

**BEFORE THE HARYANA REALESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. :	4097 of 2022
Date of filing complaint:	07.06.2022
Date of decision	26.07.2024

1. Lata Vashisht 2. Satish Vashisht through his legal heirs Lata Vashisht & Chirag Vashisht R/O: 4/23 W, 2nd Floor, Opposite Dav Public School, West Patel Nagar, New Delhi-110008	Complainants
Versus	
Vatika Ltd. Regd. Office At: Vatika Triangle, 4th Floor, Sushant Lok, Ph-1, Block-A, Mehrauli-Gurugram Road, Gurugram-122002	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Ms. Surbhi Garg Bhardwaj (Advocate)	Complainants
Sh. Rahul Singh (Advocate)	Respondent

ORDER

1. This 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 provision of the Act or the Rules and regulations

made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.No.	Particulars	Details
1.	Name of the project	Expressions by Vatika in the project Vatika Express City at Sector 88-B, Gurugram, Haryana
2.	Nature of the project	Residential plotted colony
3.	DTCP license no.	94 of 2013 dated 31.10.2013 11 of 2015 dated 01.10.2015
4.	RERA Registered/ not registered	271 of 2017 dated 09.10.2017 valid up to 08.10.2022
5.	Allotment letter	11.07.2016 [pg. 32 of complaint]
6.	Date of builder buyer agreement	07.11.2016 [pg. 36 of complaint]
7.	Unit no.	HSG-028-Pocket-H-2-Level-1, 1700 sq. ft. [page 39 of complaint]
8.	Possession clause	13 <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 on 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</i>

		<i>by any of the terms or conditions of this agreement.</i>
9.	Due date of possession	07.11.2020 + 6 months COVID = 07.05.2021
10.	Total sale consideration as per soa dated 09.09.2022	₹ 1,22,45,656/- [pg. 86 of reply]
11.	Paid up amount as per SOA dated 09.09.2022	₹ 22,00,000/- [pg. 86 of reply]
12.	Occupation certificate	Not received
13.	Offer of Possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That somewhere around 2015, the respondent advertised about its new residential group housing project namely "Xpressions by Vatika" located in Sector-88B, Gurugram. Believing the false assurances and misleading representations of the respondent in their advertisements and relying upon the goodwill of the respondent company, on 13.09.2015, the complainant, Smt. Lata Vashisht along with her husband, Sh. Satish Vashisht (*co-allottee, now deceased*) booked an apartment in the said project of the respondent company by paying an amount of Rs.2,00,000/- towards said booking by way of instrument bearing no. 626336.
- II. That thereafter, the complainant (along with her deceased husband) kept making payment in accordance with the demands raised by the respondent. Finally, after almost a year from date of booking, an allotment letter dated 11.07.2016 was issued thereby allotting the unit bearing no. 15 located in street no. h-30, on level 1, admeasuring super area of 1700 sq. ft. in the name of to the complainant and her deceased husband.

- III. That after almost 1 year 2 months from date of booking, a builder buyer agreement was executed on 07.11.2016 between the parties for the aforementioned unit. As per clause 13 of said agreement dated 07.11.2016, the respondent proposed to complete construction and handover possession of the unit in question within a period of 48 months from the date of execution of said agreement, i.e. by 07.11.2020. However, the respondent miserably failed in handing over possession in accordance with the said agreement.
- IV. That thereafter, the complainants kept making payment in accordance with the demands raised by the respondent company. Till 2016, the complainants paid a total sum of Rs. 22,00,000/- towards the aforesaid residential flat in the project as and when demanded by the respondent.
- V. That though the booking was made in 2016 and possession was supposed to be handed over by 2020, till the due date as per agreement, i.e. 07.11.2020, the project was nowhere nearing completion. Rather, the complainant and her deceased husband never heard from the respondent post 2016-17. Upon this, the complainants asked the respondent as to the date of handing over, but to no avail as no concrete reply was given by the said respondent. Thereafter, the complainants kept contacting the respondent on several occasions seeking an update on the construction status and if the requisite sanctions and approvals had been obtained, but all in vain.
- VI. That throughout this period, the complainants along with the other apartment owners regularly and repeatedly followed up with the representatives of the respondent and enquired about the status of the project. However, the representatives of the respondent on every occasion made false and vague assurances that the possession of the

flat would be delivered soon and kept on prolonging the matter unjustifiably without any convincing reason thereby inflicting great mental agony and hardship upon the complainants.

- VII. That the complainants had asked the respondent to clarify about the one-sided and unfair clauses in the agreement, namely stark contrast between the interest being charged by the respondent on the delayed payments and the delayed possession charges for which the complainants were entitled on account of delay in handing over possession in violation of the apartment buyer agreement, to which the latter verbally replied that the delayed payment interest, if any, will be charged on the basis of the agreement and the delay in handing over possession of the flat was beyond the control of respondent.
- VIII. That the complainants kept painstakingly pursuing the respondent to handover possession for the unit in question in their favour, but all in vain. To add to the misery of the complainant, her husband, Sh. Satish Vashisht(*co-allottee*) passed away in 2021 due to COVID-19 highlighted as 'Covid Pneumonia' by the Hospital. Thereafter, the complainant again approached the respondent in november'2021 to seek update upon the unit status. Upon no concrete response by the respondent, the complainant informed the respondent about the sudden demise of her husband and also pointed out the financial hardship through which she and her family was going through owing to the untimely demise of her husband and accordingly, sought refund of their hard earned money which had been kept by the respondent for so many years, but again in vain as the respondent bluntly refused to give back her money.
- IX. That the present complaint has been filed in order to seek refund of the principal amount paid by the complainant along with interest at the

prescribed rate in accordance with RERA, 2016 and HRERA, 2017 from the date of payments till the date of actual receipt of refund.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

i. Direct the respondent to refund the amount received by the promoter.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent contested the complaint on the following grounds:-

I. 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. 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, the complainant now 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.

II. That subject to the complainant having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the said residential floor within a period of 48 months from the date of execution of the agreement unless there shall be delay due to failure of allottee(s) to pay in time the price of the said residential floor.

III. That it had also been 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. 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:-

- a. 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 Respondent has already laid down its facilities

before such upliftment. As a result, 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.

- b. The GMDA vide its letter dated 08.09.2020 had handed over the possession of said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.
- c. Further, initially, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 mtrs was uplifted. 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.

- d. 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.
- e. 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.
- f. 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.

- g. 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.
- h. Disruptions caused by unusually heavy rains in Gurgaon every year.
- i. Due to the slump in real estate sector, major financial institutions are facing difficulty in providing funding to the developers. As a result, developers are facing financial crunch.
- j. Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.
- k. Declaration of Gurgaon as a Notified Area for the purpose of Groundwater and restrictions imposed by the state government on its extraction for construction purposes.
- l. Additionally, imposition of several partial restrictions from time to time prevented the respondent from continuing construction work and ensuring fast construction. Some of these partial restrictions are:

- Construction activities could not be carried out between 6 p.m. to 6 a.m. for 174 days.
- The usage of Diesel Generator Sets was prohibited for 128 days.
- The entries of truck traffic into Delhi were restricted.
- Manufacturers of construction material were prevented from making use of close brick kilns, Hot Mix plants, and stone crushers.
- Stringently enforced rules for dust control in construction activities and close non-compliant sites.

IV. That 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.

V. 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.

VI. 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, most of the labour workforce migrated back to their villages and home states, leaving the Respondent in a state where there is still a struggle to mobilize adequate number of workers to start and complete the construction of the Project due to lack of manpower. Furthermore, some suppliers of the Respondent, located in Maharashtra, are still unable to process orders which inadvertently have led to more delay.

- VII. That due to the outbreak of Covid 19, the entire world went into lockdown and all the construction activities were halted and no labourers were available. Infact all the developers are still facing hardship because of acute shortage of labourers and even the HRERA, Gurugram has vide order dated 26.05.2020 declared the Covid 19 as a calamity under the Force Majeure clause and therefore there cannot be said to be any delay in delivering the possession by the respondent.
- VIII. That the amount actually paid by the complainant is Rs. 22,00,000/- i.e. around 18% of the total consideration of the unit. It is further submitted that there is an outstanding amount of Rs. 4,20,717/- payable by the complainant as on 09.09.2022 as per the payment plan opted by the complainant. The complainant after defaulting in complying with the terms and conditions of the buyer's 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 complainant.
- IX. That it is to be appreciated that a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers are further invested towards the completion of the project. It is submitted that a builder is supposed to construct in time when the prospective buyers make

payments in terms of the Agreement. It is further submitted that one particular buyer who makes payment in time can also not be segregated, if the payment from other prospective buyer does not reach in time. It is relevant to note that the problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers. It is also relevant to note that the slow pace of work affects the interests of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. It is pertinent to mention here that the irregular and insufficient payment by the prospective buyers such as the complainant freezes the hands of developer / builder in proceeding towards timely completion of the project.

- X. That it is important to mention here that the said Unit of the complainant is under construction and can be delivered shortly.
 - XI. That the present complaint is liable to be dismissed for non-joinder of necessary parties. It is submitted that the present unit was booked by the complainant and her husband Sh. Satish Vashisht. It is submitted that Sh. Satish Vashisht has expired and the legal heirs of Sh. Satish Vashisht are necessary parties who are required to be impleaded as parties in the present complaint and in the absence of legal heirs of Sh. Satish Vashisht the present complaint cannot sustain.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

10. 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) The promoter shall-

(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.

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.
12. 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. 2021-2022 (1) RCR (Civil), 357 and 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, 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."

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

F. Findings on the objections raised by the respondent:

F.1 Objection regarding delay in completion of construction of project due to force majeure conditions.

14. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as prohibiting mining contractors and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 07.11.2016, and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 07.11.2020.
15. The respondent also took a plea that the construction at the project site was delayed due to Covid-19 outbreak. In the instant complaint, grace

period of 6 months on account of Covid-19 is allowed therefore, the due date of handing over of possession comes out to be 07.05.2021 thus, no period over and above grace period of 6 months can be given to the respondent-builder.

G. Findings on the relief sought by the complainants:

G.1 Direct the respondent to refund the amount received by the promoter.

16. In the present complaint, the complainants were allotted the unit vide allotment letter on 11.07.2016. A builder buyer agreement was executed between the complainant's i.e., Mrs. Lata Vashisht and Mr. Satish Vashisht and the respondent on 07.11.2016. The respondent vide proceedings dated 14.07.2023 raised an objection to implead the legal heirs of the allottee since there was a demise of one allottee i.e., Mr. Satish Vashisht. The complainant has filed an application for impleadment of necessary party along with the surviving member certificate as one of the co-allottee died due to Covid-19 and the complaint was filed by Lata Vashisht only. The said application was allowed vide proceedings dated 05.07.2024. The document is on record and perused further.

17. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference :

“Section 18: - Return of amount and compensation

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

- (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)

18. As per clause 13 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

*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 on 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.*

19. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 48 months from the date of execution of this agreement. The authority calculated due date of possession from the date of agreement i.e., 07.11.2016 and the same comes out to be 07.11.2020. An extension of 6 months is to be given in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid - 19 pandemic. The authority calculated 48 months from the date of agreement i.e., 07.11.2016 plus 6 months of Covid- 19, so the due date of the subject unit comes out to be 07.05.2021.

20. The due date of possession as per the possession clause of the flat buyer's agreement comes out to be 07.05.2021. The occupation certificate of the project where the unit is situated has still not been

obtained by the respondent-promoter and no possession is yet handed over to the complainants.

21. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him along with interest 18% rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them 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.

22. 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.

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., 26.07.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.

24. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 13 of the agreement executed between the parties on 07.11.2016, the due date of possession is calculated

from the date of execution of builder buyer's agreement i.e., 07.11.2016. The period of 48 months expired on 07.11.2020. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 07.05.2021. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid almost the total consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

25. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees 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....."

26. Further, 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.

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."

27. 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 allottees 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 he 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.
28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them along with the interest at prescribed rate i.e., @ 11% p.a. (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 Haryana Rules 2017 ibid.

H. Directions of the authority:


29. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount i.e., Rs.22,00,000/- received by it from the complainant along with interest at the rate of 11% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- ii. 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.

30. Complaint stands disposed of.

31. File be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.07.2024