

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

Complaint no.	:	300 of 2023
Date of decision	:	16.02.2024

1. Mr. Sandeep Rohilla
2. Hema Rani

Both R/O- House no-B 172, DLF new town
height, sector 86, Gurgaon, Haryana - 122004.

Complainants

Versus

M/s Vatika Limited

Address: Vatika limited INXT city centre,
Ground Floor, tower- A, sector 83, vatika India
next, Gurgaon - 122012, Haryana.

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Sanjeev Sharma, Advocate

Complainants

Sh. Harshit Batra, Advocate

Respondent

ORDER

1. The present complaint dated 23.01.2023 has been filed by the complainant/allottee 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 under the provisions 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. Unit and project related details

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

Sno.	Heads	Information
1.	Project name and location	"Turning point", Sector-88B, Harsaru Gurugram
2.	Project area	18.80 acres
3.	Nature of the project	Residential
4.	DTCP License	91 of 2013 26/10/2013 Valid up to 25/10/2017
5.	Name of the licensee	Vaibhav Warehousing Pvt. Ltd & 5 others
6.	RERA Registered/ not registered	Registered vide no. 213 of 2017 Valid up to 15.09.2017
7.	Date of booking letter	16.12.2018 (page 16 of complaint)
8.	Unit no.	WE-1-1901, 19 th floor, tower- west end - 1 (page 18 of complaint)
9.	Unit area admeasuring	Carpet area of 684.44 sq. ft. and balcony area of 68.76 sq. ft.
10.	Date of builder buyer agreement	22.02.2019 (page 25 of complaint)
11.	Possession clause	5. Time Is Essence <i>Subject to timely payment of dues/ demands by the Allottee(s), the Promoter shall abide by the time schedule for completing the Project as disclosed at the time of registration of the project with the Authority and towards handing over the Apartment along with parking to the Allottee(s) and the common areas to the association of allottee's or the competent authority as the</i>

		<i>case may be, as provided under Rule 2(1)(f) of Rules, 2017. The Allottee cannot hold the promoter responsible for delay in completion of the project if the Allottee himself has been in default in making timely payments as per the agreed payment plan per schedule D to this agreement.</i>
12.	Due date of possession	15.03.2025 [Note: due date calculated as 90 months from 15.09.2017 as per registration certificate]
13.	Total sale consideration	₹ 60,00,007.50/- [as per SOA dated 02.11.2023 at page 24 of reply]
14.	Amount paid by the complainant	₹ 17,03,602/- [as per SOA dated 02.11.2023 at page 24 of reply]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
 - a. That the complainants booked a residential apartment no. WE-1-1901, 19th floor, tower- west end - 1, admeasuring Carpet area of 684.44 sq. ft. and balcony area of 68.76 sq. ft. for a total sale price of ₹ 60,00,007.50/-and the agreement for sale was executed on 22.02.2019 between the complainants and the respondent had in year 2013.
 - b. That the said project is a construction linked project and the complainant has made payment of ₹ 17,03,602/-till

10.06.2019 and further no demands were raised by the respondent.

- c. That the complainants have made a total payment from December 2018 to June 2019 and despite wait for more than 4 years, the possession has not been Offered to the complainants.
- d. That the complainants have approached the Hon'ble authority seeking refund of their monies along with the interest as all the requests made by the complainants have gone to the deaf ears of the respondent.

C. Relief sought by the complainants:

- 4. The complainants have sought following relief(s):
 - a. Direct the respondent to refund the entire amount paid by the complainants amounting to ₹ 17,03,602/- along with the interest.

D. Reply by respondent:

- 5. The respondent made the following submissions in its reply:
 - a. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
 - b. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 22.02.2019 as

- shall be evident from the submissions made in the following paragraphs of the present reply.
- c. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Hon'ble Authority and can only be adjudicated by the Adjudicating Officer/Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone.
 - d. That the complainants have not come before this Hon'ble Authority with clean hands and has suppressed vital and material facts from this Hon'ble Authority. The correct facts are set out in the succeeding paras of the present reply. That the complainants are vehemently and most humbly stated that bring out the true and correct facts and circumstances is subject to the contention of the respondent that the Hon'ble Authority has no jurisdiction to deal with the present matter and that the present complaint is not maintainable for reasons stated in the present reply.
 - e. That the complainants are not "allottees" but investors who had booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the

purpose of self-use as their residence. Therefore, no equity lies in favour of the complainants.

- f. That the complainants approached the respondent and expressed interest in booking of an apartment in the residential group housing colony developed by respondent known as "Turning Point" situated in sector 88B, Gurgaon, Haryana. Prior to the booking, the complainants conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- g. That thereafter the complainants, vide an application form dated 16.12.2018 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no HSG-026-West End-1-1901, admeasuring 1125sq. ft. (tentative area) was allotted to the complainants. That the complainants consciously and wilfully opted for a construction linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent that they shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in their favour.
- h. Thereafter, a buyer's agreement dated 22.02.2019 was executed between the complainants and the respondent. It is pertinent to mention that the buyer's agreement was

consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the Parties.

- i. That as per clause 7.1 of the agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect.
- j. That the complainants made several visits to the office of Respondent to know whereabouts of the said project. That the complainants even enquired about the veracity of the project and was satisfied with every approval deemed necessary for the purpose of the development. That the complainants had immense and deep interest on the project carried out by it and booked a unit detailed above.
- k. That the respondent has got its project registered with the Hon'ble Authority. That the Hon'ble Authority vide memo number HRERA-430/2017/1106 dated 15.09.2017 was pleased to register the said project. That the present complaint filed by the complainants premature. There is no cause of action arising in favour of the complainants. It is submitted that as per clause 5 of the agreement, the respondent is under an obligation to complete the said project in consonance with the validity period of registration

of the project, i.e., 90 months from the date, it was issued i.e., 15.09.2017 which comes out to be 15.03.2025 and the same has been enshrined under clause 5 of buyer's agreement.

- l. That the complaint under reply is filed by complainants on baseless and on absurd grounds. It is clearly mentioned under clause 7.1(A) of the agreement that timely payment of amounts due by the complainants as per the agreed payment schedule is the essence of the agreement.
- m. That it is submitted that the construction of the said project is going on at a very good pace and the respondent will offer the possession of the units to their respective allottees within the agreed time. It is submitted that as per the buyer's agreement dated 22.02.2019 executed between the parties, the total sale consideration of the said unit is ₹60,00,000/- That it is pertinent to note that out of the total sale consideration, the complainants has paid only an amount of ₹17,03,602/-.
- n. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent's, it is respectfully submitted that the provisions of the Act relied upon by the complainants for seeking assured returns and interest cannot be called in to aid in derogation and ignorance of the clauses of the buyer's agreement and as per the prevailing laws. It is submitted that the construction of the Project was affected on account of unforeseen circumstances beyond the control of the respondent. In the year, 2012 on the directions of the Hon'ble Supreme Court of

India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Reference in this regard may be had to the judgment of "**Deepak Kumar v. State of Haryana, (2012) 4 SCC 629**". The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce. Further, the respondent faced certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide order dated 02.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna Riverbed. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel

exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale. Further, the parties have agreed that in the event of delay, the allottee shall be entitled to compensation on the amounts paid by the allottee, which shall be adjusted at the time of handing over of possession/execution of conveyance deed subject to the allottee not being in default under any of the terms of the agreement.

- o. That it is submitted that apart from the above, the progress of the said project is also affected due to various unforeseen circumstances such as:
 - i. Unexpected introduction of a new National highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the respondent. Under this new development NH 352 W was initially supposed to be developed as sector roads by Haryana Urban Development Authority (HUDA) which took around 3 years in completing the land acquisition process.
 - ii. The Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45 (1) of Gurugram Metropolitan Development Authority Act, 2017 (GMDA Act) vide its Notification dated 11.04.2018

- makes the transfer scheme for transferring the properties falling within the ambit of NH 352 W acquired by the HUDA to GMDA for development and construction of NH 352 W.
- iii. The GMDA vide its letter dated 08.09.2020 had handed over the possession of said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.
 - iv. Further, initially, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 metres was uplifted. Before start of the acquisition and construction process, it had already laid down the services according to the earlier sector road levels. However, due to upliftment caused by the HUDA in NH 352 W the company has been constrained to raise and uplift the same within the project, which not only result in deferment of construction of project but also attract costing to it.
 - v. Re-routing of high-tension lines passing through the lands resulting in inevitable change in the layout plans.
 - p. That in accordance with the facts and circumstances noted above, the present claim is barred by limitation. The Article 113 of Schedule I of the Limitation Act is applicable and the present complaint was filed after over 4 years of passing of limitation, which cannot be condoned under any

circumstance whatsoever. That the complainants have voluntarily executed the agreement to Sale on 22.02.2019 and no objection was raised prior to filing of the present complaint. Hence, the said complaint is more likely an afterthought in order to extort money from the respondent.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority: 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

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

E. II Subject matter jurisdiction

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale.

Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the

allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

9. 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.
10. 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."

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

F. Findings on the relief sought by the complainants:

F.1 Direct the respondent to refund the entire amount paid by the complainants.

12. In the present matter the complainants intend to withdraw from the said project and are seeking a refund of the paid-up amount along with interest from the respondent. Section 18(1) of the Act is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, -

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

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed." (Emphasis supplied)

13. Clause 5 of the buyer's agreement dated 22.02.2019 provides for schedule for possession of unit in question and is reproduced below for the reference:

"5.

Subject to timely payment of dues/ demands by the Allottee(s), the Promoter shall abide by the time schedule for completing the Project as disclosed at the time of registration of the project with the Authority and towards handing over the Apartment along with parking to the Allottee(s) and the common areas to the association of allottee's or the competent authority as the case may be, as provided under Rule 2(1)(f) of Rules, 2017. The Allottee cannot hold the promoter responsible for delay in completion of the project if the Allottee himself has been in default in making timely payments as per the agreed payment plan per schedule D to this agreement.

" (Emphasis supplied)

14. On the basis of license no. 91 of 2013 dated 26.10.2013 issued by DTCP, Haryana, a residential group housing colony by the name of "Turning Point" was to be developed by the respondent/builder over land admeasuring 18.80 acres situated in Sector 88-B, Gurugram. This project was later on registered vide registration certificate No. 213 of 2017 with the authority. After its launch by the respondent/builder, units in the same were allotted to different persons on vide dates and that too for various sale considerations. Though, the due date for completion of the project and offer of possession of the allotted units was mentioned as validity of registration certificate being 15.03.2025

but after expiry of more than 5 years from the booking, there is no physical work progress at the site except for some digging work. Even the promoter failed to file quarterly progress reports giving the status of project required under section 11 of Act, 2016. So, keeping in view all these facts, some of the allottees of that project approached the authority by way of **complaint bearing no. 173 of 2021 and 27 others titled as Ashish Kumar Aggarwal vs Vatika Ltd.** seeking refund of the paid-up amount besides compensation by taking a plea that the project has been abandoned and there is no progress of the project at the site. The version of respondent/builder in those complaints was otherwise and who took a plea that the complaints being premature were not maintainable. Secondly, the project had not been abandoned and there was delay in completion of the same due to the reasons beyond its control. Thirdly, the allotment was made under subvention scheme and the respondent/builder had been paying Pre-EMI interest as committed.

15. During the proceedings held on 12.08.2022, the authority observed & directed as under:

"Interim RERA Panchkula issued a registration certificate for the above project being developed by M/s Vatika Limited in the form REP-III prescribed in the Haryana Real Estate (Regulation and Development) Rules, 2017 vide registration no. 213 of 2017 on 15.09.2017 valid up to 15.09.2025 under section 5 of the Act ibid. But in spite of lapse of more than 4 years since grant of registration, It was alleged by the counsel of complainant that there is no physical work progress at site except for some digging work and appears to be abandoned project. No quarterly progress report is being filed by the promoter giving the status of work progress required under section 11 of the Act, 2016.

The license no. 91 of 2013 granted by DTCP has expired on 26.10.2017 and

the same is not yet renewed/revived, while BBA has been signed declaring the validity of license. It becomes amply clear that the promoter is not only defaulting/omitting in discharge of its obligations under the Real Estate (Regulation and Development) Act, 2016 but at the same time, violating the provisions of the Haryana Development and Regulation of Urban Area, Act 1975 also.

The authority directed the respondent to furnish the details of bank account along with the statements of all the accounts associated with these promoters.

In order to safeguard the interest of the allottees and keeping in view the above facts, the authority exercising its power under section 36 of the Act, directs the promoter's M/S Vatika limited to stop operations from bank accounts of the above project namely "Turning Point".

Therefore, the banks are directed to freeze the accounts associated with

The above-mentioned promoters in order to restrict the promoter from further withdrawal from the accounts till further order."

16. It was also observed that work at the site is standstill for many years. So, the authority decided to appoint Shr. Ramesh Kumar DSP (Retd.) as an enquiry officer to enquire into the affairs of the promoter regarding the project. It was also directed that the enquiry officer shall report about the compliance of the obligations by the promoter with regard the project and more specifically having regard to 70% of the total amount collected from the allottee(s) of the project minus the proportionate land cost and construction cost whether deposited in the separate RERA account as per the requirements of the Act of 2016 and Rules 2017. He was further directed to submit a report on the above-mentioned issues besides giving a direction to the promoter to make available books of accounts and other relevant

documents required for enquiry to the enquiry officer in the office of the authority. The company secretary and the chief financial officer as well as the officer responsible for day-to-day affairs of the project were also directed to appear before the enquiry officer. They were further directed to bring along with them the record of allotment and status of the project.

17. In pursuance to above-mentioned directions passed by the authority and conveyed to the promoter, the enquiry officer submitted a report on 18.10.2022. It is evident from a perusal of the report that there is no construction of the project except some excavation work and pucca labor quarters built at the site. Some raw material such as steel, dust, other material and a diesel set were lying there. It was also submitted that despite issuance of a number of notices w.e.f. 17.08.2022 to 18.10.2022 to Mr. Surender Singh director of the project, non-turned up to join the enquiry and file the requisite information as directed by the authority. Thus, it shows that despite specific directions of the authority as well as of the enquiry officer, the promoter failed to place on record the requisite information as directed vide its order dated 12.08.2022. So, it shows that the project has been abandoned by the promoter. Even a letter dated 30.09.2022, filed by the promoter containing a proposal for de-registration of the project "Turning Point" and settlement with the existing allottee(s) therein has been received by the authority and wherein following prayer has been made by it.

- *Allow the present proposal/application*
- *Pass an order to de-register the project "turning Point" registered vide registration certificate bearing no. 213 of 2017 dated 15.09.2017.*

- *Allow the proposal for settlement of allottees proposed in the present application.*
- *To pass an order to club all the pending complaints/claims with respect to the project "turning Point" before the Id. Authority in the present matter and to decide the same in the manner as the Id. Authority will approve under the present proposal.*
- *To pass any other relief in the favour of the applicant company in the interest of justice."*

18. Thus, in view of the proposal given by the promoter to the Authority on 30.09.2022 and corroborated by the report of enquiry officer dated 18.10.2022, it was observed that the project namely "Turning Point" was not being developed and had been abandoned by the promoter. Even he applied for de-registration of the project registered vide certificate no. 213 of 2017 dated 15.09.2017 and was filing a proposal for settlement with the allottees in the project by way of re-allotment or by refund of monies paid by them. So, in view of the stand taken by the developer while submitting proposal with authority on 30.09.2022 and the report of the Enquiry Officer, it was observed that the project has been abandoned. Thus, the allottees in complaint bearing no. **173 of 2021 and 27 others titled as Ashish Kumar Aggarwal vs Vatika Ltd.** were held entitled to refund of the amount paid by them to the promoter against the allotment of the unit as prescribed under section 18(1)(b) of the Act, 2016 providing for refund of the paid-up amount with interest at the prescribed rate from the date of each payment till the date of actual realization within the timeline as prescribed under rule 16 of the Rules, 2017. A reference to section 18(1)(b) of the Act is necessary providing as under:

"18. If the promoter fails to complete or is unable to give

possession of an apartment, plot or building,

(a)


*.....
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or **for any other reason**, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act."*

19. It is proved from the facts detailed above and not rebutted by the developer that the project has already been abandoned and there is no progress at the spot. The developer used the monies of the allottees for a number of years without initiating any work at the project site and continued to receive payments against the allotted unit. So, in such situation complainants are entitled for refund of the paid-up amount i.e., ₹17,03,602/- to the developer with interest at the prescribed rate of interest i.e., 10.85% p.a.
20. It has been pointed out on behalf of respondent/builder that it was paying assured returns against the allotted units up to certain dates. So, while allowing refund of the paid-up amount in their favour, a direction be given for adjustment of that amount from the total amount. Thus, while paying back the paid-up amount to the complainants, assured returns paid to the complainants by the respondent if any, would be adjusted.
21. However, while paying sale consideration against the allotted units, the allottee raised loans from the financial institution under the subvention facilities. While refunding the amount deposited by the allottee[s] the respondent shall clear the loan

amount raised by the complainants against the allotted unit upto the date with the financial institution and the balance amount shall be paid to the allottee within a period of 90 days from the date of order.

G. Directions of the Authority:

22. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
 - a. The respondent/promoter is directed to refund the entire amount of Rs. 17,03,602/- paid by the complainants along with prescribed rate of interest @ 10.85% p.a. as prescribed under rule 15 of the rules from the date of each payment till the actual date of refund of the amount.
 - b. 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.
23. Complaint stands disposed of.
24. File be consigned to the registry.


Sanjeev Kumar Arora
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated:16.02.2024

