has allotted a new unit bearing no. (Subject unit) 318, 3rd floor, block D. Thereafter, the respondent vide letter dated 26.03.2018 has intimated the complainants regarding completion of construction of block D 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. Thus, the letter dated 26.03.2018 cannot be treated as valid offer of possession.

22. The complainant no. 2 i.e., Vijay Rattan Sawhney died on 08.05.2021 and the death certificate is annexed with the paper book. During proceedings of the case, the counsel for the complainants have placed on record requisite documents regarding inheritance of complainant no.2. As per the said

documents, the complainant no.2 is survived by Mrs. Kamlesh Sawhney i.e., complainant no.1 herein and two daughters namely Ms. Shila Sawhney and Mr. Suparna Shawan. Ms. Shila Sawhney has filed an affidavit dated 26.05.2022 whereby she transferred her share in the name of complainant no.1 and Ms. Suparna Shawan has also relinquished her rights in the subject unit in favour of complainant no.1 vide relinquishment deed dated 20.06.2022. Thus, the subject unit stands devolved in favour of complainant no. 1 only.

23. As per clause 2 of the agreement dated 22.10.2008, the respondent was liable to pay Rs.32,000/- per month as assured return. The respondent at page 6 of the reply has also admitted that it has paid a sum of Rs.38,18,959/- on account of assured return till September 2018 and has stopped paying assured return thereafter.

24. **Admissibility of refund at prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest 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]

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

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

25. The legislature in its wisdom in the subordinate legislation under the 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., 31.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
26. 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.
27. The due date of possession as per agreement as mentioned in the table above is **01.10.2010**. The authority further observes that even after a passage of more than 15 years (from the date of execution of agreement till date), the respondent has failed to offer possession of the subject unit to the complainant till date. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottee intends to withdraw from the project and

is well within the right to do the same in view of section 18(1) of the Act, 2016.

28. Moreover, 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....."

29. 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."

30. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
31. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @10.75% p.a. (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 Haryana Rules 2017 *ibid*. The amount paid by the respondent on account of assured return, if any, shall be adjusted from the aforesaid refundable amount.

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/promoter is directed to refund the entire amount i.e., Rs.31,51,500/- received by it from the complainants along with interest at the rate of 10.75% p.a. 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 deposited amount. The amount paid by the respondent on account of assured return, if any, shall be adjusted from the aforesaid refundable 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.
- iii. The original documents shall be returned by the complainant to the respondent after compliance of the order.
- iv. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount

along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainants-allottees.

33. Complaints stand disposed of.
34. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

v.1 - 3

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 31.10.2023


HARERA
GURUGRAM