



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3229 of 2022
Date of filing:	23.12.2022
Date of first hearing:	28.02.2023
Date of decision:	22.02.2024

Sunita Rana, W/o Tejveer Singh Rana
R/o AG-03, Parsvnath Prestige, Sector-93A,
Noida-201304.

....COMPLAINANT(S)

VERSUS

1. Vatika Limited.

Unit no. A-002, INXT City Centre,
Ground floor, Block-A, Sector-83,
Vatika India, Gurugram-122012

2. Ruchi Munjal

Director of M/s Vatika Limited
Vatika Triangle, 4th floor, Sushant Lok Phase-I
Block-A, MG Road, Gurugram-122002

3. Vijender Kumar

Director of M/s Vatika Limited
Vatika Triangle, 4th floor, Sushant Lok Phase-I
Block-A, MG Road, Gurugram-122002

....RESPONDENT(S)

CORAM:

Parneet Singh Sachdev
Nadim Akhtar
Dr. Geeta Rathee Singh
Chander Shekhar

Chairman
Member
Member
Member

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Present: - Mr. Sagar Chauhan, Counsel for the complainant through VC
Ms. Vertika H.Singh, Counsel for the respondent

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint was filed on 23.12.2022 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	Commercial Building Vatika Mindscapes, Sector-27-B, Faridabad
2.	RERA registered/not registered	Registered (196 of 2017 dated 15.09.2017)
3.	DTCP License no.	1133 of 2006.

	Licensed Area	8.79 acres
4.	Unit no.	C-507
5	Unit area	500 sq. ft.
6.	Date of allotment	26.05.2017
7.	Date of builder buyer agreement	Not executed
8.	Due date of offer of possession	Not available.
9.	Possession clause	Not available.
10.	Total sale consideration	₹ 43,56,000/-
11.	Amount paid by complainant	₹ 45,75,620/- Complainant in pleadings and relief sought claims to have paid an amount of Rs 45,78,320/-. However, details of paid amount mentioned in Appendix-DD at page no. 24 of complaint shows amount of Rs 45,52,020/- and Rs 23,600/- has been paid by complainant. On addition of these two amounts, total paid amount comes to Rs 45,75,620/-. There is some clerical error in totalling the paid amount. For passing of this order, correct paid amount of Rs 45,75,620/- is taken into consideration as proof of only said amount is available on file.
12.	Offer of possession	Not given.
13.	Occupation certificate	Not obtained.

B. FACTS OF THE COMPLAINT

3. Complainant booked a commercial unit bearing no. 507, measuring 500 sq. ft. on 5th floor, Tower C of the project namely, 'Vatika Mindscapes'

located at Sector-27-B, Faridabad being promoted by respondent at agreed sale consideration price of ₹ 43,56,000/- on 04.05.2017 by paying Rs 3,00,000/-. Allotment of the unit was made on 26.05.2017, copy of allotment letter is annexed as Annexure C-5 to the complaint. By way of said allotment, respondents agreed to pay monthly assured return to the complainant at the rate of Rs 77 per sq. ft. per month on super area of 500 sq. ft. of the unit , i.e. Rs 38,500/- per month till the completion of construction of concerned building in which allotted unit is located. Additionally, respondent also agreed that upon completion of construction of the building where the complainant's unit is located the respondent would pay committed return of Rs 66 per sq. ft. per month on super area for upto three years from the date of completion of construction of the building or till the time the allotted unit is put on lease. Respondents acting contrary to the agreed terms stopped paying monthly assured return from Septemeber,2018 to the complainant.

4. That at the time of issuance of allotment letter, respondent promised that possession of the unit would be handed over to the complainant in mid-half of the year 2021. Complainant has paid an amount of ₹45,52,020/- + ₹23,600/- towards the sale consideration of the unit. But respondents even after receipt of said amount have not offered possession of booked unit till date. As of today, project is far from completion and in reality, the project

has been abandoned by the respondents. Complainant cannot be expected to wait endlessly for receiving promised monthly assured returns and lawful possession of their unit/shop.

5. That in month of October,2018, officials of the respondent no. 1 contacted the complainant and informed that due to recent amendments in SEBI/RERA Act, the respondent company has decided to suspend all return based sales and would not be selling any products in this format anymore. This act of respondents is completely against the agreed terms and conditions of the allotment letter dated 26.05.2017 executed between the parties. As such, the respondent no. 1 arbitrarily and illegally suspended the payment of assured return to the complainant.

6. That the complainant has abided by are the terms and conditions of the booking as well as the executed allotment letter dated 26.05.2017. Complainant is even ready to execute the Builder Buyer Agreement (BBA) with respondents but prior to it respondent should pay to the complainant the amount of assured return which is due and payable till date. Moreover, complainant never defaulted in making the payment to the respondents, whereas the respondents have failed to complete the construction and development of the project within the promised time frame. There is no sign of completion of the project in the near future. Due to inability of the respondents promoter to complete the project in time and deliver actual



physical possession of the unit to the complainant, present complaint has been filed before this Authority for seeking refund of the entire paid amount along with interest and assured return @₹77/- per sq. ft. on super area of 500 sq. ft alongwith 12% interest.

C. RELIEFS SOUGHT

7. Complainants in his complaint has sought following relief:
 - a. Direct the respondents to refund the amount paid by the complainant i.e. ₹ 45,75,620/- along with interest @12% per annum to be calculated from the date of payment until realization.
 - b. Direct the respondents to pay assured return to the complainant @₹77/- on super area of 500 sq. ft. for the period from 07.10.2018 to 07.11.2022, i.e., Rs 19,41,500/- alongwith interest 12% interest p.a. from the date of payment until realization.
 - c. May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned counsel for the respondents filed detailed reply on 26.05.2023 pleading therein:

8. That the present complaint deserves to be dismissed qua the respondent no. 2 and 3 for the reason that the complainant has never dealt with these respondents in their personal capacities. Complainant has only



dealt with the company-Vatika Ltd which is a legal entity in itself. All communications in respect of booking of unit and allotment letter dated 26.05.2017 had been issued by respondent no. 1 only. Payments made by complainant has been duly deposited in account of company and monthly assured return has also been paid by Vatika Ltd to the complainant. Hence, no case is made out against respondent no. 2 and 3.

9. That in so far the project 'Vatika Mindscape' is concerned, it is apposite to state here that it consists of total 4 towers, i.e., Tower-A, B , C and D. The construction of tower-C is already complete and had already been intimated to the complainant.

10. That respondent has paid each and every penny of assured returns amounting to Rs 6,14,403.23/- till September, 2018. However, assured returns cannot be further paid to complainant for the reason that on 21.02.2019, Central Government issued an ordinance "Banning of Unregulated Deposit 2019" ordinance, by virtue of which payment of assured returns became wholly illegal. Said ordinance was converted into an Act named "Banning of Unregulated Deposit Scheme Act, 2019" (BUDS Act in brief) on 31.07.2019. Respondent argued that on account of enactment of BUDS Act,2019 they are prohibited from granting assured returns to complainant.



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

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

13. 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.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

14. Learned counsel for complainant has submitted that possession of the booked unit was to be handed over by 26.05.2020, however, till date project is not complete. Occupation certificate has not been issued by competent authority with respect to tower in question, i.e., tower C. Since project-Vatika Mindscape has been mortgaged time and again with banks and financial institutions by the respondent, conveyance deed cannot be executed. Without prejudice to interest of the complainant, it is averred that complainant is not desirous of waiting endlessly for a valid possession of unit and is therefore, praying for relief of refund of paid amount along with interest and payment of remaining assured returns which respondent was bound to make it to the complainant.

15. At the outset, learned counsel for complainant stated that complainant does not want to continue with the project and as such he is pressing for reliefs as prayed in the complaint.

16. Learned counsel for respondent argued that as the complainant is an investor in the project of respondent, relation of complainants and respondent

is based on a commercial transaction between the parties in the form of leasing arrangement. The agreement/allotment is in the form of investment/lease agreement wherein the complainant was to receive monthly assured returns till offer of possession of unit and after offer of possession, respondent was obligated to lease out said unit for rental income to complainant. As a matter of fact, the complainant was paid assured returns till September,2018. It is only after the enactment of BUDS Act,2019 the scheme of assured returns became infructuous. Further, she stated that builder buyer agreement has not been executed between the parties. However, the clause 3 of allotment letter deals with the leasing arrangement with the complainant. In the present case, no date for handing over of possession has been defined in the said allotment letter and it is because of the fact that the complainant has invested for monetary gains- assured returns so there is no loss being caused to complainant even if possession is not handed over within reasonable time as respondent has duly paid assured return to complainant since September,2018. Therefore, complainant is not aggrieved of any default on part of respondent. She further stated that the conditions precedent for exercising jurisdiction of this Authority of this subject are not fulfilled, therefore, Authority is precluded from proceedings ahead with the matter. The question of assured returns is squarely covered by the BUDS Act. On account of provisions of the said Act, the jurisdiction will be of any other appropriate forum but not of this Authority. Further, learned

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counsel for respondent verbally argued that question of assured return is already pending before Hon'ble Punjab & Haryana High Court in CWP no. 26740 of 2022 titled "Vatika Limited vs Union of India & Ors" which is listed for hearing on 17.07.2024. This complaint is also connected with the matter pending before Hon'ble High Court as issue of monthly assured returns is involved in it.

F. ISSUES FOR ADJUDICATION:

- i. Whether complainant is entitled to refund of the paid amount along with interest?
- ii. Whether complainant is entitled to claim pending assured returns for the period 07.10.2018 to 07.11.2022?

G. OBSERVATIONS OF THE AUTHORITY:

17. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that the respondent has taken objection w.r.t the maintainability of complaint. Therefore, the Authority deems to give its findings/observations w.r.t maintainability issue which is as follows:

- i. The respondent has taken a stand that the complainant is a speculative buyer who has invested in the project for monetary returns and taking undue advantage of RERA Act 2016 as a weapon

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during the present downside conditions of the real estate market and therefore not entitled to the protection of the Act of 2016. In this regard, Authority observes that “any aggrieved person” can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainant is an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

ii. In view of the above-mentioned definition of “allottee” as well as upon careful perusal of allotment letter dated 26.05.2017, it is clear that complainant is an “allottee” as unit bearing no. C-507 in the real estate project “Vatika Mindscape”, Faridabad was allotted to him by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016.

As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be any party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottee being investor is not entitled to protection of this Act also stands rejected.

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

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

Above referred clause was subject to condition when 'project is ready for possession' and that stage of possession has

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

iv. W.r.t mis-joinder of parties, it is observed that complainant has impleaded respondent no. 2 and 3 being Directors of respondent-company but no relief in particular has been sought against each of them. Moreover, all transactions including issuance of allotment letter dated 26.05.2017 and receipt of paid amount to the tune of Rs 45,75,620/- have been carried out between complainant and respondent no. 1, so no direction is being passed against respondent no. 2 and 3 in this order. Accordingly, the objections raised by the respondent on ground of maintainability stands dealt with and are declared devoid of any merit.

v. On merits, complainant in this case had purchased the booking rights qua the unit in question in the project of the



respondent in the year 2017 by making the payment of total sale consideration amounting to ₹ 45,52,020/- on 14.06.2017 and ₹ 23,600/- on 17.09.2018 . Thereafter, allotment letter for Unit no. C-507, 500 sq ft was issued to complainant on 26.05.2017. Further, complainant claim not to have signed the copy of builder buyer agreement sent to him by the respondent for signatures for the reason that respondent has stopped making payment of assured return w.e.f September,2018. Respondent in its written statement also denies the execution of builder buyer agreement. Therefore, it is concluded that builder buyer agreement has not been executed between the parties.

vi. Authority observes that the builder buyer agreement has not been executed between the parties. In absence of execution of builder buyer agreement and no specific clause of deemed date of possession in allotment letter, it cannot rightly be ascertained as to when the possession of said unit was due to be given to the complainant. In **Appeal no 273 of 2019** titled as "**TDI Infrastructure Ltd Vs Manju Arya**", Hon'ble Real Estate Appellate Tribunal has referred the observations of Hon'ble Apex Court in the case of **2018 STPL 4215 SC** titled as **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** in which it has been observed that period of 3 years is

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reasonable time of completion of construction work and delivery of possession. In the present complaint, unit was booked by the complainant on 04.05.2017 and allotment letter was issued on 26.05.2017 by the respondent. Accordingly, taking a period of 3 years from the date of allotment, i.e, 26.05.2017 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 26.05.2020. In present situation, respondent failed to honour its contractual obligations without any reasonable justification.

vii. Respondent in its reply has referred to Civil Writ Petition no. 26740 of 2022 titled as Vatika Ltd vs Union of India & Anr. which is pending for 17.07.2024 before Hon'ble High Court of Punjab and Haryana, Chandigarh. Vide order dated 22.11.2023 passed in aforesaid Writ Petition, Hon'ble High Court has observed that there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. Relevant part of the order is reproduced below for reference:-

"Main case(s) File of CWP-20667-2023 has not been received from the Registry.

Reply filed on behalf of respondent No.2 in CWP-26740-2022 is taken on record. A copy of which already stands supplied to counsel opposite.

Learned proxy counsel appearing on behalf of the petitioner(s) prays for some time as arguing counsel is in some personal difficulty. Learned counsel for the respondent(s) contend that even though the order passed by this court on 22.11.2022 was qualified, however, the courts i.e. the Real Estate Regulatory Authority and Real Estate Appellate Tribunal are not proceeding with the pending appeals/revisions that have been preferred. It is also pointed out that the investigating agency are also not conducting investigation under the garb of the aforesaid order. Learned counsel for the respondent(s) have been confronted with the abovesaid order and it is pointed out that there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification.

List on 20.03.2024.

Interim order to continue till the next date of hearing. A photocopy of this order be placed on the file of other connected matters”.

viii. Respondent in its reply has claimed that no loss of any kind has been caused to complainant due to non-handing over of possession of unit till date as no date was ever specified for

handing over possession of unit in allotment letter. Complainant has duly accepted such type of allotment letter for the reason that complainant has invested his money for monetary gains which in this case is assured returns. Said returns were duly paid to the complainants till September,2018 and were stopped thereafter due to enactment of BUDS Act,2019. So, plea of respondent is that the complainant is not aggrieved of any default of respondent pertaining to non-handing over of possession and non-payment of assured returns. In this regard, it is observed that the complainant has purchased a showroom space-commercial unit and definitely commercial spaces are never being purchased for residential purpose, it is always for purpose of monetary gains in future. For the purpose of monetary gains, equation exists between the parties in form of assured returns to be paid by respondent on the total sale consideration amount paid by complainant in one-go. Assured returns were paid till September,2018 but stopped thereafter due to enactment of BUDS Act,2019. Complainant has filed the complaint in year 2022 for seeking refund of paid amount and assured returns, i.e., after 4 years of non-payment of assured returns. Complainant herein is aggrieved of arbitrary acts of respondent in not executing the builder buyer agreement. Every allottee has presumption that a definite date for handing over of



possession will be specified in builder buyer agreement but in this case respondent has not bothered to execute the builder buyer agreement and rather accepted money only on the basis of allotment letter. Said allotment letter does not provide any date of handing over of possession. Complainant who has already paid about whole of total sale consideration got stuck with respondent without any proper documentation w.r.t. unit booked. If we look at the intent of allottee-complainant, he has chosen to invest in a tangible property-showroom space not any open share market where there is no definite/precise mode of transaction to be carried out. Buying of commercial property in a project having obtained license from DTCP is a real estate transaction and duly covered under ambit of RERA Act,2016. Investment in commercial property does not imply that complainant-allottee never ever wanted to own that property by perfecting the title in his name. Said transaction cannot be said to be an open-ended transaction for the mere reason that respondent in an arbitrary manner has not specified any clause for delivery of possession of unit. Furthermore, the complainant is now exiting out from the project for the reason that there is no scope of a valid offer of possession and execution of conveyance deed even in near future due to various mortgages created by respondent. Complainant rightly is



under apprehension that his title of property will never be perfected. Respondent's act of not paying assured returns is not the sole reason for withdrawing out of the project. Respondent even today in a manner has clearly highlighted that possession of unit cannot be given to complainant as there is no clause of possession, on the other hand, refund of paid amount with interest also cannot be awarded to complainant as unit was only meant for monetary gains-assured returns and there is no clause for withdrawing out of project. Further, any delay in delivery of possession is not a fault of respondent. Hence, the complainant is not allowed to be proceeded further in any direction, not even withdrawing out of project. In this scenario, RERA Act,2016 plays an effective role in safeguarding the interest of allottees. Respondent cannot take benefit of his wrong(by not delivering possession of unit till date). By virtue of Section 18 of RERA Act,2016, the respondent is obligated to refund the paid amount with interest to the allottee on its failure to complete or non-delivery of possession of unit in accordance with agreement or any other date specified therein. Further, it has been argued by respondent that complainant is seeking refund for the reason that real estate market has gone downwards. As a matter of fact, post



year 2022 the prices in real estate market is seeing a upward slide. So, this contention of respondent does not hold any merit.

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

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an



unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

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

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

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

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.



Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

xii. Complainant in his complaint has sought relief of refund @12% p.a. In this regard, it is observed that the legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

xiii. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 22.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.



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

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

xv. Thus, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of Rs 45,75,620/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.85% (8.85% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.85% till the date of this order and total



amount works out to Rs 33,50,755/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 22.02.2024
1.	45,52,020	24.05.2017	33,36,830/-
2.	23,600	17.09.2018	13,925/-
3.	Total=45,75,620/-		33,50,755/-
4.	Total Payable to complainant	4575620+3350755 =	79,26,375/-

xvi. Regarding relief of assured return, it is observed that complainant wants to withdraw from the project and wants paid money to be refunded back along with interest. As a matter of fact, assured return was payable by respondent by virtue of clause 2 of Allotment letter. Now, complainant is withdrawing out from the project meaning thereby that the complainant is acting against the terms of 'allotment letter' as said letter duly provides for allotment of specific unit for a sale consideration alongwith terms of assured returns. Complainant is no longer interested in having possession of said allotted unit so the terms of allotment at this stage have no meaning. By virtue of seeking refund, complainant is coming out of the relationship with respondent-promoter as an allottee of a booked unit. In the above referred circumstances, the allotment letter does not hold the sanctity of an agreement as complainant wishes to withdraw his allotment out of project in question. The

terms of allotment can be pressed upon only in cases where complainant is still interested in having possession of unit. Offer of paying assured returns was made by respondent only qua the possession of unit. Moreover, under Section 18 of RERA Act, 2016 where the complainant demands refund of amount, promoter is liable to refund the same alongwith interest. In cases of the withdrawal from the project, the complainant is not entitled to other benefits such as assured returns attached thereto, they can only be allowed refund along with interest. Therefore, relief of assured return is hereby vacated.

G. DIRECTIONS OF THE AUTHORITY

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

- (i) Respondent no. 1 is directed to refund the entire amount of ₹ 45,75,620/- alongwith interest of ₹ 33,50,755/- to the complainant after deducting paid amount of assured return of Rs 6,14,403.23/-. It is further clarified that respondent will remain liable to pay the interest to the complainant till the actual realization of the above said amounts.



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

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


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CHANDER SHEKHAR
[MEMBER]


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


.....
NADIM AKHTAR
[MEMBER]


.....
PARNEET SINGH SACHDEV
[CHAIRMAN]