

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

Date of decision: 23.02.2024

NAME OF THE BUILDER		VATIKA LTD.	
PROJECT NAME		VATIKA INXT CITY CENTER	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/2412/2022	Rohit Khanna V/s Vatika Limited.	Ms. Rashi Arora Ms. Ankur Berry
2.	CR/2415/2022	Rohit Khanna V/s Vatika Limited	Ms. Rashi Arora Ms. Ankur Berry
3.	CR/2443/2022	Prince Fleming Credits Ltd. through its director Aditya Chugh V/s Vatika Limited	Ms. Rashi Arora Ms. Ankur Berry

CORAM:		Member
Shri Sanjeev Kumar Arora		

**HARERA**  
**ORDER**

1. This order shall dispose of all the 3 complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'VATIKA INXT CITY CENTER' being developed by the same respondent promoters i.e., M/s Vatika Ltd.
3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	VATIKA LTD. "VATIKA INXT CITY CENTER" Sector-102, Gurugram.		
Possession Clause	2 <i>The developer shall complete the construction of the said complex within 3 years from the date of execution of this agreement. Further the allottee has paid full sale consideration on signing of this agreement, the developer further undertakes to make payment as per annexure A per sq. ft. of super area per month by way of committed return for the period of construction, which the allottee duly accepts. In the event of a time overrun in completion of the said complex the developer shall continue to pay to the allottee the within mentioned assured return until the unit is offered by the developer for possession</i>		
Assured return clause	CR/2412/2022	CR/2415/2022	CR/2443/2022
	<i>The allottee is entitled for assured return w.e.f. 03.05.2010 @ ₹ 71.50/- per sq. ft. till completion of building and ₹ 65/- per sq. ft. after completion.</i>	<i>The allottee is entitled for assured return w.e.f. 22.04.2010 @ ₹ 71.50/- per sq. ft. till completion of building and ₹ 65/- per sq. ft. after completion.</i>	<i>The allottee is entitled for assured return w.e.f. 16.10.2009 @ ₹ 78/- per sq. ft. till completion of building and ₹ 65/- per sq. ft. after completion.</i>
Completion certificate	Not Obtained		
Relief Sought	1. Direct the respondent to refund the amount paid by the complainant.		
Complaint no	CR/2412/2022	CR/2415/2022	CR/2443/2022
Unit no.	408, 4 <sup>th</sup> floor, block B [pg. 43 of complaint]	323, 3 <sup>rd</sup> floor, block B [pg. 46 of complaint]	120 admeasuring 500 sq. ft. [pg. 47 of complaint]

<b>Date of BBA</b>	03.05.2010 [pg. 22 of complaint]	22.04.2010 [pg. 21 of complaint]	16.10.2009 [pg. 28 of complaint]
<b>Due date of possession</b>	03.05.2013	22.04.2013	16.10.2012
<b>Total sale consideration (TC)</b>	₹ 20,00,000/- [pg. 25 of complaint]	₹ 20,00,000/- [pg. 24 of complaint]	₹ 39,00,000/- [pg. 30 of complaint]
<b>Amount paid (AP)</b>	₹ 20,00,000/- [pg. 25 of complaint]	₹ 20,00,000/- [pg. 24 of complaint]	₹ 39,00,000/- [pg. 30 of complaint]
<b>Assured return</b>	₹ 31,85,000/- paid till 01.08.2018 [annexure R2 of reply]	₹ 32,50,000/- paid till 30.09.2018 [annexure R2 of reply]	₹ 32,82,500/- paid till 01.05.2018 [annexure R2 of reply]

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/2412/2022** titled as **Rohit Khanna V/s Vatika Limited.** are being taken into consideration for determining the rights of the allottees qua refund of the paid up amount.
- A. Unit and project related details**
6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

**CR/2412/2022 titled as Rohit Khanna V/s  
 Vatika Limited.**



S.no.	Particulars	Details
1.	Name of the project	Vatika Inxt City Center at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial colony
3.	Project area	6 acres
4.	DTCP license no.	258 of 2007 dated 19.11.2007 license migrated from commercial in residential zone to commercial plotted colony vide order dated 13.10.2022.
5.	Name of licensee	M/s Shivam Infratech Pvt. Ltd.
6.	RERA Registered/ not registered	Not Registered
7.	Date of builder buyer agreement	03.05.2010 [pg. 22 of complaint]
8.	Date of addendum to the agreement	03.05.2010 [pg. 38A of complaint]
9.	Unit no.	408, 4 <sup>th</sup> floor, block B (page 43 of complaint)
10.	Relocation of unit	17.09.2013 (project changed from trade centre to Inxt city centre) [pg. 43 of complaint]
11.	Possession clause	<b>2</b> <i>The developer shall complete the construction of the said complex <b>within 3 years from the date of execution of this agreement.</b> Further the allottee has paid full sale consideration on</i>

		<i>signing of this agreement, the developer further undertakes to make payment as per annexure A per sq. ft. of super area per month by way of committed return for the period of construction, which the allottee duly accepts. In the event of a time overrun in completion of the said complex the developer shall continue to pay to the allottee the within mentioned assured return until the unit is offered by the developer for possession.</i>
12.	Due date of possession	03.05.2013
13.	Date of addendum to the agreement w.r.t. inxt	Not dated [pg. 40 of complaint]
14.	Assured return clause	<i>The allottee is entitled for assured return w.e.f. 03.05.2010 @ ₹ 71.50/- per sq. ft. till completion of building and ₹ 65/- per sq. ft. after completion.</i>
15.	Total Sale Consideration	₹ 20,00,000/- [pg. 25 of complaint]
16.	Paid up amount as per BBA	₹ 20,00,000/- [pg. 25 of complaint]
17.	Offer of possession	Not offered
18.	Occupation certificate	Not obtained
19.	assured return paid till	01.08.2018
20.	Assured return paid	₹ 31,85,000/- [annexure R2 of reply]

**B. Facts of the complaint**

7. The complainant has submitted as under:

- a. That the complainant is a law-abiding citizen of India, currently residing at F-612, DLF City Phase-1, Gurugram, Haryana-122003. That the respondent is inter-alia engaged in the business of construction and development of commercial as well as residential real estate projects. The respondent as part of its commercial operations is engaged in development of a commercial residential project in the name of "VATIKA TRADE CENTRE" situated at Sector-83, Gurugram, Haryana and "VATIKA INXT CITY CENTRE" which are subject matter of dispute before this Ld. Tribunal.
- b. The respondent as per the records of MCA is carrying out its activities from its registered office at A002, INXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next, Gurugram- 122012. That the present complaint is being filed by the complainant against the respondent as the respondent has, in a pre-planned manner, cheated and defrauded the complainant of his hard-earned money and have rendered deficient services by not providing the committed assured return and have miserably failed to deliver possession of the allotted unit till date.
- c. In this regard, it is submitted that the respondent was under a contractual obligation to firstly deliver the possession of the unit on or before expiry of 36 months from the date of the builder - buyer agreement and secondly, to continue paying monthly assured returns to the complainant as per the terms of the contract till the possession of the unit allotted to it was delivered to the complainant



- after obtaining necessary certificates and permissions from the concerned authorities including but not limited to occupancy certificate as well as competition certificate. The material breaches committed by the respondent along with the malicious conduct has caused wrongful loss to the complainant and wrongful gains to the respondent, which has constrained the complainant to approach this Ld. Authority seeking redressal of its grievances.
- d. In regard to the aforesaid, it is submitted that sometime in the year 2010, the respondent issued an advertisement of launching of its forthcoming commercial project "Vatika Trade Centre" situated at Sector-83, Gurugram, Haryana. The complainant and his wife i.e., Mrs. Vandana Khanna after seeing the advertisement, came in contact with the sales executives/representatives of the respondent who embarked upon the complainant and his wife i.e. Mrs. Vandana Khanna with various promises of timely completion of the project and swift delivery of possession of the unit on time.
- e. During several meetings that took place between the complainant, his wife i.e. Mrs. Vandana Khanna and the representatives of the respondent it was explicitly assured to the complainant and his wife i.e. Mrs. Vandana Khanna that apart from delivering the possession of the unit as per the schedule the respondent shall ensure timely payments of the assured returns.
- f. That the complainant and his wife i.e. Mrs. Vandana Khanna, trusting and believing completely in the words, assurances and towering claims made by the respondent, fell into their trap and agreed to

- book a commercial unit in the project namely "Vatika Trade Centre" of the respondent.
- g. On 22nd April 2010, a builder buyer agreement ("BBA") was duly executed between Mrs. Vandana Khanna wife of the complainant and the respondent wherein Mrs. Vandana Khanna was allotted a unit no. 1542 located on 15th floor, tower no. A admeasuring 500 sq. feet super area (Approx.) in the project namely "Vatika Trade Centre" situated at Sector- 83, Gurugram against a total sale consideration of ₹20,00,000/- which was calculated at a rate of ₹4,000/- per sq. ft.
- h. It is submitted that on execution of the agreement the wife of complainant i.e. Mrs. Vandana Khanna immediately paid a sum of ₹20,00,000/- towards the entire sale consideration amount vide cheque no. 852851 dated 19th April 2010 drawn on HDFC Bank, which fact has been duly acknowledged by the respondent under clause 2 of the BBA.
- i. Imperatively, as per clause 2 of the BBA, the respondent had committed to complete the construction and deliver the possession of the unit within 3 years (36 months) from the date of execution of the BBA. Thus, the respondent was under a contractual obligation to deliver the possession of the aforesaid unit by 22nd April 2013. Unfortunately, till date the possession of the unit has not been handed over by respondent to the complainant, moreover the respondent has stopped answering the calls of the complainant and has even failed to inform the complainant as to when the possession of the unit shall be delivered.



- j. Subsequently, on 17.11.2011, an addendum to the BBA was executed between Mrs. Vandana Khanna and the respondent wherein the unit initially allotted to the Mrs. Vandana Khanna in terms of the BBA was relocated and shifted to another project of the respondent namely "VATIKA INXT CITY CENTRE" (hereinafter referred to as 'the project'). It is submitted that even though an addendum was executed nevertheless the terms and the conditions of the BBA which remaining unchanged continued to remain in in force and contractually bounded the parties.
- k. It is further submitted that as per annexure-A of addendum to builder buyer agreement, the respondent committed and promised to pay Mrs. Vandana Khanna an assured return an assured monthly rent of ₹71.50/- per sq. ft. till the completion of the building and further ₹65/- per sq. ft. after the completion of the building.
- l. Subsequently, in terms of the addendum the respondent unilaterally and arbitrarily issued a purported letter dated 31st July 2013 to Mrs. Vandana Khanna wherein the respondent changed/ shifted the allotted unit of the Mrs. Vandana Khanna from unit no. 1542 located on 15th floor to unit no. 323 on 3rd floor of block B (hereinafter referred to as 'the unit') in the project namely Vatika INXT City Centre situated at Sector-83, Gurugram, Haryana.
- m. It was further stated in the purported letter that all the rights, title and interest of Mrs. Vandana Khanna in the BBA stands transferred to new allotted unit no. 323 on 3rd floor of block- B. In this respect, it is submitted that the respondent in the said letter assured Mrs. Vandana Khanna that the project will be operational by the second

- quarter of next year, which later turned out to be nothing but a false promise and assurance by the respondent.
- n. Mrs. Vandana Khanna on receipt of the letter along with the complainant immediately approached the respondent and objected to such unilateral allocation and directed the respondent to restore the original contractual understandings and arrangements. However, no heed was paid by the respondent to objections and request of the complainant and Mrs. Vandana Khanna. Consequently, Mrs. Vandana Khanna and the complainant in order to secure its investment had no option but to accept such reallocation. In fact, even though the reallocation was accepted, nevertheless the respondent continued to be bound by the terms and conditions of the BBA which governed the rights and obligations of both the parties.
- o. On 23.07.2014, Mrs. Vandana Khanna requested the respondent to transfer/assign her rights, title and interest in the unit in favor of her husband i.e., Mr. Rohit Khanna. In this regard, Mrs. Vandana Khanna executed and issued an assignment deed as well in favor of the complainant which was duly received by the respondent. The respondent on receipt of the aforesaid request of Mrs. Vandana Khanna vide letter dated 26th August 2014 accepted the request of Mrs. Vandana Khanna and made necessary endorsement in the builder buyer agreement.
- p. It is submitted that despite executing the BBA and representing that the possession of the unit will be delivered in the contractual period the respondent failed to deliver the possession of the unit to the complainant, thereby breaching the terms and conditions of the BBA.

However, despite its failure to deliver the possession the respondent continued releasing the assured returns in terms of the BBA as well as the addendum and its annexures. At this juncture, it is relevant to mention that payment of assured returns and delivery of the possession of the unit were independent obligations and were to continue under all circumstances.

- q. Pertinently, the respondent has paid the monthly assured return of ₹71.50/- per sq. ft. per month till August, 2018. Thereafter from September 2018 the respondent has stopped the payment of assured return and has till date not paid the assured return as guaranteed under the BBA, to the complainant.
- r. That on 31.10.2018, the respondent issued yet another illegal and arbitrary email to the complainant regarding the suspension of assured return scheme. It is submitted the aforesaid email dated 31.10.2018 of the respondent is in contravention to the BBA since the respondent had promised to pay the assured return to the complainant till the date of handover of possession of the unit. It is further submitted that the aforesaid claim of the respondent is in grave contradiction of the judgment dated 11th November 2021 of this Ld. Tribunal in complaint no. 1239 of 2021 titled 'Madhushree Khaitan v. Vatika Limited'
- s. It is submitted that the complainant has time and again requested the respondent for handing over the possession of the said unit and further to pay the pending assured returns. However, all efforts and requests of the complainant have gone in vein and the respondent has been oblivious to the grievance of the complaint. On the contrary,

the respondent has withheld all the contractual dues with the intention to cause wrongful loss to the complainant and wrongful gain to itself.

- t. That the complainant also visited the project sites several times in order to ensure the stage of construction of the project but to the utter shock and surprise of the complainant, the construction of the said project was not going as per the assurance of the respondent. It is pertinent to note that at time of booking of the said unit, the respondent painted a rosy picture for the same project assuring the respondent for the timely delivery of possession of the said unit, but nothing was appearing as such and all the promises were on papers only. That the complainant had further contacted the representatives of the respondent to enquire about the delayed construction of the said project and completion / possession of the unit and pointed out the discrepancies in the project, but all the efforts of the complainant went in vain.
- u. It is stated that the construction of the project has been inordinately delayed which is clearly evident from the fact that as per clause 2 of the BBA, the respondent had promised and was under a contractual obligation to deliver the possession of the unit within 3 years from the date of execution of BBA. However, the respondent has till date not even completed the construction or has obtained the occupation certificate.
- v. It is further imperative to state that the license of the said project as issued by the Department of Town of Country Planning (DTCP), Haryana to the respondent was valid only till 18.11.2019 which has

- also expired and till date the same has not even been renewed by the respondent, which explicitly exhibits the intention of the respondent.
- w. In fact in addition to the aforesaid, the respondent has not even registered its project "Vatika INXT City Centre" with this Hon'ble Authority and the same is in contravention of Section 3 of Act of 2016. In this respect, it is submitted that the project of the respondent is an "on-going project" since the respondent did not have the completion certificate prior to commencement of Act of 2016 and is therefore liable to get the project registered, which the respondent has blatantly failed to do so till date.
- x. It is now apparent from the above that the respondent has miserably failed to complete to handover the possession of the unit till date to the complainant in accordance with the BBA and in this manner has committed grave unfair practices and breach of the agreed terms between the parties. Further, due to the aforementioned illegal acts and unfair trade practices of the respondent, the complainant has been unnecessarily mentally and financially harassed and the respondent is therefore liable to compensate the complainant. It is crystal clear all the above stated wrongful acts of the complainant are in violation of the Section 11 of the Act of 2016.
- y. Thus, the complainant is filing the present complaint in order to seek refund of principal amount of ₹20,00,000/- along with interest from the date of payment i.e. 19.04.2010 till the date of realization of the amount. Further the complainant is seeking the pending assured returns at the rate of ₹35,750/- per month, calculated @ ₹71.50/- sq. ft., for the period from September 2018 till the amount of



₹20,00,000/- is not paid back to the complainant along with interest and allotment is not cancelled by the respondent as envisaged in the BBA.

**C. Relief sought by the complainant:**

8. The complainant has sought following relief(s):
  - a. Direct the respondent to refund the paid up amount by the complaint along with the interest at prescribed rate.
9. On the date of hearing, the authority explained to the respondents/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

10. The respondent has contested the complaint on the following grounds:
  - a. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the builder buyers agreement dated 03.05.2010, as shall be evident from the submissions made in the following paras of the present reply.
  - b. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by the complainant cannot be said to fall within the realm of jurisdiction of this Ld. Authority. It is humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter



referred as BUDS Act) the 'assured return' and/ or any "committed returns" on the deposit schemes have been banned. The respondent company having not taken registration from SEBI Board cannot run, operate, continue an assured return scheme. The implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "Deposit".

- c. Thus the Assured Return Scheme proposed and floated by the respondents has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to operation of law. As a matter of fact, the respondent duly paid ₹32,50,356/- till September, 2018. The complainant has not come with clean hands before this Hon'ble Authority and has suppressed these material facts.
- d. That it is also relevant to mention here that the commercial unit of the complainant is not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income. Furthermore, as per the agreement, the said commercial space shall be deemed to be legally possessed by the complainant. Hence, the commercial space booked by the complainant is not meant for physical possession.
- e. That the complainant has come before this Hon'ble Authority with un-clean hands. The complaint has been filed by the complainant just to harass the respondent and to gain unjust enrichment. The actual reason for filing of the present complaint stems from the changed

financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The Covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. The complainant has instituted the present false and vexatious complaint against the respondent company who has already fulfilled its obligation as defined under the BBA dated 03.05.2010. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainant, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.

- f. It is submitted that the complainant entered into an agreement i.e., builder buyers agreement dated 03.05.2010 with respondent company owing to the name, good will and reputation of the respondent company. That it is a matter of record that the respondent duly paid the assured return to the complainant till July, 2018. That due to external circumstance which were not in control of the respondent, construction got deferred. That even though the respondents suffered from setback due to external circumstances, yet the respondents managed to complete the construction.
- g. The present complaint of the complainant has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The legislature in its great wisdom, understanding the catalytic role played by the Real Estate Sector in fulfilling the needs and demands for housing and infrastructure in

the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while Section 11 to Section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/developer, Section 19 provides the rights and duties of Allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the allottees, rather the intent was to ensure that both the allottee and the developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.

- h. Thus, in this regard it is pertinent to mention that the respondent company was facing umpteen roadblocks in construction and development work in projects comprised in township 'Vatika India Next' beyond the control of the respondent such as the follows:
- i. Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of Sector roads 75 mtr. and 60 mtr. wide and the consequent litigation for the same, the issue is even yet not settled completely.
  - ii. Labour issue, disruptions/delays in supply of stone aggregate and sand due to court orders of the courts, unusually heavy rains, delay in supply of cement and steel, declaration of Gurgaon as 'Notified Area' for the purpose of ground water.

- iii. Total and partial ban on construction due to the directives issued by the National Green Tribunal during various times since 2015.
- iv. The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2015 to December 2019.
- i. The several stretches of total and partial construction restrictions have led to significant loss of productivity in construction of our projects. We have also suffered from demobilization of the labor working on the projects, and it took several additional weeks to resume the construction activities with the required momentum.
- j. That it is brought to the knowledge of this Hon'ble Authority that the complainant is guilty of placing untrue facts and is attempting to hide the true colour of the intention of the complainant. That before buying the property, the complainant was aware of the status of the project and the fact that the commercial unit was only intended for lease and never for physical possession.
- k. That, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought, hence the present

complaint filed by the complainant deserves to be dismissed with heavy costs.

11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.
12. Rejoinder is also filed by the complainants on 25.10.2023 which have also been taken into consideration.

**E. Jurisdiction of the authority**

13. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

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

**E. II Subject-matter jurisdiction**

15. Section 11(4) (a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4) (a) is reproduced as hereunder:

**Section 11(4) (a)**

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



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

**Section 34-Functions of the Authority:**

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

16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
17. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.***" SCC Online SC 1044 decided on 11.11.2021 wherein it has been laid down as under:

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



*Section 71 and that would be against the mandate of the Act 2016.”*

18. Furthermore, the said view has been reiterated by the division bench of Hon'ble Punjab and Haryana High Court in ***Ramprastha Promoter and Developers Pvt. Ltd. Vs Union of India and others*** dated 13.01.2022 in CWP bearing no. 6688 of 2021. The relevant paras of the above said judgment reads as under:

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

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

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

19. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of ***M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra.)***, and the division bench of Hon'ble Punjab and Haryana High Court in ***“Ramprastha Promoter***

*and Developers Pvt. Ltd. Vs Union of India and others. (supra.),* the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee along with interest at the prescribed rate.

**F. Findings on the relief sought by the complainant.**

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

20. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by them in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:

***"Section 18: - Return of amount and compensation.***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, - in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

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

*(Emphasis supplied)*

21. Clause 2 of the buyer's agreement executed between the parties talks about the completion of the project:

*"The developer shall complete the construction of the said complex within 3 years from the date of execution of this agreement. Further the allottee has paid full sale consideration on signing of this agreement, the developer further undertakes to make payment as per annexure A per sq. ft. of super area per month by way of committed return for the period of construction, which the*

*allottee duly accepts. In the event of a time overrun in completion of the said complex the developer shall continue to pay to the allottee the within mentioned assured return until the unit is offered by the developer for possession."*

22. Accordingly, the due date of possession is calculated as 3 years from the date of BBA i.e., 03.05.2010. Therefore, the due date of possession comes out to be 03.05.2013.
23. Keeping in view the fact that the allottee complainant on 31.05.2022 the complainant filed the complaint before the authority for refund of paid amount along with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed within the reasonable time. The matter is covered under section 18(1) of the Act of 2016.
24. 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....."*

25. 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.

26. 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.
27. **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."*

28. 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.

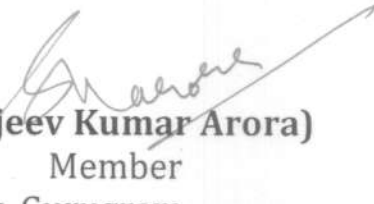
29. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
30. The authority hereby directs the promoter to return the amount received by him i.e., ₹20,00,000/- with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid* after deduction of the amount of assured return i.e., ₹31,85,000/- already paid by the respondent.

**G. Directions of the authority:**

31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent/promoter is directed to refund the amount received by it from each of the complainant(s) along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount after deduction of assured return already paid.
  - A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.



32. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
33. True certified copies of this order be placed on the case file of each matter.
34. Files be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 23.02.2024**



**HARERA**  
GURUGRAM