

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

Date of decision: 16.08.2024

NAME OF THE BUILDER		M/s Vatika Limited.	
PROJECT NAME		"Vatika trade Center at Sector 83, Gurugram, Haryana"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4649/2023	Ashok Nagrath V/s Vatika Limited	Prashant Sheoran (Advocate) and Ankur Berry (Advocate)
2.	CR/4632/2023	Ashok Nagrath V/s Vatika Limited	Prashant Sheoran (Advocate) and Ankur Berry (Advocate)

CORAM:

Sanjeev Kumar Arora

Member**ORDER**

1. This order shall dispose of all the 2 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Vatika trade Center" at Sector 83, Gurugram, Haryana being developed by the same respondent/promoter i.e., M/s Vatika Limited.

The terms and conditions of the agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and fulcrum of the issues involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	" Vatika trade Center at Sector 83, Gurugram, Haryana .
Possession Clause: - 14. Schedule for Possession of the said space <i>The developer, based on its present plans and estimates, promises to complete construction of the said space on or before expiry of three years from the date of execution of the agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause 16,17,18 and 22 or due to failure of allottee to pay in time the price of the said space along with other charges....."</i>	

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of agreement to sell	Due date of possession	Total Consideration/Total Amount paid by the complainants in Rs.

1.	CR/4649/2023 Ashok Nagrath V/s Vatika Limited Date of Filing of complaint 18.10.2023	Reply received on 16.02.20 24	401 on 4th floor block a (page 26 of complaint)	23.02.2009 [pg. 12 of complaint]	23.02.2012 (three years from the date of agreement)	TSC: - 92,50,000/- as on pg. 19 of complaint AP: - 90,28,705/- (pg. 12 and 70 of complaint)
2.	CR/4632/2023 Ashok Nagrath V/s Vatika Limited Date of Filing of complaint 18.10.2023	Reply received on 16.02.20 24	402 on 4th floor block a (page 28 of complaint)	23.02.2009 [pg. 12 of complaint]	23.02.2012 (three years from the date of agreement)	TSC: - 92,50,000/- as on pg. 32 of complaint AP :- ₹ 90,14,224/- [pg. 13 and 72 of complaint]

The complainants in the above complaints have sought the following reliefs:

1. Direct the respondent to refund the entire paid-up amount along with interest at the prescribed rate.

Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of refund the entire paid-up amount along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/

respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4649/2023 case titled as Ashok Nagrath V/s Vatika Limited** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire paid-up amount along with interest and others.

A. Project and unit related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/4649/2023 case titled as Ashok Nagrath V/s Vatika Limited.

S.no.	Particulars	Details
1.	Name of the project	Vatika trade Center at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial colony
3.	DTCP license no.	258 of 2007 dated 19.11.2007 license migrated from commercial in residential zone to commercial plotted colony vide order dated 13.10.2022.
4.	Name of licensee	M/s Shivam Infratech Pvt. Ltd.

5.	RERA Registered/ not registered	Not Registered *Since the project is not registered the registration branch may take the necessary action under the provisions of the Act, 2016
6.	Date of allotment	24.07.2008 (Page 19 of complaint)
7.	Date of builder buyer agreement	23.02.2009 [pg. 12 of complaint]
8.	Unit no.	401 on 4 th floor block a (page 26 of complaint)
9.	Possession clause	<i>As per clause 14 of the agreement - within 3 years from the date of execution of agreement</i>
10.	Due date of possession	23.02.2012
11.	Sale Consideration	₹ 92,50,000/- [as on pg. 19 of complaint]
12.	Paid up amount	₹ 90,28,705/- [pg. 12 and 70 of complaint]
13.	Offer of possession	Not offered
14.	Occupation certificate	Not obtained
15.	Letter sent by complainant to respondent seeking refund	28.03.2023 (page 80 of complaint)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -

- I. The complainant, on being convinced with the representations made by the respondent, applied for allotment of a unit in said project on 07-07-2008 and paid an amount of Rs. 13,52,250 vide cheque no. 594424 dated 05-06-2008. That towards booking of the commercial space. That thereafter respondent on 24 July 2008 issued an allotment letter wherein a unit bearing no. 401 was allotted to the complainant.
- II. That the respondent pursuant to the allotment letter dated 24-07-2008 executed a builder buyer agreement with the complainant. It is pertinent to mention here that initially at the time of execution of builder buyer agreement unit bearing number A-401 was allotted to the complainant, however same was later changed to E-401 and respondent issued a letter dated 17-09-2013 in this regard. As on today complainant has already paid amount of Rs. 90,28,705 out of total sale consideration of Rs. 92,50,000 as per builder buyer agreement. That account statement qua unit in question i.e E-401 issued by respondent wherein all the above stated payments are duly acknowledged.
- III. That the clause 14 of the agreement clearly states that the possession shall be handed over to the complainant within three years from the date of execution of this agreement. That in view of the same the possession of the said unit should have been handed over to the complaint in the year 2012.
- IV. That the complainant has adhered to the payment schedule and as already stated above paid more than 99% of the total sale consideration by 2017 as and when demanded as per the terms of the agreement but unfortunately the respondent has miserably failed in its obligation to

handover possession within the time limit as mentioned in the builder buyer agreement.

- V. That the complainant has already made payment of Rs. 90,28,705/- till date and the last payment was made in 27-06-2017 vide cheque bearing number 685305 for an amount of Rs. 896402. That since 27-06-2017 till today complainant has not received any other demand letter or offer of possession qua unit in question i.e E-401 floor 4th.
- VI. That the complainant even after several inquiries through various modes has not received a single valid reason for the delay in giving possession. However, till date no response has been given by respondent nor refund the amount paid by complainant.
- VII. That even on 29-03-2023 complainant sent a letter to respondent demanding complete refund but even after receiving of said letter not refund was made by respondent, thus the complainant left with no other option to approach authority for seeking relief of refund.
- VIII. That complainant reserves its right to file another complaint seeking compensation against the respondent before the appropriate forum.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)
- Direct the respondent to refund the entire paid-up amount along with interest at the prescribed rate.
10. On the date of hearing, the authority explained to the respondent /promoter on the contravention 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

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

- i. That the complainant has filed the present complaint after a delay of the alleged due date of possession. It is to be noted that the complainant has filed the present frivolous complaint in 2023 even though the complainant claims that the possession was due in 2012. That the present complaint being filed in 2023 after a gap of 10 years since the alleged due date of possession in 2012 is thus barred by limitation. The complainant who was aware of his own delay in payments and non-execution of agreement cannot be allowed to agitate its claim on a complaint that is filed after more than 5 years as being well beyond the limitation period.
- ii. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the allotment letter 17.09.2013., as shall be evident from the submissions made in the following paras of the present reply.
- iii. That the present complaint does not come within the ambit of RERA Act, 2016 since the alleged due date of possession as claimed by the Complainant was in 2012. That this Hon'ble Authority was established after enacted of the RERA Act, 2016 and if there were any valid claims, the Complainant could have approached, but the complainant chose to sit till 2023 to filed a frivolous, fictitious and delayed claim. That the Complainant has hidden the fact that the Respondent paid to the Real Estate agent namely M/s Locations an amount of Rs. 1,26,405/- as

brokerage for the commercial unit booked by the complainant. That vide cheque No. 377743 dated 20.10.2008 the Respondent paid the brokerage amount for the Unit No. 402 to the Real Estate Agent. That further on 09.10.2015 the Respondent also refunded an amount of Rs.46,397.15/-. That the copy of the Cheque no. 339854 dated 09.10.2015 for an amount of Rs. 46,397.15/- in favour of the Complainant. That further including the failure to make timely payments, the Complainant also failed to execute the Builder Buyer Agreement for the unit.

- iv. The said letter also contained the details of the schedule of payment, which the complainant failed to abide by. That even the account statement annexed with delayed payments that were due in terms of the payment plan opted by the Complainant. That over the years the delay in payment resulted in imposition of delayed payment interest. That it is pertinent to note that the BBA annexed with the complaint is unexecuted. The respondent sent the BBA to the Complainant timely however the Complainant who was to send the signed copy of the BBA to the Respondent for execution of the BBA failed to provide the signed copy to the Respondent resulting in non-execution of the BBA till date. That failure to execute the BBA resulted in breach of Clause of 14 of the BBA which guided the timelines of possession. That since the Clause 14 of the BBA dictated that the handover of possession was to be within 3 years from date of execution of the BBA, the Respondent cannot be directed to adhere to the timeline of an unexecuted BBA.
- v. The Covid pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. The complainant

booked the commercial unit with respondent owing to the name, good will and reputation of the respondent.

- vi. Thus, while Section 11 to Section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/Developer, Section 19 provides the rights and duties of Allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the Allottees, rather the intent was to ensure that both the Allottee and the Developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other. That without prejudice to the other rights of the Respondent, it is submitted that the Hon'ble Authority may also consider the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations,
- vii. Thus, in this regard it is pertinent to mention that the respondent was facing umpteen roadblocks in construction and development work in projects comprised in township 'Vatika India Next' beyond the control of the Respondent such as the follows:
1. Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of Sector roads 75 mtr and 60 mtr wide and the consequent litigation for the same, the issue is even yet not settled completely;
 2. Labour issue, disruptions/delays in supply of stone aggregate and sand due to court orders of the Courts, unusually heavy rains, delay in supply of cement and steel, declaration of Gurgaon as 'Notified Area' for the purpose of Ground Water,
 3. Total and Partial Ban on Construction due to the directives issued by the National Green Tribunal during various times since 2015.
 4. The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in Air quality in Delhi-CR region

especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2015 to December 2019.

5. Additionally, it imposed a set of partial restrictions, some of which are

- i. No construction activities between 6 pm till 6 am (174 days)
- ii. Stop the usage of Diesel Generator Sets (128 days).
- iii. Stop entry of Truck Traffic into Delhi.
- iv. Close brick kilns, Hot Mix plants and Stone Crushers.
- v. This year, partial restrictions continued to be in place in NCR region.

6. The several stretches of total and partial construction restrictions have led to significant loss of productivity in construction of our projects. We have also suffered from demobilization of the labor working on the projects, and it took several additional weeks to resume the construction activities with the required momentum.

7. That the respondent had been issued the license, by the Director Town & Country Planning, Haryana, for the development and completion of an integrated township, in terms with the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter HUDA Rules, 1976) terms of form LC-IV-A, which were timely renewed as per the HUDA Rules, 1976. The said HUDA Act, 1975 and the Rules of 1976 prescribe a duty upon the HUDA and the Director Town and Country Planning to provide External Development Works & Infrastructure Development Works.

viii. It is submitted that upon the issuance of the DTCP License, the concerned government department levied a certain fee in order to fulfil the EDC and IDC development work, which has been delayed and not completed by the Government authorities. The incompleteness of such Development Works resulted in minor alterations in timelines of the project, however the respondent yet managed to complete the project. It is pertinent to mention that in the matter titled, Credai-NCR vs. Department of Town

and Country Planning, Government of Haryana & Anr. before the Competition Commission of India - Case No. 40 of 2017 it has been opined and well conveyed by the Hon'ble Commission that there is a dependency of a project vis-à-vis the concerned department's responsibilities and failure of government departments in providing the necessary development work subsequently, impact the project timelines. Thus, the altered timelines were never intended and the Respondent lacked any control in the subsequent deference of the project. That since the hurdles faced by the Respondent Company were beyond the control of the Respondent, there was unintentional delay in completion of the project. It is further submitted that, it was never the intention of the Respondent Company to not complete the project, and the only effect of all the obstructions was that the timelines as proposed initially could not be fulfilled.

- ix. That the Complainant is attempting to seek an advantage of the slowdown in the real estate sector and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the Respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the Respondent Company. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the Complainant and against the Respondent and hence, the complaint deserves to be dismissed. That, it is evident that the entire case of the Complainant is nothing but a web of lies and the false and frivolous allegations made against the Respondent are nothing but an afterthought,

hence the present complaint filed by the Complainant deserves to be dismissed with heavy costs.

12. 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

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

15. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the 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.

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

F. Findings on the objections raised by the respondent

F.I. Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

17. The respondent has contended that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements

made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....."

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

18. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

19. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

F.II Objections regarding the circumstances being 'force majeure'.

20. The respondent has contended that the project was delayed because of the 'force majeure' situations like delay on part of government authorities in granting approvals, etc. which were beyond the control of respondent. However, all the pleas advanced in this regard are devoid of merits. First of all, the possession of the unit in question was to be offered by 23.02.2012. Further, the time taken in getting governmental approvals/clearances cannot be attributed as reason for delay in project. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his

own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

G. Findings on the relief sought by the complainant.

G.I. Direct the respondent to refund the entire paid-up amount along with interest at the prescribed rate.

21. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by it 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)

22. Clause 14 of the agreement dated 23.02.2009 provides for completion of construction and is reproduced below:

14. Schedule for Possession of the said space

The developer, based on its present plans and estimates, promises to complete construction of the said space on or before expiry of three years from the date of execution of the agreement unless there shall be delay or

there shall be failure due to reasons mentioned in clause 16,17,18 and 22 or due to failure of allottee to pay in time the price of the said space along with other charges....."

23. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such a clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
24. **Due date of handing over possession and admissibility of grace period:** As per clause 14 of the agreement, the possession of the allotted unit was supposed to be completed within a stipulated timeframe of 36 months. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by February 2012.

25. **Admissibility of refund along with prescribed rate of interest:** The complainant intends to withdraw from the project and is seeking refund of the amount paid by it 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., 16.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
28. On consideration of the documents available on record as well as submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14 of the agreement executed between the parties on 23.02.2009, the possession of the subject unit was to be completed within a period of

36 months from the date of execution of buyer's agreement which comes out to be 23.02.2012.

29. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
30. The due date of possession as per agreement as mentioned in the table above is 23.02.2012. The authority has further, observes that even after a passage of 10 years till date neither the construction is complete nor the occupation certificate has been obtained of the allotted unit by the respondent/promoter. 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 it and for which it has paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document place 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 fact, the allottee intend to withdraw from the project and is well within the right to do the same in view of section 18(1) of the Act, 2016.
31. 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 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....."

32. 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:

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."*

33. 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). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

34. 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 complainant is entitled to refund of the entire amount paid by it at the prescribed rate of interest 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

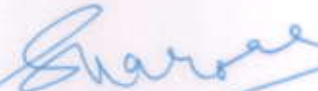
35. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount received by it from each of the complainant(s) 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.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant(s), and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainant(s).
36. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
37. Complaint stands disposed off.
38. File be consigned to registry.

Dated: 16.08.2024



(Sanjeev Kumar Arora)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram