# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

| | |
|---|---|
| **Complaint no.:** | **845 of 2022** |
| **Date of filing:** | **02.05.2022** |
| **Date of first hearing:** | **05.07.2022** |
| **Date of decision:** | **21.09.2023** |

1. Ravindra Kumar Singh Chandel S/o Sh. Bijai Singh Chandel &
2. Renu Chandel W/o Sh. Ravindra Kumar Singh Chandel

Both R/o House No.3274, Sector-23,
Gurgaon-122017.

....COMPLAINANT(S)

VERSUS

Vatika Limited.
Unit no. A-002, INXT City Centre,
Ground floor, Block-A, Sector-83,
Vatika India Next, Gurugram-122012 ....RESPONDENT(S)

**CORAM:** **Dr. Geeta Rathee Singh** **Member**
**Nadim Akhtar** **Member**

**Present: -** Mr. Amitabh Narayan, Counsel for the complainants through VC
Mr. Kamaljeet Dahiya, Counsel for the respondent

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint was filed on 02.05.2022 by complainants under Section 31 of The Real Estate (Regulation & Development) Act, 2016

(for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

## A. UNIT AND PROJECT RELATED DETAILS

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

| S.No. | Particulars | Details |
|---|---|---|
| 1. | Name of the project | Commercial Building Vatika Mindscapes, Sector-27-B, Faridabad |
| 2. | RERA registered/not registered | Registered (196 of 2017 dated 15.09.2017) |
| 3. | DTCP License no. | 1133 of 2006. |
| | Licensed Area | 8.79 acres |
| 4. | Unit no. | C-220 |
| 5 | Unit area | 500 sq. ft. |
| 6. | Date of allotment | 12.04.2017 |
| 7. | Date of builder buyer agreement | Not executed.<br>As per version of complainants, builder buyer agreement was signed by them and was given to respondent |

| | | |
|---|---|---|
| | | for signing. However, signed copy of builder buyer agreement was never returned by the respondent to the complainants. No draft/copy of builder buyer agreement has been placed on record by any of the party. |
| 8. | Due date of offer of possession | Not available. |
| 9. | Possession clause | Not available. |
| 10. | Total sale consideration | ₹ 44,83,050/- |
| 11. | Amount paid by complainants | ₹ 44,83,050/- |
| 12. | Offer of possession | No offer. |
| 13. | Occupation certificate | Not obtained. |

## B. FACTS OF THE COMPLAINT

3. Complainants booked a commercial unit bearing no. 220 measuring 500 sq. ft. on 2nd floor, tower C of the project namely, 'Vatika Mindscapes' located at Sector-27-B, Faridabad being promoted by respondent at agreed sale consideration of ₹ 44,83,050/- on 03.04.2017. Allotment of the unit was made on 12.04.2017, copy of allotment letter is annexed at page 31 of the complaint. Complainants paid entire consideration, i.e., ₹44,83,050/-, copy of receipts have been placed at Annexure-A, page nos.20-22 of the complaint file. Thereafter, as stated in complaint the builder-buyer agreement was signed by the complainants and was given to respondent for signing. However, the signed copy of the builder buyer agreement was never returned by respondent to the complainants. Further, it is stated that

respondent had promised to complete the project up to 31.12.2017. But respondent had failed to complete project and hand over possession of the unit up to 31.12.2017. Complainants allege that respondent paid assured return @ ₹77 per sq. ft. till 30th September, 2018, but suddenly stopped making payment thereafter. Further, it is stated that the possession of the unit has not been offered and the project is not ready for occupation which is borne out from the documents submitted by the respondent before Authority in the year 2021.

4. The complainants have discovered that conveyance deed of the unit in question cannot be executed in favour of complainants for the reason that respondent company has time and again mortgaged the unfinished project namely Vatika Mindscapes at Tower-C to various banks and financial institution. Details of said mortgage has been provided as Annexure H to complaint. Due to inability of the respondent promoter to complete the project in time and deliver actual physical possession of the unit to the complainants, present complaint has been filed seeking refund of the entire paid amount along with interest and compensation @₹77/- per sq. ft. @₹38,500/- per month from 01.10.2018 till date.

**C. RELIEF SOUGHT**

5. Complainants in their complaint have sought following relief:

i. To direct the respondent to refund the sum of ₹44,83,050/- deposited with the respondent along with interest @24% per annum.

ii. To direct the respondent to pay compensation @₹77/- sq. ft. @₹38,500/- per month from 01.10.2018 till date.

iii. To pay a penalty at the rate of 5% of the estimated cost of the real estate project in terms of Section 61 read with Section 11(4)(h) of the RERA Act for each of the mortgages and charges created on the entire unfinished project.

iv. To award compensation in favour of complainant under section 72 of the RERA Act for mental agony and harassment caused to the complainant to the tune of ₹30,00,000/-.

iv. Cost of the complaint.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 13.04.2023 pleading therein:

6. That present complaint is not maintainable for the reason that Authority does not have jurisdiction to decide the complaint pertaining to unregistered project- 'Vatika Mindscape'.

7. That the completion of construction for Block C wherein all the three units of the complainants are located had already been intimated to the

complainant vide letter dated 27.03.2018. Present complaint for refund is not maintainable at such a belated stage when the construction had been completed and the respondent had invested huge sum in the project.

8. That the agreement between the complainants and Vatika Ltd. was in form of investment agreement and the complainant had made investment in the project of the respondent by purchasing a unit for speculative gains and not for getting possession of unit which is evident from clause 3 of allotment letter. Therefore, there does not exist relation of allotees and promoter between the parties as complainants herein are not allottees but mere investors.

9. That respondent has paid each and every penny of assured returns amounting to Rs 6,70,083/- till October, 2018. However, assured returns cannot be further paid to complainant due to prevailing laws for the reason that on 21.02.2019, Central Government issued an ordinance "Banning of Unregulated Deposit 2019" ordinance, by virtue of which payment of assured returns became wholly illegal. Said ordinance was converted into an Act named "Banning of Unregulated Deposit Scheme Act, 2019" (BUDS Act in brief) on 31.07.2019. Respondent argued that on account of enactment of BUDS Act, they are prohibited from granting assured returns to complainants.

10. Further, Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 titled "Vatika Limited vs Union of India & Ors" took the cognizance in respect of banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till next date of hearing. Said matter is listed before the Hon'ble High Court for 17.05.2023. That once the Hon'ble High Court has taken cognizance and State of Haryana has notified the appointment of competent Authority under the BUDS Act who will decide the question of law whether such deposits are covered under the BUDS Act or not, this Hon'ble Authority lacks jurisdiction to adjudicate upon the matters coming within the purview of the special act namely BUDS Act, 2019.

11. Respondent has further taken a plea that complainants are speculative buyers, who invested in the project of the respondent company for monetary returns and since the real estate market is showing downward tendency, complainants cannot take it as a weapon by way of taking undue advantage of provisions of RERA Act 2016. Agreement duly signed between the parties is binding on both parties as held in Bharti Knitting vs DHL by Hon'ble Apex Court.

## E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

12. Learned counsel for complainants has submitted that possession of the booked unit was to be handed over by 31.12.2017, however, till date project is not complete. Occupation certificate has not been issued by competent authority with respect to tower in question i.e. tower C. Since project-Vatika Mindscape has been mortgaged time and again with banks and financial institutions by the respondent, conveyance deed cannot be executed. Without prejudice to interest of the complainants, it is averred that complainants are not desirous of waiting endlessly for a valid possession of unit and are therefore, praying for relief of refund of paid amount along with interest.

13. At the outset, learned counsel for complainants stated that complainants do not want to continue with the project and as such they are pressing for relief of refund of the paid amount along with interest and they want to forgo relief of assured returns and imposition of penalty upon respondent as specified in clause b and c of relief clause respectively.

14. Learned counsel for respondent argued that as the complainants are an investors in the project of respondent, relation of complainants and respondent are based on a commercial transaction between the parties in the form of leasing arrangement. The agreement/allotment is in the form of investment/lease agreement wherein the complainants were to receive monthly assured returns till offer of possession of unit and after offer of possession, respondent was obligated to lease out said unit for rental income

to complainants. As a matter of fact, the complainants were paid assured returns till October,2018. It is only after the enactment of BUDS Act,2019 the scheme of assured returns became infructuous. Further, he stated that builder buyer agreement has not been executed between the parties. However, the clause 3 of allotment letter deals with the leasing arrangement with the complainants. In the present case, no date for handing over of possession has been defined in the said allotment letter and it is because of the fact that the complainants have invested for monetary gains- assured returns so there is no loss being caused to complainants even if possession is not handed over within reasonable time as respondent has duly paid assured return to complainants since October,2018. Therefore, complainants are not aggrieved of any default on part of respondent. He further stated that the conditions precedent for exercising jurisdiction of this Authority of this subject are not fulfilled, therefore, Authority is precluded from proceedings ahead with the matter. The question of assured returns is squarely covered by the BUDS Act. On account of provisions of the said Act, the jurisdiction will be of any other appropriate forum but not of this Authority. Further, learned counsel for respondent verbally argued that question of assured return is already pending before Hon'ble Punjab & Haryana High Court in CWP no. 26740 of 2022 titled "Vatika Limited vs Union of India & Ors" which is listed for hearing on 22.11.2023. This complaint is also connected with the

matter pending before Hon'ble High Court as issue of monthly assured returns is involved in it.

15. Learned counsel for respondent further argued that even in case refund of paid amount is to be allowed to complainants then same may be awarded after forfeiture of earnest money for the reason that in present scenario respondent is not at fault for payment of assured returns as it was stopped due to enactment of BUDS Act,2019 and for handing over of possession as no clause in particular to this effect has been incorporated in the allotment letter. Complainants by accepting monthly assured returns upto October 2018 has enriched themselves with monetary gains on their invested/paid amount which was the essence of their purchase of commercial unit in question. Here the complainants are not the one who booked the unit for their personal residence it was only for the purpose of monetary gains which respondent has duly paid to them.

## F. ISSUES FOR ADJUDICATION:

i. Whether complainants are entitled to refund of the paid amount along with interest?

## G. OBSERVATIONS OF THE AUTHORITY:

16. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments

submitted by both parties, Authority observes that the respondent has taken objection w.r.t the maintainability of complaint. Therefore, the Authority deems to give its findings/observations w.r.t maintainability issue which is as follows:

i. The respondent has taken a stand that the complainants are speculative buyers who have invested in the project for monetary returns and taking undue advantage of RERA Act 2016 as a weapon during the present downside conditions of the real estate market and therefore not entitled to the protection of the Act of 2016. In this regard, Authority observes that "any aggrieved person" can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainants are an aggrieved persons who have filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: -

*Section 2(d) of the RERA Act:*
*(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or*

*otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;*

ii. In view of the above-mentioned definition of "allottee" as well as upon careful perusal of allotment letter dated 12.04.2017, it is clear that complainants are an "allottee" as unit bearing no. C-220 in the real estate project "Vatika Mindscape", Faridabad was allotted to them by the respondent promoter.The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled **as M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

iii. Respondent has also raised a plea that complainants had applied for allotment of a unit in respondent's project as an investor for steady rental income. Clause 3 of allotment letter has been referred which is reproduced below for reference:-

> *"3.That you have intended to purchase the said unit with leasing arrangement and in terms of builder buyer agreement, the company shall be authorised to put the said unit on lease for and on your behalf as and when the said unit is ready and fit for occupation."*

Above referred clause was subject to condition when 'project is ready for possession' and that stage of possession has not been reached by respondent as occupation certificate for the tower C has not yet been received from the competent authority. Further, the right to lease out the property could have been delegated only once a person has become an owner of the property for which it is a pre-requisite that the allotee gets a perfect title in the property, however, it is a matter of fact that the title was never perfected as no conveyance deed has been executed. That this stage of delegating/respondent's right to lease out property/unit does not arise. Thus, there is no doubt regarding the fact that complainants are only an allotee.

iv. The objection of the respondent that the project in which the complainants are seeking relief is not registered with this Hon'ble Authority and therefore this Hon'ble Authority does not

have jurisdiction to entertain the present complaint. It is pertinent to mention here that the project in which the unit in question is situated is registered with the Authority vide Registration no. 196 of 2017 dated 15.09.2017. The issue that whether this Authority has jurisdiction to entertain the complaint if the project is not registered with the Authority has been dealt and decided by the Authority in **complaint no. 191 of 2020 titled as Mrs. Rajni and Mr. Ranbir Singh vs Parsvnath Developers Ltd.** Relevant part of said order is being reproduced below:

*"Looked at from another angle, promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Sector 3 of the Act. The argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot avail benefit of summary procedure provided under the RERA Act for redressal of their grievances. It is a classic argument in which violator of law seeks protection of law by misinterpreting the provisions to his own liking.*

*14. The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get*

*away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.*

*15. For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected."*

v. Another set of objection raised by the respondent is that the Authority lacks the jurisdiction to adjudicate and grant the relief of refund under section-18 of the RERA, Act 2016 as the same may only be granted by the Adjudicating officer of the Authority. In this regard the Authority has no hitch in proceeding with the complaint and to grant the relief of refund in the present complaint in view of the judgment passed by the Hon'ble Apex Court in **"Newtech Promoters and Developers Pvt. Ltd versus State of UP and Ors." 2021-2022 (1) RCR (C) 357** and followed in the case of **"Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others" dated 13.01.2022 in CWP bearing number 6688 of 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."*

Hence, in the view of authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the Authority has the jurisdiction to entertain/adjudicate a complaint seeking refund of amount, and interest on refund amount.

vi. Admittedly, complainants in this case had purchased the booking rights qua the unit in question in the project of the

respondent in the year 2017 by making payment of total sale consideration amounting to ₹ 44,83,050/- on 03.04.2017. Thereafter, allotment letter for Unit no. C-220, 500 sq ft was issued to complainants on 12.04.2017. Further, complainants claim to have returned the signed copy of builder buyer agreement to respondent for signatures but respondent never returned the properly signed copy of builder buyer agreement to them. Respondent in its written statement denies the execution of builder buyer agreement. No draft/copy of builder buyer agreement has been attached by complainants for reference with the complaint. Therefore, it can be safely presumed that builder buyer agreement has not been executed between the parties.

vii. Authority observes that the builder buyer agreement has not been executed between the parties. In absence of execution of builder buyer agreement and no specific clause of deemed date of possession in allotment letter, it cannot rightly be ascertained as to when the possession of said unit was due to be given to the complainants. In **Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya**, Hon'ble Real Estate Appellate Tribunal has referred to observation of Hon'ble Apex Court in **2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) &**

**Anr.** in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, the unit was booked by the complainants on 03.04.2017 and allotment letter was issued on 12.04.2017 by the respondent. Accordingly, taking a period of 3 years from the date of allotment, i.e, 12.04.2017 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 12.04.2020. In present situation, respondent failed to honour its contractual obligations without any reasonable justification.

viii. Respondent in its reply has claimed that no loss of any kind has been caused to complainants due to non-handing over of possession of unit till date as no date was ever specified for handing over possession of unit in allotment letter. Complainants have duly accepted such type of allotment letter for the reason that complainants have invested their money for monetary gains which in this case is assured returns. Said returns were duly paid to complainants till October,2018 and was stopped thereafter due to enactment of BUDS Act,2019. So, plea of respondent is that the complainants are not aggrieved of any default of respondent pertaining to non-handing over of possession and non-payment of assured returns. In this regard, it is observed that the complainants

have purchased a showroom space-commercial unit and definitely commercial spaces are never being purchased for residential purpose, it is always for purpose of monetary gains in future. For the purpose of monetary gains, equation exists between the parties in form of assured returns to be paid by respondent on the total sale consideration amount paid by complainants in one-go. Assured returns were paid till Ocober,2018 but stopped thereafter due to enactment of BUDS Act,2019. Complainants have filed the complaint in year 2022 for seeking refund and assured returns i.e. after 4 years of non-payment of assured returns. Complainants herein are aggrieved of arbitrary acts of respondent ;first in not executing the builder buyer agreement. Every allotee has presumption that any date for handing over of possession will be specified in builder buyer agreement but in this case respondent has not bothered to execute the builder buyer agreement and rather accepted money only on the basis of allotment letter. Said allotment letter does not provide any date of handing over of possession. Complainants who have already paid about whole of total sale consideration got stuck with respondent without any proper documentation w.r.t. unit booked. If we look at the intent of allotee-complainants, they have chosen to invest in a tangible property-showroom space not any open share market where there

is no definite/precise mode of transaction to be carried out. Buying of commercial property in a project having obtained license from DTCP is a real estate transaction and duly covered under ambit of RERA Act,2016. Investment in commercial property does not imply that complainants-allottees never ever wanted to own that property by perfecting the title in their name. Said transaction cannot be said to be an open-ended transaction for the mere reason that respondent in an arbitrary manner has not specified any clause for delivery of possession of unit. Furthermore, the complainants are now exiting out from the project for the reason that there is no scope of a valid offer of possession and execution of conveyance deed even in near future due to various mortgages created by respondent. Complainants rightly are under apprehension that their title of property will never be perfected. Respondent's act of not paying assured returns is not the sole reason for withdrawing out of the project. Respondent even today in a manner has clearly highlighted that possession of unit cannot be given to complainants as there is no clause of possession, on the other hand, refund of paid amount with interest also cannot be awarded to complainants as unit was only meant for monetary gains-assured returns and there is no clause for withdrawing out of project. Further, any delay in delivery of possession is not a fault

of respondent. Hence, the complainants are not allowed to be proceeded further in any direction, not even withdrawing out of project. In this scenario, RERA Act,2016 plays an effective role in safeguarding the interest of allottees. Respondent cannot take benefit of his wrong(by not delivery possession of unit till date). By virtue of Section 18 of RERA Act,2016, the respondent is obligated to refund the paid amount with interest to the allotee on its failure to complete or non-delivery of possession of unit in accordance with agreement or any other date specified therein. Further, it has been argued by respondent that complainants are seeking refund for the reason that real estate market has gone downwards. As a matter of fact, post year 2022 the prices in real estate market is seeing a upward slide. So, this contention of respondent does not hold any merit.

ix. With regard to plea of ld. Counsel for respondent that even if relief of refund of paid amount is to be awarded to complainants then same may be awarded subject to forfeiture of earnest money, the Authority observes that respondent is in receipt of total sale consideration of unit which is Rs 44,83,050/- since 03.04.2017 i.e. date of booking. Thereafter no further amount remains due on part of complainants to pay towards sale consideration of unit to respondent. Clause 9 of application form dated 03.04.2017 and

clause 1 of allotment letter dated 12.04.2017 describes the various circumstances/grounds in which respondent is authorised to forfeit the earnest money. Clause 9 and clause 1 reads as under:-

*9. The company and the intending allotee hereby agrees that the earnest money for the purpose of this application and builder buyer agreement shall be 10% of the total sale consideration of the said shops/commercial space. The intending allotee hereby authorizes the company to forfeit the earnest money alongwith other non-refundable amounts e.g. interest on delayed payments, interest on instalments, brokerage etc. in case of non-fulfilment of the terms and conditions herein contained and those of the builder buyer agreement.*

*1.That in the event you(allotee)default in sending us the builder buyer agreement duly signed by you, within 30 days from receipt of same for signing by you, the present allotment letter shall be liable to be withdrawn and the earnest money as mentioned in the builder buyer agreement shall be liable to be forfeited.*

In light of aforesaid clauses, the respondent can proceed for forfeiture of earnest money in two circumstances, first; when the allotee-complainants does not fulfil terms and conditions of application form/builder buyer agreement and second; when the allotee defaults in not sending the signed copy of builder buyer agreement to respondent within 30 days of receipt of same. Factual position remains that complainants have duly abided by the terms and conditions of application form as well as allotment by making full and final payment of total sale consideration on 03.04.2017 and after said payment no amount remains due on their part. Obligation was left upon respondent to deliver possession and for making

payment of assured returns on time. It is not the case that respondent after year 2017 has issued demand letters which were not honoured by complainants. No document proving non-fulfilment of terms and conditions of application form/allotment has been placed on record by respondent. Further, as per version of complainants they have sent a signed copy of builder buyer agreement to respondent but it is the respondent who has not returned the signed copy of builder buyer agreement to them. Respondent has denied the execution of builder buyer agreement with complainants. But no specific plea with respect to default on part of complainants in signing and sending copy of builder buyer agreement has been highlighted in written statement. Moreover, in case of default the respondent was having an opportunity to withdraw the allotment letter dated 12.04.2017 which has not been done so in this case till date. No document for proving any kind of default on part of complainants has been placed on record by respondent. Accordingly, the plea of respondent to refund the paid amount after forfeiture of earnest money is devoid of merit and is therefore rejected.

x. It is to mention here that the complainants are insisting upon refund only for the reason that though the construction of the unit is almost complete but occupation certificate has not yet been

received and further the legal and valid title of the property is not possible as conveyance deed of the unit would not be executed because of the several mortgages of project by the respondent to banks and financial institution. So, there is no hope of getting a valid offer of possession and legal title of unit with the complainants even in near future. Therefore, Authority cannot keep the complainants waiting endlessly for possession. Further, Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**" has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per agreed state. Para 25 of ibid judgement is reproduced below:

> "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."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

xi. In view of aforesaid observations, Authority finds it to be fit case for allowing refund in favour of complainants. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

xii. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

> *(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation.-For the purpose of this clause-*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

xiii. The legislature in its wisdom in the subordinate legislation under the provisions 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.

xiv. Consequently, as per website of the state Bank of India i.e., https://sbi.co.in, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 21.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

xv. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

*"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".*

xvi. Thus, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of Rs 44,83,050/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75% (8.75% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the

total amount along with interest calculated at the rate of 10.75% till the date of this order and total amount works out to Rs 31,19,988/- as per detail given in the table below:

| Sr. No. | Principal Amount in ₹ | Date of payment | Interest Accrued till 21.09.2023 |
|---|---|---|---|
| 1. | 29,83,050 | 03.04.2017 | 20,76,060 |
| 2. | 6,00,000 | 03.04.2017 | 4,17,571 |
| 3. | 9,00,000 | 03.04.2017 | 6,26,357 |
| 7. | Total=44,83,050/- | | Total= 31,19,988/- |
| 8. | Total Payable to complainant | 4483050+ 3119988= | 76,03,038/- |

xvii. Regarding relief of assured return, it is observed that since complainants wants to withdraw from the project and wants paid money to be refunded back along with interest, Complainants can only be allowed either refund along with interest or possession along with delay interest and assured returns. In the case in hand, the issue of assured return is not being dealt with for the reason that learned counsel for complainants during oral arguments, have limited his prayer regarding relief of refund by giving up relief of assured returns and imposition of penalty under Section 61 of RERA Act, 2016 upon respondent. Therefore, relief of assured return and imposition of penalty is hereby vacated.

xviii. The complainants are seeking compensation on account of mental agony and harassment. It is observed that Hon'ble

Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as *"M/s Newtech Promoters and Developers PvL Ltd. V/s State of U.P. & ors."* (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

## G. DIRECTIONS OF THE AUTHORITY

17. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount of ₹ 76,03,038/- to the complainants in equal share after deducting paid amount of assured return of Rs 6,70,083/-.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

18. **Disposed of**. File be consigned to record room after uploading of order on the website of the Authority.

.....
**DR. GEETA RATHEE SINGH**
**[MEMBER]**

.....
**NADIM AKHTAR**
**[MEMBER]**