

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

Complaint no.	4089 of 2021
Date of filing of complaint	19.10.2021
Date of decision	23.04.2024

1. Col Pramod Kumar Mishra 2. Mrs. Saroj Singh Both R/o: H No. 596-C Sector 5, Vikas Nagar	Complainants
Versus	
M/s Vatika Limited Address: Vatika Triangle, 4 th Floor, Sushant Lok, Phase-I, Block A, M.G. Road, Gurugram, Haryana-122002.	Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member

APPEARANCE:	
Shri Dev Ashish (Advocate)	Complainants
Shri Dhruv Dutt Sharma (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions

under the provisions of the Act or the rules and regulations made thereunder or to the allottees 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"Xpressions" in Vatika Express City Phase 1 at Sector 88B Gurugram, Haryana
2.	Nature of the project	Residential plotted colony
3.	DTCP license no.	<ul style="list-style-type: none"> • 94 of 2013 dated 31.10.2013 for 94.2 acres Valid up to- 30.10.2019 • 11 of 2015 dated 01.10.2015 for 32.24 acres Valid up to- 30.09.2020
4.	HRERA registered/not registered	Registered as "Vatika Express City" bearing no. 271 of 2017 dated 09.10.2017 Valid up to- 08.10.2022
5.	Date of allotment letter	20.05.2016 [page 14 of complaint]
6.	Unit no.	27, H-30, level 2 [Page 14 of complaint]
7.	Unit measuring	1700 sq. ft.
8.	Builder buyer agreement executed on	11.08.2016 [page 18 of complaint]
9.	Possession clause	13. SCHEDULE FOR POSSESSION OF THE SAID RESIDENTIAL FLOOR

		<p><i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Residential Floor within a period of 48 (Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein or due to failure of Allottee(s) to pay in time the price of the said Residential Floor along with all other charges and dues in accordance with the Schedule of Payments given in Annexure- 1 or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.</i></p> <p>(Emphasis supplied)</p> <p>[Page 29 of complaint]</p>
10.	Due date of possession	<p>11.02.2021</p> <p>[Due date of possession calculated from the date of BBA i.e., 11.08.2016 and including 6 months grace period on account of Covid-19]</p>
11.	Total sale consideration	<p>Rs.1,0439097/-</p> <p>[As per builder buyer agreement at page 21 of complaint]</p>
12.	Amount paid by the complainants	<p>Rs.21,19,126/-</p> <p>[As per SOA dated 12.10.2021 on page 99 of reply]</p>
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered
15.	Legal notice by the complainants seeking refund of the entire amount paid along with	<p>13.04.2021</p> <p>[Page 65 of complaint]</p>

interest as per section 18(1) of the Act and in alternative Possession of the alternative unit along with interest	
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B. Facts of the complaint:

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

- a. That, in the year 2012, the complainants with the desire to own a house in Gurugram, learnt about the project of the Respondent titled "XPRESSIONS" which was situated at Dwarka Expressway, Sector 88B, Gurugram, Haryana-122018. After due inquiry and being impressed with the amenities and benefits attached to the project, complainants made an application for booking an apartment unit and entered into an allotment agreement with the respondent on 06.11.2015 upon receiving the booking confirmation. The total consideration amount for the unit was agreed upon to be Rs.1,04,39,097.50/- (Rupees one crore four lac thirty nine thousand ninety seven and fifty paise only) as per allotment agreement dated 06.11.2015, out of which an amount of Rs.21,19,126.00/- (twenty one lakh nineteen thousand one hundred and twenty six rupees only) was paid through Cheques/RTGS.
- b. That, complainants were allotted unit no. HSG-028, Plot No. 27, Level 2, measuring 1700 sq. ft. at the project of the respondent. Complainants made bonafide payments as requested by the respondent towards said unit in Xpressions by Vatika, Dwarka Expressway, Sector 88 B, Gurugram, Haryana-122018.
- c. That, at the time of the builder buyer agreement for the unit, the respondent assured the complainants about the completion of the

project within 4 years of the execution of the buyer's agreement along with all essential and ancillary amenities and the grant of possession by 11.08.2020 with an extension period of 60 days from such date.

- d. The complainants, even after making due payments, were shocked to learn that the construction on the project has not made any headway, which clearly reveals deceit and unprofessional behaviour on the part of the respondent. Respondent seemed to have no intention of handing over the possession on time. Due to such inordinate delay in the completion of the project, the respondent is in blatant violation of the agreement.
- e. After complainants made repeated requests and reminders, along with granting sufficient time to the respondent for the completion of the said project, he was then constrained to serve a legal notice through his counsel dated 13.04.2021 which was duly served on the address of the managing director. The respondent is in blatant violation of statutory compliances and other promises, and the inordinate delay in construction of the project has made it highly unlikely for the respondent to hand over possession to complainants in the near future. It is to be clarified that the complainants are not interested to seek delivery of any alternative unit. The complainants are seeking the possession of the allotted unit along with the delay penalty. However, in the alternative, the complainants are seeking refund of the complete amount paid along with interest at the statutory rate of possession of the allotted unit along with the delay penalty.

C. Relief sought by the complainants:

4. The pursuant to the oral request made by the counsel of complainants during proceedings on 23.04.2024 for amendment of relief followed by the written application of even date, the following relief were sought by the complainant:

- i. Direct the respondent to refund the entire amount paid by the complainants along with interest at the prescribed rate of interest in the Act calculated from the date of respective deposit till the date of actual realization.
- ii. Direct the respondent to pay compensation to the complainants for subjecting him to long period of mental harassment and agony and litigation charges.
- iii. Any other relief that the Hon'ble Authority deems fit in the facts and circumstances of the case.

D. Reply by respondent:

5. The respondent made the following submissions in its reply:
- a. That at the outset, the respondent humbly submits that each and every averment and contention, as made/raised in the complaints, unless specifically admitted, be taken to have been categorically denied by the Respondent and may be read as travesty of facts.
 - b. That the unit in question was booked by Mr. Pramod Kumar Mishra and Mrs. Saroj Singh. It is, however, submitted that the present complaint has been filed by the complainant only Mr. Pramod Kumar Mishra, thus on such ground alone the complaint is liable to be dismissed on account of non-joinder of the necessary party. Hence, the complainant is estopped from raising the plea, as raised

- in respect thereof, besides the said pleas are being illegal, misconceived and erroneous, and is untenable in the eyes of law.
- c. That apparently, the complaint filed by the complainant is abuse of process of law and the reliefs claimed as sought for, are liable to be dismissed and not maintainable. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.
- d. That the complainant has miserably and willfully failed to make payments in time or in accordance with the terms of the builder buyer's agreement. It is submitted that the complainant has frustrated the terms and conditions of the builder buyer's agreement, which were the essence of the arrangement between the parties and therefore, now the complainant cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. That the complainant has also misdirected in claiming refund on account of alleged delayed offer for possession.
- e. It has been categorically agreed between the parties that subject to the complainants having complied with all the terms and conditions of the builder buyer agreement and not being in default under any of the provisions of the said builder buyer agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete the construction of the said residential floor within a period of 48 months from the date of execution of the builder buyer agreement unless there shall be delay due to force majeure events and failure of allottee(s) to pay in time the price of the said residential floor.

Reference may be made to clause 13 of the builder buyer agreement.

*"13. Schedule for Possession of the said Residential Floor
That the Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Residential Floor within a period of 48 (Forty Eight) months from the date of execution of this Builder Buyer Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other clauses herein or due to failure of Allottee(s) to pay in time the price of the said Residential Floor along with all other charges and dues in accordance with the Schedule of payments given in Annexure-I or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this agreement."*

- f. That Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond the control of the Developer then the Developer shall be automatically entitled to the extension of time for delivery of possession. Further the Developer may also suspend the Project for such period as it may consider expedient.
- g. That, In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:-
- 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. Initially HUDA has to develop the major sector roads for the connectivity of the projects on the licensed land. But no development for the connectivity and movement across the sectors, for ingress or egress was done by HUDA for long time. Later on, due to the change in the master plan for the development of Gurugram, the Haryana Government has decided to make an alternate highway passing through between sector 87 and sector 88 and further Haryana government had transferred the land

falling in sector 87, 88 and others sectors to GMDA for constructing new highway 352 W. Thereafter in a process of developing the said highway 352 W, the land was uplifted by 4 to 5 mtrs. It is pertinent to note that the respondent has already laid down its facilities before such upliftment. As a result, the respondent is constrained to uplift the project land and re-align the facilities. Thereafter GMDA handed over the possession of the land properties/land falling in NH 352 W to NHAI for construction and development of NH 352 W. All this process has caused considerable amount of delay and thus hampered the project in question which are beyond the control and ambit of developer.

- ii. Further, initially, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 mtrs was changed from its approved dimension. Before start of the acquisition and construction process, the respondent 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 the respondent.
- iii. Re-routing of high-tension lines passing through the lands resulting in inevitable change in the lay out plans and cause unnecessary delay in development.
- iv. The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in air quality in the Delhi-NCR region, especially during winter months. Among these measures were bans

imposed on construction activities for a total period of 70 days between November, 2016 to December, 2019.

- v. Due to the implementation of MNREGA Schemes by the Central Government, the construction industry as a whole has been facing shortage of labour supply, due to labourers regularly travelling away from Delhi-NCR to avail benefits of the scheme. This has directly caused a detrimental impact to the respondent, as it has been difficult to retain labourers for longer and stable periods of time and complete construction in a smooth flow.
- vi. Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana, disruptions caused by unusually heavy rains in Gurgaon every year and disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana and various other restrictions imposed from time to time causing delay in construction.
- The imposition of several total and partial restrictions on construction activities and suppliers as well as manufacturers of necessary material required, has rendered the respondent with no option but to incur delay in completing construction of its projects. This has furthermore led to significant loss of productivity and continuity in construction as the respondent was continuously stopped from dedicatedly completing the project. The several restrictions have also resulted in regular demobilization of labour, as the respondent would have to disband the groups of workers from time to time, which created

difficulty in being able to resume construction activities with required momentum and added many additional weeks to the stipulated time of construction.

- The Government of India imposed lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic. This severely impacted the respondent as the respondent was constrained to shut down all construction activities for the sake of workers' safety.
 - Further, it had been also agreed and accepted that in case the delay is due to force majeure then the developer shall not be held responsible for delay in delivery of possession. Reference may be made to Clause 37 of the builder buyer's agreement.
- h. That the unit of the complainants is situated in the project Vatika Xpressions which is a part of the "Vatika Express City" Phase-1 and has been registered with the Ld. HARERA vide registration no 271 of 2017 on 09/10/2017. That due to the various reasons and not limited to delay on the part of the allottees, NGT notifications, Covid-19 pandemic, etc. the project has been majorly impacted.
- i. That the complainants has failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the builder buyer's agreement and as such the complaint is liable to be rejected. It is submitted that out of the total sale consideration of Rs.1,12,96,253.50/-, the amount actually paid by the complainants is Rs.21,19,126/- i.e. around 19% of the total sale consideration of the unit. The complainants after defaulting in complying with the terms and conditions of the

builder buyer agreement now wants to shift the burden on the part of the respondent whereas the respondent has suffered a lot financially due to such defaulters like the present complainants.

- j. That the contents of brief facts of the complaint are wrong and denied except which are matter of record. It is denied that the complainant desired to own a house in Gurugram. It is submitted that the complainant is a real estate investor who has made the booking with the respondent only with an intention to make speculative gains and huge profit in a short span of time. However, it appears that his calculations and planning have gone wrong on account of severe slump in the real estate market and the complainant is now raising several untenable pleas on highly flimsy and baseless grounds. It is denied that the sale consideration amount for the Unit was Rs.1,04,39,097.50/-. It is submitted that the total sale consideration amount was Rs.1,12,96,253.50/-. It is further submitted that the total sale consideration amount is exclusive of the registration charges, stamp duty charges, service tax and other charges which were to be paid by the complainants at the applicable stage.
- k. It is further submitted that the timeline to complete the project was only tentative and not final. It is further submitted that the covenants incorporated in the Builder Buyer Agreement are to be cumulatively considered in their entirety and selected clauses of the same cannot be considered and read in isolation. The complainants have completely misinterpreted and misconstrued the covenants incorporated in the agreement. The period specified in the buyer's agreement was proposed and the same

was subject to occurrence of various eventualities and also to other circumstances mentioned therein which have not been reproduced for the sake of brevity.

- l. It is denied that the complainants made repeated request and reminders to the respondent as alleged. The complainants are trying to mislead this Id. authority by concocting baseless and false pleas in order to unnecessarily harass and pressurize the respondent to submit to his unreasonable demands.
 - m. All the reliefs as claimed by the complainants are baseless, false so hence denied, as the complainants are not entitled for any of such reliefs.
 - n. It is, therefore, prayed that the complaint may kindly be dismissed with exemplary costs.
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:

7. 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

8. 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

9. 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) 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.

10. 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.
11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants:

- F.I. Refund of the entire amount paid by the complainants along with interest from the date of respective deposit till the date of actual realisation.**

12. The complainants are seeking refund of entire amount deposited against the allotment of the subject unit for an area of 1700 sq. ft. with respect to which agreement dated 11.08.2016 was executed between the parties for total sale consideration of Rs. Rs.1,12,96,253.50/-. The complainants states that even after making due payments, the construction on the project has not made any headway, which clearly reveals deceit and unprofessional behaviour on the part of the respondent. Respondent seemed to have no intention of handing over the possession.
13. The counsel for the respondent submitted that the present complaint has been filed by only one allottee i.e., Mr. Pramod Kumar Mishra, thus on such ground alone the complaint is liable to be dismissed on account of non-joinder of the necessary party. However, on 13.02.2024 complainant moved an application for impleading the co-allottee as complainant no.2 in array of parties which was allowed by the authority vide order dated 05.03.2024.
14. The complainants booked a unit bearing no. HSG-028, plot no. 27, level 2, measuring 1700 sq. ft. in Xpressions by Vatika, Dwarka expressway, sector 88 B, Gurgaon vide allotment agreement dated 06.11.2015 for a total consideration of Rs.1,04,39,097/- out of which an amount of Rs.21,19.126/- has been paid by the complainants to respondent. The counsel for the complainants clarifies that after payment of initial booking amount, the next payment was made on 21.12.2015 as per the payment plan annexed with the BBA which was executed on 11.08.2016. However, there is no physical progress at site as even the construction of the unit has not commenced and barren land photographs are being placed on record. One opportunity to offer alternate unit was afforded

to the respondent but no specific offer of any unit has been made by the respondent till date and the counsel for the respondent clarifies that the unit allotted to the complainants allottee is not available due to revision in the plan. The due as per agreement was 11.08.2020 and 6 months additional Covid period may be allowed.

15. The counsel for the complainants has orally made a request followed by an application for amendment of prayer, seeking refund of the deposited amount alongwith interest alongwith compensation and litigation charges and the counsel for the respondent has no objection to the request of the refund.
16. The complainants through the present complaint is seeking refund of the paid-up amount besides 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)

17. Clause 13 of the builder buyer’s agreement dated 11.08.2016 provides for schedule for possession of unit in question and is reproduced below for the reference:

13. SCHEDULE FOR POSSESSION OF THE SAID RESIDENTIAL FLOOR

*The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to **complete construction of the said Residential Floor within a period of 48 (Forty Eight) months from the date of execution of this Agreement** unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein or due to failure of Allottee(s) to pay in time the price of the said Residential Floor along with all other charges and dues in accordance with the Schedule of Payments given in Annexure- I or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement.*

(Emphasis supplied)

18. **Entitlement of the complainants for refund:** The respondent has proposed to hand over the possession of the subject unit within a period of 48 months from date of execution of builder buyer's agreement. The builder buyer's agreement was executed *inter se* parties on 11.08.2016 therefore, the due date of possession comes out to be 11.02.2021 including six months of grace period on account of Covid-19.
19. It is observed that the respondent promoter has failed to handover the subject unit to the complainants as per the committed date in terms of the builder buyer agreement executed *inter se* parties. Also, the occupation certificate in respect of the project where the subject unit is situated has not obtained by the respondent till date. 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 occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

20. Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)* reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*, it was observed as under:

"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."

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or 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.
22. **Admissibility of refund along with prescribed rate of interest:** Section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit

with interest at prescribed rate as provided under rule 15 of the rules.

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]

(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.”

23. 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., **29.03.2024** is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
24. The authority hereby directs the promoter to return the amount received by him i.e., Rs.21,19,126/- 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*.

F.II Litigation expenses & compensation

25. The complainants are also seeking relief w.r.t. litigation expenses & compensation. Hon’ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & 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 adjudicating officer as per

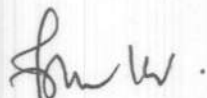
section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

G. Directions of the Authority:

26. 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:
- The respondent/promoter is directed to refund the entire amount of Rs.21,19,126/- 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.
 - 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.
27. Complaint stands disposed of.
28. File be consigned to the registry.

(Ashok Sangwan)
Member

V.I - 3
(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.04.2024