

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

Date of decision: 06.10.2023

| NAME OF THE BUILDER | | VATIKA LTD. | |
|---------------------|--------------|---------------------------------------------------|-----------------------------------------|
| PROJECT NAME | | VATIKA INXT CITY CENTER | |
| S. No. | Case No. | Case title | APPEARANCE |
| 1. | CR/7680/2022 | Prithvi Gupta And Rajni Sajal V/s Vatika Limited. | Sh. Amitabh Narain Sh. Harshit Batra |
| 2. | CR/7681/2022 | Rajni Sajal And Ashwati Gupta V/s Vatika Limited | Sh. Amitabh Narain Sh. Harshit Batra |
| 3. | CR/7682/2022 | Sajal Gupta HUF V/s Vatika Limited | Sh. Amitabh Narain Sh. Harshit Batra |

CORAM:

Shri Sanjeev Kumar Arora

Member

ORDER

1. This order shall dispose of all the 3 complaints titled as above filed before this authority in Form CRA 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 projects, namely, 'VATIKA INXT CITY CENTER' being developed by the same respondent promoters i.e., M/s Vatika Ltd.
3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

| Project Name and Location | VATIKA LTD. "VATIKA INXT CITY CENTER" Sector-102, Gurugram. |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Possession Clause | No possession clause as there is leasing arrangement between the parties. |
| Assured return clause | <p>12</p> <p><i>Since the buyer has paid the full basic sale consideration for the said commercial unit upon signing of this agreement and has also requested for putting the same on lease in combination with other adjoining units/spaces of other owners after the said building is ready for occupation and use, the developer has, agreed to pay Rs. 71.5/- per sq. ft. super area of the said commercial unit per month by way of assured return to the buyer from the date of execution of this agreement till the completion of construction of the said building. The buyer hereby gives full authority and powers to the developer to put the said commercial unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the buyer, as and when the said building/ said commercial unit is ready and fit for occupation. The buyer has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the developer or the confirming party. It is further agreed that:</i></p> <p>(i) <i>The developer will pay to the buyer Rs. 65/-per sq. ft. super area of the said commercial unit as committed return for up to three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier. After the said commercial unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the buyer will start receiving lease rental in respect of the said commercial unit in accordance with the lease document as may be executed and as described hereinafter.</i></p> <p>(ii)</p> |

| | | | |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|--------------------------------------------------------------------------|
| Completion certificate | Not Obtained | | |
| Relief Sought | 1. Direct the respondent to refund the amount paid by the complainant. 2. Direct the respondent to pay assured return. | | |
| Complaint no | CR/7680/2022 | CR/7681/2022 | CR/7682/2022 |
| Unit no. | F-906 admeasuring 500 sq. ft. [pg. 23 of complaint] | F-404 admeasuring 600 sq. ft. [pg. 23 of complaint] | 1117, 11th floor, tower F measuring 500 sq. ft. [pg. 53 of complaint] |
| Date of BBA | 19.01.2012 [pg. 33 of complaint] | 19.01.2012 [pg. 32 of complaint] | 23.05.2016 [pg. 25 of complaint] |
| Subsequent allottee | 03.05.2015 [pg. 57 of complaint] | 10.03.2015 [pg. 56 of complaint] | NA |
| Total sale consideration (TC) | ₹ 22,50,000/- [pg. 35 of complaint] | ₹ 27,00,000/- [pg. 34 of complaint] | ₹ 17,50,000/- [pg. 27 of complaint] |
| Amount paid (AP) | ₹ 22,50,000/- [pg. 35 of complaint] | ₹ 27,69,525/- [pg. 34 of complaint] | ₹ 18,26,000/- [pg. 27 of complaint] |
| Assured return | ₹ 28,76,250/- paid till 30.09.2018 [pg. 37 of reply] | ₹ 18,17,400/- paid till 07.09.2018 [pg. 64 of reply] | ₹ 10,48,558.3/- paid till 07.09.2018 [pg. 60 of reply] |

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/7680/2022 titled as Prithvi Gupta And Rajni Sajal V/s Vatika Limited.** are being taken into consideration for determining the

rights of the allottees qua delay possession charges, quash the termination letter get executed buyers' agreement and conveyance deed.

A. Unit and project related details

6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

CR/7680/2022 titled as Prithvi Gupta And Rajni Sajal V/s

Vatika Limited.

| S.no. | Particulars | Details |
|-------|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Name of the project | Vatika Inxt City Center at Sector 83, Gurugram, Haryana |
| 2. | Nature of the project | Commercial colony |
| 3. | Project area | 6 acres |
| 4. | DTCP license no. | 258 of 2007 dated 19.11.2007 license migrated from commercial in residential zone to commercial plotted colony vide order dated 13.10.2022. |
| 5. | Name of licensee | M/s Shivam Infratech Pvt. Ltd. |
| 6. | RERA Registered/ not registered | Not Registered |
| 7. | Assignment of unit | 05.03.2015 [pg. 23 of complaint] |
| 8. | Date of builder buyer agreement | 19.01.2012 [pg. 33 of complaint] |

| | | |
|-----|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| 9. | Subsequent allottee | 03.05.2015 [pg. 57 of complaint] |
| 10. | Unit no. | F-906 admeasuring 500 sq. ft. [pg. 23 of complaint] |
| 11. | Due date of possession | No possession clause in the BBA since there is leasing arrangement between the parties and assured return clause is there |
| 12. | Total sale consideration | ₹ 22,50,000/- [pg. 35 of complaint] |
| 13. | Paid up amount | ₹ 22,50,000/- [pg. 35 of complaint] |
| 14. | Offer of possession | Not offered |
| 15. | Occupation certificate | Not obtained |
| 16. | Assured return paid till 30.09.2018 | ₹ 28,76,250/- [pg. 37 of reply] |

B. Facts of the complaint

7. The complainants have submitted as under:

- a. That, the respondent misled the complainants by giving false promises that the project would be completed by 31.05.2017. The respondent further promised an assured return/monthly rent/commitment charges @ ₹ 71.50/- per sq. ft. till the completion of the project. Thereafter, upon completion of the project, a lease rental at the rate of ₹ 65/- per sq. ft. was promised.
- b. That Ms. Manju Sethi, was the original allottee of the unit of the complainants. Thereafter, the complainants purchased the unit of Ms.

- Manju Sethi with the concurrence of the respondent. Induced by the representations made by the respondent/ developer, the complainants purchased the unit of Ms. Manju Sethi and invested their hard-earned money in India Next City Centre, Gurugram.
- c. That the respondent accordingly assigned the unit bearing no. 906 vide letter dated 05.03.2015 on 9th floor having a super area of 500 sq. ft. in block / tower-F ("**Commercial Unit**"), which was to be constructed and made ready for possession by 31.05.2017 with all promised amenities as per the representation of the respondent.
 - d. That, the complainant believing the assurances of the respondent, paid the entire sale consideration of ₹ 24,07,937/-. The basic sale price was calculated at the rate of ₹ 3,500/- per sq. ft. of approximately 500 sq. ft. super area.
 - e. That, an agreement to sell dated 17.02.2015 was signed between Ms. Manju Sethi and the complainants. That, a builder buyer agreement dated 19.01.2012 signed between the respondent and Ms. Manju Sethi was provided by the respondent to the complainants.
 - f. It is pertinent to note that no fresh builder buyer agreement was executed by the respondent in favor of the complainants. However, on purchase of the unit from Ms. Manju Sethi, the complainants stepped into the shoes of Ms. Manju Sethi qua the respondents. The respondent approved the purchase of unit by complainants. The respondent started to deal with the complainants as if the complainants were the persons who had initially booked the project. The complainants acquired all the rights of Ms. Manju Sethi. The

respondent assigned the unit in favour of the complainants vide endorsement dated 5th March, 2015.

- g. That, as per clause 12 of the builder buyer agreement, the respondent had agreed to pay ₹ 71.50/- per sq. ft. super area of the said commercial unit per month by way of assured return to the buyer. Further, the same clause also provided that the respondent will pay to the complainant ₹ 65/- per sq. ft. super area of the said commercial unit as committed return for up to three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier.
- h. That, accordingly, the respondent started making payments of the assured returns to the complainants w.e.f. March 05, 2015 directly into the bank account of the complainants at the rate of ₹ 71.50/- per sq. ft. However, the respondent paid the assured returns at the rate of ₹ 71.50/- per sq. ft. only till February 2018 and thereafter the said rate was unilaterally reduced by the respondent to ₹ 65/- per sq. ft. It is pertinent to mention that this rate was to be reduced from ₹ 71.50/- per sq. ft. to ₹ 65/- per sq. ft. only after completion of the project. The project has not even been completed till today leave alone the promised amenities.
- i. That, the respondent made the payment of the assured returns at the rate of ₹ 65/- per sq. ft. till September, 2018. However, after September, 2018, the respondent abruptly stopped making payment of any amount by way of assured returns. That, the complainants have been regularly and repeatedly following up with the respondent and its officials and enquiring about the payment of the assured

returns and the status of the project. However, there has been neither any payments of the assured returns from October 2018 nor delivery of possession of the commercial unit. Further, it is pertinent to mention that when the complainant visited the project site, they were surprised to find that the work on the project site was still not completed. The survey of the project site revealed that there was a lot of work that was needed to be done.

- j. That, as per the website of the Directorate of Country Town and Planning, Haryana, the license to construct is valid only till 13th June, 2016. Thereafter there are no documents/ information on the website of further extension of license to construct in favour of respondent. On this short ground this complaint is liable to be allowed as respondent appears to have no subsisting license to construct.
- k. That, it is stated that the respondent has carried out an unfair trade practice by forcing the complainant to execute an addendum to the builder buyers agreement in which addendum the respondent altogether resiled from its promise to pay commitment charges. By way of the addendum dated 12.07.2019, the respondent resiled from its agreement to pay commitment charges.
- l. Hence, the present Complaint. That, the complainants claim return/refund of the entire money paid to the respondent along with interest @18% per annum namely ₹ 22,50,000/- paid by Ms. Manju Sethi to the respondent. The respondent has reserved its right to claim interest at 18% per annum on any overdue amount from the allottee. Hence, the complainants also claim the interest at 18% per

annum from the respondent. The Ms. Manju Sethi have paid the principal amount of ₹ 22,50,000/-. The complainant claim an amount of ₹ 22,50,000/- along with interest @18% per annum from the respondent w.e.f. 05.03.2015 till the payment is received by the complainants from the respondent.

- m. That, further, the respondent promoter is liable to be punished under section 59 of the RERA Act. The respondent is liable to pay a penalty of 10% of the estimated cost of the real estate project. The directors of the respondent, namely, Mr. Gautam Bhalla, Mr. Anil Bhalla, Mr. Brij Kishore Singh, Mr. Surender Singh, Mr. Vijender Kumar, Mr. Keshav Jha and Mr. Manish Agarwal are liable to be imprisoned for a term of three years or with further fine of 10 per cent or with both on account of continued violation of Section 3 of the RERA Act.

C. Relief sought by the complainants:

8. The complainants have sought following relief(s):
- Direct the respondent to refund the paid up amount by the complaint along with the interest at prescribed rate.
 - Direct the respondent to pay assured return till the complainants withdrew from the project.
 - The respondent be punished under section 59 of the Act, 2016.
 - Cost of litigation
9. On the date of hearing, the authority explained to the respondents/promoters 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 respondents.

10. The respondent has contested the complaint on the following grounds:
- a. That in the year 2011, the original allottee, i.e., Ms. Manju Sethi, learned about the commercial project launched by the respondent under the name and title 'Vatika Trade Centre' (now, Vatika INTX City Centre) and repeatedly visited the office of the respondent to know the details of the said project.
 - b. That after having an interest in the commercial project being developed by the respondent, the original allottee vide an application form dated 05.11.2011 tentatively allotted a unit bearing no. 112, 1st floor, tower-A tentatively admeasuring 500 sq. ft. for an amount of ₹ 22,50,000/- on free will and consent, without any demur whatsoever. Thereafter, considering the future speculative gains, the original allottee, in December, 2011, at her own will made the due payment towards the agreed sale consideration of the said unit with the sole intention of making income from the same.
 - c. That thereafter, a builder buyer agreement dated 19.01.2012 (hereinafter referred to as '**Agreement**') was executed between the original allottee and the respondent for the unit allotted in the project. It is pertinent to mention that original allottee was aware of terms and conditions under the aforesaid agreement and only upon being satisfied with each and every term, agreed to execute the same with free will and consent.
 - d. That the unit of the original allottee was tentative and subject to change, as was categorically agreed between the parties in terms of the agreement. Consequently, due to some changes or modifications as per the approved sanctioned plans in the said project, the original

allottee was allocated the unit no. 906 on 9th floor, block-F admeasuring 500 sq. ft. ("Unit") vide letter dated 15.04.2013. That the said position was explained and understood by the original allottee. The said letter categorically mentioned that the builder buyer agreement shall stand amended with respect to the unit number. That it is a matter of fact and record that the original allottee had duly, willingly and happily accepted the same without any protest.

- e. That thereafter, the original allottee approached the respondent for transferring and conveying rights, entitlement and title of the original allottee in the unit in question to the complainants. That an assignment letter dated 14.02.2015 was executed by the original allottee assigning the rights, interests and obligations of the said unit in favour of the respondent. That pursuant to the issuance of the assignment letter dated 14.02.2015 by the original allottee, an agreement to sell dated 17.02.2015 was executed between the original allottee and the complainants for transferring and conveying rights, entitlement and title of the original allottee in the unit in question to the complainants. That the said assignment letter dated 14.02.2015 and the agreement to sell dated 17.02.2015 was duly acknowledged by the respondent and the unit was then transferred in the name of the complainants vide assignment letter dated 05.03.2015.
- f. That it is submitted that at the request of the original allottee an endorsement dated 03.05.2015 was made in favour of the complainants for transferring and conveying rights, entitlement and

title of the original allottees in the unit in question to the complainants. That the Complainants stepped into the shoes of the original allottee knowing fully well about the status of construction of the said project.

- g. That at this stage, it is categorical to highlight that the complainants are trying to mislead this Hon'ble court by concealing facts which are detrimental to this complaint at hand. That the agreement executed between the parties on 19.01.2012 was in the form of an "**investment agreement**". That the complainants had approached the respondent as an investor looking for certain investment opportunities. Therefore, the allotment of the said unit contained a "lease clause" which empowers the developer to put a unit of complainants along with the other commercial space unit on lease and does not have "possession clauses", for physical possession. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist. That it is also most humbly submitted that the present complaint is not maintainable and the complainants herein has no locus standi. The complainants merely seeks to earn profits.
- h. That it is submitted that the respondent completed the construction within the stipulated time. That the respondent vide its letter dated 27.03.2018 duly informed the complainants about the completion of the construction of block-F in which the unit of the complainants is located. That it was further apprised to the complainants that the respondent is in active discussions with number of prospective tenants and expect to lease out the same in due course. Further, the

complainants were also informed about their revised commitment charges as per the buyer's agreement.

- i. That an addendum to buyer's agreement dated 12.07.2019 was duly executed by the complainants. That as per the addendum agreement clause 12 of the buyer's agreement was amended. It is submitted that the complainants raised no objection in regard to any provision of the addendum to the agreement and is obliged to abide by the terms and conditions as envisaged in the said addendum. That the said addendum has been signed by the complainants under no undue influence or coercion.
 - j. That it is humbly submitted before the Hon'ble Authority that the respondent was always prompt in making the payment of assured returns as agreed under the agreement. It is not out of the place to mention that the respondent herein had been paying the committed return of ₹ 71.50/- per sq. ft. of super area to the complainants without any delay since 05.03.2015 till 30.09.2018. That the respondent has made a payment of ₹ 26,81,250/- as assured returns till completion and a sum of ₹ 1,95,000/- as committed return post completion. Hence, in totality, the complainant has got a benefit of ₹ 28,76,250/-. However, post October, 2018, the respondent could not pay the agreed assured returns due to change in the legal position and the illegality of making the payment of the same.
 - k. All other averments made in the complaints were denied in toto.
11. 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 on the basis of those undisputed documents and submissions made by the parties.

12. Rejoinder is also filed by the complainants on 03.10.2023.

E. Jurisdiction of the authority

13. 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

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

15. 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) *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.*

16. 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.
17. 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."

18. Furthermore, the said view has been reiterated by the division bench of Hon'ble Punjab and Haryana High Court in ***Ramprastha Promoter and Developers Pvt. Ltd. Vs Union of India and others*** dated 13.01.2022 in

CWP bearing no. 6688 of 2021. The relevant paras of the above said judgment reads as under:

"23) The supreme court has already decided on the issue pertaining to the competence/power of the authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.

24) The substantive provision of the Act having been interpreted by the Supreme Court; the Rules have to be in tandem with the substantive Act.

25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."

19. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of ***M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)***, and the division bench of Hon'ble Punjab and Haryana High Court in ***"Ramprastha Promoter and Developers Pvt. Ltd. Vs Union of India and others. (supra)***, the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee along with interest at the prescribed rate.

F. Findings on the relief sought by the complainants.

F.I. Direct the respondent to refund the paid up amount by the complaint along with the interest at prescribed rate.

20. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest. Sec. 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. -

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

21. However, in the present matter there is no possession clause in the BBA therefore the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1 and then was reiterated in Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:***

"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek

the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

22. Accordingly, the due date of possession is calculated as 3 years from the date of BBA i.e., 19.01.2012. Therefore, the due date of possession comes out to be 19.01.2015. The authority has already held in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** that in cases where subsequent allottee had stepped into the shoes of original allottee after the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges w.e.f. the date of entering into the shoes of original allottee i.e. nomination letter or date of endorsement on the builder buyer's agreement, whichever is earlier. Since, in the instant matter the complainant is the subsequent buyer/purchaser vide endorsement dated 03.05.2015 i.e., after the expiry of due date of handing over possession and before the coming into force of the Act accordingly, the subsequent buyer/purchaser is entitled for DPC with effect from date of endorsement i.e., 03.05.2015.
23. In the complaint bearing no. **CR/7682/2022** the complainant is the original allottee accordingly, the due date will be calculated 3 years from the date of agreement i.e., 23.05.2016 therefore the due date of possession comes out to be 23.05.2019 in this particular matter.

24. Keeping in view the fact that the allottee complainant vide the email dated 01.12.2022 requested for refund of the amount paid, after ten years from executing the BBA with the respondent, on account of non-completion of the project within reasonable time. Thereafter, on 14.12.2022 the complainant filed the complaint before the authority for refund of paid amount along 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 within the reasonable time. The matter is covered under section 18(1) of the Act of 2016.
25. 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 relevant para is reproduced as under:
- ".....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....."*
26. 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 is 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 him in respect of the unit with interest at such rate as may be prescribed.

27. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 and 72 read with section 31(1) of the Act of 2016.
28. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them along with interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest. 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."

29. 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.
30. 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%.

31. The authority hereby directs the promoter to return the amount received by him i.e., ₹ 22,50,000/- 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 after deduction of the amount of assured return i.e., ₹ 28,76,250/- already paid by the respondent.

F.II. Direct the respondent to pay assured return till the complainants withdrew from the project.

F.III. The respondent be punished under section 59 of the Act, 2016.

32. The abovementioned reliefs stands redundant in view of the findings w.r.t. the relief no. 1.

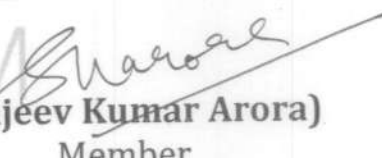
F.IV. Cost of litigation.

33. The complainants in the aforesaid relief is seeking relief w.r.t. compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021)*, has held that an allottee is entitled to claim compensation 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 shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority:

34. 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):
- The respondent/promoter is directed to refund the amount received by it from each of the complainant(s) 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 after deduction of assured return already paid.
 - 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.
35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
36. True certified copies of this order be placed on the case file of each matter.
37. Files be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.10.2023