

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

Complaint no. :	3974 of 2021
Date of decision :	10.11.2023

1. Bharti Bhargava
2. Satish Kumar Bhargava

**R/o 2-Vivekanand Nagar, Opp Railway Station,
Jhotwada, Jaipur, (Raj.)-302012**

Complainants

Versus

M/s Vatika Ltd.

Office address: 4th Floor, Sushant Lok, Phase I, Block A,
Mehraulli Gurgaon Road, Gurgaon, Haryana-122002.

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Complainant no.2 in person

Shri Pankaj Chandola

Complainants

Respondent

HARERA
GURUGRAM
ORDER

1. The present complaint dated 04.10.2021 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is

inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details

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

S.N.	Particulars	Details
1.	Name of the project	"Gurgaon 21/next at Vatika India Next", Sector 82A, Gurugram.
2.	Allotment letter	24.09.2008 [pg. 24 of reply]
3.	Unit no.	Ggn-21-B2/006, Ground floor, block B2 admeasuring 1737.32 sq. ft. [pg. 15 of complaint]
4.	Date of execution of apartment buyer's agreement	11.04.2009 [Page 12 of complaint]
5.	Possession clause	10.1 Schedule for possession of the said independent dwelling unit. <i>That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said</i>



		<i>independent dwelling unit within a period of three years from the date of execution of this Agreement.</i>
6.	Due date of possession	11.04.2012
7.	Total sale consideration as per SOA dated 28.04.2021	₹ 56,42,772.3/- [Page 66 of reply]
8.	Paid up amount as per SOA dated 28.04.2021	₹ 53,91,975/- [pg. 66 of reply]
9.	Termination letter dated	17.05.2011 [pg. 52 of reply]
10.	Offer of possession without OC	22.06.2016 [pg. 64 of complaint]

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- a. The complainant contacted the respondent at Gurgaon and applied for the allotment of a residential flat in the project named as "Gurugram Next". The total cost of flat was ₹ 54, 57,720/-. The area of the flat was 1732.32 sq. ft. and the basic cost of the flat was ₹2420/- per sq. ft. as per payment plan complainant initially deposited ₹30,00,000/-. The respondent assured the complainant that respondent is a reputed builder and always delivers the possession of unit in time. The possession of the flat was to be delivered after 36 months from the date of buyer's agreement.

- b. That buyer agreement was executed between the parties on 11.04.2009 and in the buyer's agreement it was mentioned that complainants have already paid ₹ 30.00 lakhs. That the buyer's agreement the possession was to be given within a period of three years but the respondent did not even start construction till 2012. The complainant paid the balance amount as per the schedule mentioned in the agreement. Respondent charged heavy interest @ 18% p.a. compounding on monthly basis. Respondent failed to keep the promise and failed to give possession of unit within the agreed period.
- c. That vide letter dated 10.12.2015 respondent demanded ₹ 5,71,927/- from complainants and intimated to start the process of offering possession. The complainants downloaded the account statement from the site of the respondent on 26.04.2016 that shows the amount of ₹ 6,02,670/- was due and payable.
- d. That the complainants had already paid ₹ 53,91,975/- out of ₹ 54,57,720/- and a petty sum of ₹ 65,745/- was due towards complainants and therefore demanded breakup of amount already paid. It is clear from the perusal of the account statement that on 04.03.2015 nothing was due and thereafter an amount of ₹ 59,688/- was added as interest. Thereafter again on 24.07.2015 complainants cleared all the dues, but again the Respondent demanded ₹ 5,66,831/- on 25.12.2015 on the pretext of giving possession. The complainants demanded the breakup of the amount of ₹ 5,66,831/- but the respondent failed to give the



breakup of the demand as complainants have already paid ₹ 53,91,973/- out of ₹ 54,57,720/- since the balance was payable on possession.

e. That after receiving letter dated 10.1.2015, complainants visited the site and found that lot of development work was pending but the possession of flat was being offered; whereas the construction had not been completed and the flat was in semi-finished condition. Thereafter complainants vide letter dated 20.06.2016 demanded the **completion certificate and occupancy certificate** issued by the competent authority as the bankers are not extending the term loan and complainants had to make payment of ₹ 5,71,927/-.

f. That instead of providing the completion certificate and occupancy certificate issued by the competent authority the respondent issued the letter asking the complainants to make the payment of final instalment of ₹ 6,18,746/- and take possession by 07.06.2017.

g. That since respondent had not completed the development besides finishing work, the occupation certificate had not been issued by the competent authority but the respondent was insisting for possession without '**occupation certificate**'. Living in such building was risky for the dwellers besides other hurdles and hick-ups. The complainants vide letter dated 20.6.2016 demanded the occupation certificate but the respondent failed to provide the same. The requirement of the buyer's agreement that the respondent would provide the occupation certificate and only it will be the conclusive evidence of completion of the construction of the

building. The complainants got the legal notice served to respondent for making the payment of damages/interest in lieu of delay in handing over possession and provide the occupation certificate as provided in the buyer's agreement.

- h. That respondent is charging ₹ 3.00 Lakh for the parking which is illegal. As per Hon'ble Supreme Court of India in the case of **Nahalchand Lalochand P. Ltd Versus panchali Co-Operative Housing Society Ltd (AIR 2010SC3607)**, it has held that parking area cannot be sold separately by flat builders as these spaces are part of the common areas in the flat complexes and are therefore not saleable independently. Thus, as per judgement of Hon'ble Supreme Court complainant is entitled for refund of ₹ 3.00 lakhs along with interest @ 18% per annum.
- i. That respondent had failed to give the possession with the occupation certificate issued by the competent authority. As per the buyer's agreement complainants are entitled for compensation @ ₹ 5/- per sq. ft. of the super area as per cl. 11.5 of the buyer's agreement. The buyer's agreement was executed on 11.04.2009 and the possession was to be delivered by 11.04.2012, but the respondent failed to give possession till date, besides the 'occupation and completion certificate'.
- j. That Hon'ble Authority has the jurisdiction to entertain, try and decide the present complaint as the complainant is demanding ₹ 12,50,870/- as compensation for delay according to the clause 11.5 of the buyer's agreement and refund of ₹ 3.00 lacs which the



respondent charged illegally, for parking. The respondent has debited the account by charging the interest @ 15-18% amount every month without crediting the interest on account of delay on their part. Thus, illegal demand of interest is required to be reversed. Equity to be observed in such translations.

- k. That the value of the flat is ₹ 54,57,720/- and demanding compensation of ₹ 12,50,870/- and refund of the cost of the flat deposited by the complainant with interest of ₹ 91,99,370/- since the promoter failed to comply with the terms of the contract.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- Direct the respondent to refund the amount paid along with interest from the date of each payment till its realization.
- Compensation for delayed period.
- Legal expense.

5. On the date of hearing, the authority explained to the respondent/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 respondent.

6. The respondent by way of written reply made the following submissions:

- That the present complaint, filed by the complainants, is bundle of lies and hence liable to be dismissed as it is filed without any cause of action. Hence, the object of the rule contained in Section 10 is to

prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject-matter and the same relief. The policy of law is to confine a plaintiff to one litigation, thus obviating the possibility of two contradictory verdicts by one and the same court in respect of the same relief.

- b. It is imperative to bring into the knowledge of the Ld. Adjudicating Officer that complainants herein has already prayed for compensation before the Hon'ble NCDRC. It is submitted that the complainant herein cannot pick and choose the relief so prayed as per his own convenience. However, it is a settled law that the complainant herein cannot be entitled to get two separate reliefs for one cause of action. That as per the principle of natural justice the The complainant herein is merely trying to hoodwink the Ld. Adjudicating Officer by concealing such relevant facts.
- c. It is an admitted fact the present complaint is pending before the Hon'ble National Consumer Dispute Resolution Commission (NCDRC). It is imperative to bring into the attention of the Ld. Adjudicating Officer that the present complaint is listed for arguments before the Hon'ble NCDRC and the same is yet to be adjudicated upon the merits. It is an established law that the principle of res sub-judice discourages a court from proceeding with the trial of any suit in which the concern in matter is directly or substantially the same as a previously instituted suit between the same parties, and the court in which the issue was previously instituted has the power to grant the relief sought.



- d. That as per the provision of section 10 of the civil procedure code the complainant cannot proceed with the present complaint as the same is pending before the Hon'ble NCDRC and is yet to be adjudicated by the Hon'ble Commission on the merits of the present case.
- e. That after having keen interest in the project constructed by the respondent the complainant desired to book a unit and applied for the same vide application dated 04.07.2008. And, paid an amount of ₹ 3,00,000/- for further registration. It is submitted that the respondent company was always committed to complete the project and has always tried the level best to adhere with the terms as provided in the agreement and complete the project as per the milestone.
- f. The respondent vide invitation for allotment letter dated 24.09.2008, called upon the complainant to take the allotment of the said priority no. 3BR/168. Thereafter, the respondent vide allotment letter dated 09.01.2009, further allotted a unit bearing no. GGN-21-B2/006, block B, ground floor admeasuring to 1737.32 sq. ft. (herein referred to as 'Unit') in the said project. That on 06.02.2009, a builder buyer agreement (herein referred to as 'agreement') was served to the complainant through post for signatures and the complainant was bound to deposit the same within 30 days but the same were left unanswered.
- g. That after much pursuance on 11.04.2009, a builder buyer agreement (herein referred to as 'agreement') was executed between the complainant and the respondent for the said unit. It is submitted since starting it is the complainant who has failed to comply with the

timelines. That the complainants herein, has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.

- h. It is submitted that the Ld. Adjudicating Officer does not have jurisdiction to adjudicate upon the matters pertaining to seeking relief of fund. That in accordance with the amended HARERA, rules the power to grant relief of refund solely vest with the Hon'ble Authority, meanwhile, the Hon'ble Punjab and Haryana High Court has upheld the amended rules vide its order dated 16.10.2020. Thereafter, the order of the Hon'ble High Court was challenged in SLP no. 13005 of 2020 before the Hon'ble Supreme Court and the Hon'ble Apex Court has stayed the operation of Hon'ble High Court order dated 16.10.2020. Thus, there is a status quo upon the amended HARERA Rules. Therefore, the Ld. Adjudicating Officer does not have any jurisdiction to adjudicate upon the complaint seeking refund until the Hon'ble Supreme Court decides the validity of the amended HRERA Rules.
- i. At the outset, the complainant herein, learned about the project launched by the respondent titled as 'Gurgaon 21/Next' (herein referred to as 'project') situated at Sector 82A, Gurgaon and approached the respondent repeatedly to know the details of the said project. The complainant further inquired about the specification and veracity of the project and was the agreement and also with the payment plan and total sale consideration agreed to sign upon the



same with free will and without any protest or demur. That the complainant being the habitual defaulter in terms of payment has failed to adhere to the payment plan and violated the terms and conditions embodied under clause 8 of agreement.

j. It is to note, that the complainant was very well aware of the payments schedule and was also knew that timely payment is essence for completion of the project. But, despite after being aware of the payment schedule the respondent herein had to issue payment reminders calling upon the complainant to abide the terms so agreed.

k. That inspite after knowing payment obligation the complainants herein has failed to pay the instalment as and when demanded by the respondent as per the payment schedule. And, upon not receiving the due instalment the respondent herein was bound to issue payment reminders calling upon the respondent to clear the payment from time to time.

l. That owing to the default in instalment payment the respondent instead of terminating the unit of the complainants requested the complainant to make the requisite payment as and when demanded as per the payment schedule. And, on considering the long business relations the respondent herein granted a final opportunity and time to the complainant to make the requisite payment.

m. It is submitted that the complainants herein are a habitual defaulters and despite after knowing that payment was essence for timely completion the complainants have failed to pay the instalment on time even after making several reminders. Due to which the respondent

herein was bound to terminate the unit of the complainant as per the terms agreed under the agreement.

- n. That despite after promising to make the requisite payment on time and as and when demanded by the complainants herein has failed to make the payment on the requisite due date. It is to note, that as per the agreement the respondent was not under obligation issue payment reminders yet the respondent has served payment reminder calling upon the complainants to make the required payment.
- o. That despite after knowing the payment schedule and the due date of the instalment the complainants herein has failed to comply with the same. As a result the respondent herein was bound to issue payment reminders on 12.08.2014; 05.09.2014; 09.10.2014; 12.11.2014 and 05.12.2014, calling upon the complainant to make the requisite payment as per the payment schedule.
- p. It is pertinent to bring into the knowledge of the Ld. Adjudicating Officer that the respondent herein vide offer for possession letter dated 10.12.2015, has already intimated the complainant the exact status of the project and has requested further to clear the pending dues and take over the possession.
- q. It is submitted that the present complaint are filed by complainants on baseless and absurd grounds. It is clearly mentioned under clause 11.1 of the agreement that in case of any unforeseen circumstances faced by respondent in the mid-way of development of the subject project, then extension time would be granted for the completion of the project.



- r. It is pertinent to mention, that the complainant in the aforesaid clause so signed and acknowledged, agreed that they shall not be liable for any amount of compensation for such extension which is caused either due to any act or notice or notification issued by the government or public or competent authority.
- s. It is further submitted that the allottee in the said agreement so signed and acknowledged agreed that he/she shall continue with this agreement and shall not obtain any specific performance in case the possession is delayed due to any government rules, orders or notification.
- t. It is submitted that as per the agreement executed for the said unit, the complainants were well aware that respondent shall not be liable for not fulfilling the obligation under the agreement if such obligations are delayed due to any reasons mentioned under the category of force majeure.
- u. It is submitted that in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to time by the company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.
- v. Subsequent to the booking and the signing of the agreement, the company was facing umpteen roadblocks in construction and

development works in projects in its licensed lands comprised of the township owing to the initiation of the GAIL corridor which passes through the same. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted /group housing/commercial/institutional in the entire township. This was further compounded with the non-removal or shifting of the defunct high tension lines passing through these lands, which also contributed to the inevitable change in the layout plans.

w. Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the company, company was unable to execute and carry out all the necessary work for the completion of the said project. These subsequent developments have repeatedly marred and adversely impacted the progress of the company's projects. To further add to the woes of the company, in addition to the reasons stated above, non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the project, forceful unauthorised occupation of certain parcels by some farmers coupled with other regular obstructions and impediments beyond the control of the company have resulted in the company being unable to deliver.

7. Copies of all relevant documents have been filed and placed on record.

Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.



E. Jurisdiction of the authority

8. The plea of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. 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 the 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 completed 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)* 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* wherein it has been laid down as under:

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

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases 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 complainant.

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

14. 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)

15. Clause 10.1 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below.

"10.1 Schedule for possession of the said independent dwelling unit. That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said independent dwelling unit within a period of three years from the date of execution of this Agreement."

16. On consideration of the documents available on record and submissions made by both the parties, the authority is of the view that there has been a huge delay on the part of respondent in completing construction of the project in question. Further, the complainant filed the complaint dated 04.10.2021 for refund of the amount paid along with interest on account of non-completion of the project in due time as agreed between the parties vide buyer's agreement dated 11.04.2009. The respondent on 17.05.2011 terminated the subject unit of the complainant but the said cancellation cannot be treated as valid as on date because the respondent thereafter issued numerous reminder notices to the complainant and lastly, respondent offered the possession of the unit on 22.06.2016 without obtaining OC from the competent authority till date.
17. Now the authority would express its views regarding the concept of a "valid offer of possession". It is necessary to clarify this concept because, after a valid and lawful offer of possession, the liability of the promoter for the delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of the promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over of possession. The Authority after a detailed consideration of the matter has concluded that a valid offer of possession must have the following components:
- a. The possession must be offered after obtaining an occupation certificate/completion certificate.
 - b. The subject unit must be in a habitable condition.

c. Possession should not be accompanied by unreasonable additional demands.

18. In the present case, the first and foremost condition of a valid offer of possession is not fulfilled. The occupation certificate in respect of the project in question where the subject unit is situated has not been granted by the concerned authority till date although the respondent in its reply states that the OC for the said unit have been received by the respondent from the competent authority but no such document is placed on record for reliance. The respondent offered the possession of the allotted unit before obtaining occupation certificate i.e., on 22.06.2016. Hence, the said offer is not a valid offer of possession.

19. 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....."

20. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale

under section 11(4)(a) of the Act. The promoter has failed to complete or 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.

21. 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.
22. **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."*

23. 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.

24. 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., 10.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

25. The authority hereby directs the promoter to return the amount received by him i.e., ₹ 53,91,975/- 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*.

F.II. Compensation for delay.

F.III. Cost of litigation.

26. 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

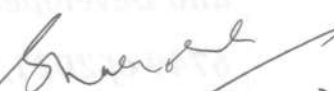
27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The authority hereby directs the respondent- promoter to return the amount received by it i.e., ₹ 53,91,975/- 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 date of refund of the deposited amount.
- b. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any.

28. The complaint stands disposed of.

29. File be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 10.11.2023