

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

Complaint no. : 1967 of 2023
Date of filing complaint: 27.04.2023
Date of Decision : 19.03.2024

Ravinder Singh Bhamra

R/o: 135, Cherryhurst Road, Oakville, Ontario,
Canada L6M OWL.

Also at: D-27, Ground Floor, Greater Kailash Enclave
I, New Delhi-110048.

Complainant

Versus

1. M/s Vatika Sovereign Park Pvt. Ltd.

Office: Flat No. 621A, 6th floor, Devika Towers 6,
Nehru Place, New Delhi-110019

2. M/s Vatika Limited

Office: A-002, INXT City Centre, Ground Floor,
Block A, Sector 83, Vatika India Next Gurugram-
122012.

Respondents

CORAM:

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Shri Sanjeev Kumar Arora

Member

Member

Member

APPEARANCE:

Ms. Manisha Arora

Advocate for the complainant

Shri Anurag Mishra

Advocate for the respondents

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real



Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the rules and regulations made 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 complainant, 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 of the project	Sovereign Park, Sector 99, Gurgaon, Haryana.
2.	Nature of the project	Group housing colony
3.	DTCP license no.	<ul style="list-style-type: none">• 119 of 2012 dated 06.12.2012 Valid till 05.12.2016 Licensed area- 10.03 acres Licensee- Planet Earth Estates Pvt. Ltd.• 65 of 2013 dated 20.07.2013 Valid till 19.07.2017 Licensed area- 0.40 acres Licensee- Planet Earth Estates Pvt. Ltd
4.	HRERA registration or not	Registered vide no. 285 of 2017 Valid till 09.10.2022
5.	Date of allotment letter	Not placed on record



6.	Unit allotted (as per buyer's agreement dated 21.08.2014)	202, 2nd floor, building A measuring 2610 sq. ft. (Page 29 of complaint)
7.	Unit changed vide Addendum to the BBA	1402/Tower A/Sovereign Park/Sector 99 (Page 62 of complaint)
8.	Date of execution of buyer's agreement	21.08.2014 [Page 26 of complaint]
9.	Possession clause	13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT <i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Apartment 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 Clauses 14 to 17 & 37 or due to failure of Allottees(s) to pay in time the price of the said Apartment 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.</i> [Page 40 of complaint]
10.	Due date of possession	21.08.2018* [Note: [*] rectified vide present order]
11.	Total sale price as per SOA dated 13.01.2023	Rs. 2,19,58,600/- (Page 57 of complaint)



12.	Amount paid by the complainant as per SOA dated 13.01.2023	Rs. 2,30,16,405/- (Page 57 of complaint)
13.	Occupation certificate /Completion certificate	Not received
14.	Offer of possession	Not offered
15.	Legal notice by the complainant allottee seeking refund of the entire amount along with interest @ 18% p.a.	09.03.2023 [Page 65 of complaint]

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

- i. That the respondents approached the complainant and represent him that the respondents were in the process of constructing a residential group housing colony in the name of 'Sovereign Park', Sector 99, Gurugram, Haryana along with the help of the associate company namely 'Planet Earth Estates Pvt. Ltd.'. The respondents represented to the complainant that the respondents and Planet Earth Estates Pvt. Ltd. are co-owners of the land admeasuring 10.43125 acres had obtained license bearing nos. 119/2012 dated 06.12.2012 and 65/2013 dated 20.07.2013 for development of the said project. The respondent no.2 and Planet Earth Estates Pvt. Ltd. had entered into an agreement dated 02.11.2012 for development and construction of the residential group housing colony on the said land.
- ii. That acting upon the misrepresentations and false assurances given by the respondent no.2, the complainant and the

respondent no.2 entered into the builder buyer agreement dated 21.08.2014. As per the said agreement, the complainant agreed to buy apartment no. 202, 2nd floor, building A in the said project for total sale price of Rs.2,43,17,200/-. The possession of the said apartment was to be handed over by the respondent no.2 to the complainant within a period of 48 months from the date of execution of the said agreement. Subsequently, the complainant made the payment of Rs.2,30,16,405/- till 17.08.2020 to the respondent no.1.

- iii. That the complainant ordinarily resides in Canada, hence the complainant telephonically enquired about the status of completion of construction of said apartment from the respondents. Initially, the respondents delayed the enquiries put up by the complainant. The respondents told the complainant that the respondents were unable to complete the construction of the allotted unit by 21.08.2018. The respondent no.2 gave the offer to change the unit initially allotted to the complainant. Despite the complainant agreed to obtain the changed unit and the respondents requested for physical presence of the complainant to get the documentation work done. The complainant assured the respondent no.2 that as and when the complainant arrives in India, the complainant will be available for completion of said formalities.
- iv. That in the month of August 2019, the complainant arrived in India. As per the instructions of the respondent no.2, the complainant executed some documents including blank papers with respect to the change in the unit allotted in the said project.



Accordingly, the complainant and the respondent no.2 entered into addendum to builder buyer agreement dated 21.08.2014 and allotted a new apartment bearing no. 1402, tower A in Sovereign Park admeasuring 2780 sq. f. for total sale consideration of Rs.2,19,58,470/- in lieu of the old apartment. It was further agreed that all the payments made by the complainant shall be treated as payment for new apartment and all other terms and conditions of the said agreement shall remain valid and binding on the parties.

- v. That the complainant has paid Rs.2,30,16,405/- till 17.08.2020 against demand of Rs.2,10,78,470/- by the respondents. Therefore, the complainant has made payment of Rs.19,37,934/- in excess of total demand of the sale price for the second apartment. The respondents assured the complainant that the possession of the second apartment will be handed over to the complainant within 6 months.
- vi. That in the month of March 2020, due to outbreak of COVID 19 pandemic, the respondents requested for grant of more time to deliver possession of the second apartment, as the respondents were badly affected financially. The complainant objected to the same, but the respondents assured the complainant that they are searching possibilities for completion of construction of second apartment. Thereafter, the complainant on several occasions had approached the respondents for the execution of builder buyer agreement and enquiry about the date of actual delivery of physical possession of the second apartment. However, the same

was of no avail as no response was received by the complainant for the same.

- vii. That in the month of October 2021, the complainant after doing various efforts to reach the respondents, the respondents told the complainant that they shall only be able to deliver the possession of the said apartment in the year 2022. Subsequently, even after lapse of approximately 48 months, there is no communication by the respondents to the complainant with the respect to the second apartment, despite of the complainant reaching out to the respondents on several occasions for enquiry about the delivery of the possession of second apartment. The respondents have miserably failed to deliver timely possession of the said apartment.
- viii. That the complainant sent a legal notice dated 09.03.2023 to the respondent no.2 calling upon respondent no.2 to pay an amount of Rs.2,30,16,405/- along with interest @18% per annum from respective date of payment till its realisation. The said notice was successfully delivered to the respondent no.2 on 10.03.2023. However, respondent no.2 failed to pay the said amount. Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondents to refund the amount of Rs. 2,30,16,405/- along with the interest @ 18% p.a. from respective date of payment till its realisation.

- ii. Pass any other orders as this Hon'ble Authority may deem fit in the interest of justice.

D. Reply by respondents:

5. The respondents by way of written reply have made the following submissions:

- i. That the relief sought by the complainant for refund along with interest @18% per annum cannot be granted in the present legal proceeding as the complainant has not paid the amount as a loan or with a view to earn interest or profit nor the amount was received by the respondents with a promise to refund with interest. Moreover, the claim of the complainant for refund @ 18% per annum is illegal and not maintainable as the same is against the understanding contained in the apartment buyer agreement duly executed between the parties. It is submitted that the refund, if any, can only be made after forfeiture of earnest money and deduction of amount paid towards service tax/ GST (for which OP only works as intermediary of the Govt.), overdue interest and brokerage, if any.
- ii. That in the year 2012, the complainant, learned about the project launched by the respondents titled as "Sovereign Park" and approached the respondents repeatedly to know the details of the said project. The complainant further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project. After having keen interest in the project constructed by the respondent, the complainant booked a unit no. 202, tower A, second floor, admeasuring 2610 sq. ft. for total consideration of

Rs. 2,30,16,405/- upon his own judgement and investigation. It is pertinent to bring into the knowledge of this Hon'ble Authority that the said transfer was purely on the willingness and request of the complainant and the same has been agreed by the complainant under the request letter.

- iii. That as per clause 13 of the buyer agreement executed with the complainant, the construction of the project was contemplated to be completed in 48 months from the date of said BBA subject to force majeure circumstances mentioned in clauses 14 to 17 & 37 thereof which provided for extension of time. The slowdown in construction and delay, if any, is primarily because of default in making timely payment of instalments by the buyers including the complainant. The pace of construction and timely delivery of apartments in a project where the majority of buyers have opted for construction linked payment plan is solely dependent on timely payment of demand raised by the developer. If the buyers of apartments in such projects delay or ignore to make timely payments of demands raised, then the inevitable consequence is the case of construction getting affected and delayed. It is submitted that most of the flat buyers including the complainant, in the "Sovereign Park" have wilfully defaulted in the payment schedule which has also contributed to the delay in the construction activity and affecting the completion of the project.
- iv. That besides the above major default in non-payment of instalments by majority of buyers, the demonetization of currency notes of INR 500 and INR 1000 announced vide executive order dated 08.11.2016 has also affected the pace of



the development of the project. All the workers, labourers at the construction site are paid their wages in cash keeping in view their nature of employment as the daily wages labourers. The effect of such demonetization was that the labourers were not paid and consequently they had stopped working for the project and had left the project site/ NCR which led in huge labour crisis which was widely reported in various newspapers/ various media. Capping on withdrawal and non-availability of adequate funds with the banks had further escalated this problem many folds.

- v. That the delay, if any, is on account of reasons beyond the control of the respondents, therefore, there is no breach whatsoever on the part of respondents. In any event, it is stated that the time stipulated for completion under the allotment / agreement is not the essence and respondents are entitled to a reasonable extension of time in the event of existence of reasons causing delay which were indeed beyond its control and not attributable to respondents. On the perusal of below submissions, it would be clear that the complaint of the complainant with regard to delay in completion of construction of the possession is misconceived particularly for various reasons. 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 2016 to December 2019. These partial

and unplanned bans have also become a factor for delay in construction of the project. In addition to the same the Government has imposed various restrictions on the construction sites as follows:

- No construction activities between 6 pm till 6 am (174 days)
- Stop the usage of Diesel Generator Sets (128 days)
- Stop entry of Truck Traffic into Delhi
- Close brick kilns, Hot Mix plants and Stone Crushers
- Stringently enforced rules for dust control in construction activities and close non-compliant sites

The several stretches of total and partial construction restrictions have led to a significant loss of productivity in construction of our projects. The world at large has witnessed COVID-19 pandemic, and the Government of India imposed a lockdown on all commercial activities in the light of the ongoing pandemic situation from 22.03.2020. Due to uncertainty and fearing sickness and the epidemic, most of the construction workers left for their hometowns. Although our contractors received the permission to commence work on site during the Month of May, the non-availability of manpower impacted the productivity very severely.

- vi. The above has resulted in delays in construction of the project, for reasons that essentially lie beyond our control. The respondents are committed to make all efforts to reduce the impact of the construction ban. Further, to increase the misery of the respondents, the laborers started migration towards their hometown. Post lockdown, the laborers have not returned full fledged till date. Surge of Covid Second wave and apprehension

of Covid third wave is also affecting the return of laborers to work sites.

vii. Delay in the project is only due to above mentioned reasons which were beyond the control of the respondents and time spent in all the factors should be excluded in computation of the timeline of the project. For the reasons narrated above, it is most humbly stated that the present complaint may kindly be dismissed against respondents for want of any cause of action whatsoever against respondents.

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 those undisputed documents and oral as well as written submissions 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 allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

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 complainant at a later stage.
11. 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."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter noted above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee alongwith interest at the prescribed rate.

F. Findings on the objections raised by the respondents:

F.1 Objection regarding delay due to force majeure circumstances.

13. The respondents-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). Further, the authority has gone through the possession clause of the agreement and observed that the respondents-developer proposes to handover the possession of the allotted unit within a period of four years from the date of execution of the buyer's agreement. In the present case, the date of execution of the buyer's agreement is 21.08.2018. Thus, the due date of handing over possession comes out to be 21.08.2018. The events such as Hon'ble Supreme Court of India to curb pollution in NCR, various



orders passed by NGT, EPCA etc., were for a shorter duration of time and were not continuous being annual feature. Thus, the promoter-respondents cannot be given any leniency on based of aforesaid reasons and plea taken by respondents is devoid of merits.

14. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 has observed that:

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

15. The respondents were liable to handover the possession of the said unit by 21.08.2018 and is claiming benefit of lockdown which came into effect on 24.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.
16. Further in the judgement of the Hon'ble Supreme Court of India in the case of ***Newtech Promoters and Developers Private Limited Vs. State of U.P. and Ors.*** (Civil Appeal no. 6745-6749 of 2021), it was observed-



*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.***

17. In view of the above, the objection raised by the respondents to extend the due date of handing over possession due to force majeure circumstances due to various authorities/tribunals/courts orders and COVID-19 is declined.

G. Findings on the relief sought by the complainant

G.1 Direct the respondents to refund the paid amount along with interest.

18. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same 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)

19. Clause 13 of the builder buyer's agreement provides the time period of handing over possession and the same is reproduced below:

13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT

*The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Apartment **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 Clauses 14 to 17 & 37 or due to failure of Allottees(s) to pay in time the price of the said Apartment 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.*

20. The buyer's agreement was executed inter se parties on 21.08.2014. The complainant was allotted a unit bearing no. 202, 2nd floor, building A measuring 2610 sq. ft. as per the agreement dated 21.08.2014. Thereafter, the respondents changed the unit of the complainant vide addendum to the buyer's agreement (annexed as Annexure C/4 at page 62 of complaint) and new unit was allotted to the complainant bearing no. 1402/Tower A/Sovereign Park/Sector 99 in the project Sovereign Park. As per clause 13 of the said BBA, the possession of the unit was to be given within a period of 48 (forty-eight) months from date of execution of the agreement. In view of clause 13 of the BBA, the due date of possession comes out to be 21.08.2018.



21. During proceedings on 19.03.2024, the counsel for the respondent confirms that the unit is not yet completed and the OC is not yet obtained, although 90% work stands completed and will be ready for possession in 6 months. But the complainant does not wish to continue in the project as the due date has elapsed way back in the year 2018 and cannot be expected to wait endlessly for handing over of possession.
22. The authority observes that the occupation certificate/completion certificate of the project where the subject unit is situated has still not been obtained by the respondents-promoter and has failed to offer possession of the subject unit till date to the complainant. 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....."

23. 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. 2021-2022(1) RCR (c), 357** 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."*

24. 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 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 respondents promoters are liable to the complainant-allottee, as the complainant-allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the promoter in respect of the unit with interest at such rate as may be prescribed. This is without prejudice to any other remedy available to the complainant including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
25. **Admissibility of refund along with prescribed rate of interest:** The 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.”

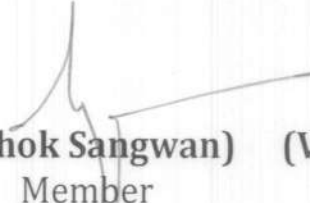
26. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
27. 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., 19.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
28. The authority hereby directs the respondents-promoters to return the amount received by them i.e., Rs. 2,30,16,405/- 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*.

H. Directions of the Authority



29. 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:
- The respondents/promoters are directed to refund the entire amount of Rs.2,30,16,405/- paid by the complainant 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 date of refund of the deposited amount.
 - A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
 - The respondents are further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
30. Complaint stands disposed of.
31. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.03.2024