



HARERA
GURUGRAM

सत्यमेव जयते

Complaint No. 2225 of
2023 and 2370 of 2023

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

Date of filing of complaints : 08.06.2023
Date of first hearing : 08.11.2023
Date of decision : 14.08.2024

NAME OF THE BUILDER		M/s Vatika Limited	
PROJECT NAME		"Vatika Trade Centre at Sector 81, Gurugram, Haryana"	
Sr. No.	Case No.	Case title	APPEARANCE
1.	CR/2225/2023	Sharan Suri V/s Vatika Limited	Rajni Narula and Rana Gurtej Singh (Advocates) and Ankur Berry (Advocate)
2.	CR/2370/2023	Saiba Suri V/s Vatika Limited	Rajni Narula and Rana Gurtej Singh (Advocates) and Ankur Berry (Advocate)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of both the 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 the 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 Centre" 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 Centre" at Sector 81, Gurugram, Haryana
Possession Clause: -	
<p><i>"D. The Developer has represented that it will complete the construction of the said complex and make it ready for occupation and possession in all respects, on or before expiry of 03 years from the date of execution of this agreement unless the construction of the same is stopped or delayed on account of factors beyond its control, as has been stipulated in the latter part of this agreement."</i></p> <p style="text-align: right;">(Emphasis supplied)</p>	

Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of builder buyer agreement	Due date of possession	Total Consideration/ Total Amount paid by the complainants in Rs.
CR/2225/2023 Sharan Suri V/s Vatika Limited	Reply received on 15.11.2023	322A on 3 rd floor tower A (page 18 of complaint)	22.07.2011 (page 15 of complaint)	22.07.2014 (Calculated to be three years from the date of execution of the builder buyer	TSC: - 24,37,500/- (as per BBA at page 18 of complaint and agreed to by



Date of Filing of complaint 08.06.2023				agreement)	respondent at page 16 of reply) AP: - 25,00,266/- (as per BBA at page 18 of the complaint)
CR/2370/2023 Saiba Suri V/s Vatika Limited Date of Filing of complaint 02.09.2022	Reply received on 06.06.2023	124 on 1 st floor Block E (page 39 of complaint) Earlier: 328 on 3 rd floor tower A (page 18 of complaint)	22.07.2011 (page 17 of complaint)	22.07.2014 (Calculated to be three years from the date of execution of the builder buyer agreement)	TSC: - 24,37,500/- (as per BBA at page 18 of complaint and agreed to by respondent at page 16 of reply) AP: - 25,00,266/- (as per BBA at page 18 of the 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.
2. Direct the respondent to pay the dues towards the promised assured return from October 2018 till the date of decision of the present complaint.
3. Direct the respondent to pay interest to the complainant on entire amount paid by the complainant from the date of payment made till the actual date of realization.
4. Direct the respondent to pay Rs.1,50,000/- on account of litigation charges.
5. Direct the respondent to place on record all statutory approvals and sanctions pertaining to the project.

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/2225/2023 case titled as Sharan Suri 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/2225/2023 case titled as Sharan Suri V/s Vatika Limited.

Sr.no.	Particulars	Details
1.	Name of the project	Vatika Trade Centre, 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.	Unit no.	322A, 3 rd floor, tower A (page 18 of complaint)
7.	Unit admeasuring	500 sq. ft. (Super area) (page 18 of complaint)
8.	Date of buyer agreement	22.07.2011 (page 15 of complaint)
9.	Addendum to the agreement (Assured returns)	22.07.2011 (page 36 of complaint)
10.	Total sale consideration	Rs.24,37,500/- (as per BBA at page 18 of complaint and agreed to by respondent at page 16 of reply)
11.	Amount paid by the complainant	Rs.25,00,266/- (as per BBA at page 18 of complaint)
12.	Occupation certificate	Not obtained
13.	Offer of possession	Not offered
14.	Assured return clause	<i>"This addendum forms an integral part of the builder buyer agreement dated 22.07.2011</i> <i>a) Till offer of possession Rs.71.50/- per sq. ft.</i> <i>b) After completion of the building Rs.65/- per sq. ft. "</i> (Addendum to BBA at page 36 of complaint)
15.	Assured return paid by the complainant	Rs.30,63,282/- (as alleged by respondent at page 06 of reply) (To be ascertained by complainant)
16.	Letter as to completion of construction sent by respondent to complainant	27.03.2018 (Page 50 of reply)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint and further by way of rejoinder dated 08.05.2024: -

- a) The the respondent through various advertisements published in newspaper, sign-boards and through various estate agents/ estate agent network, represented and lured the public at large by stating that it is in the process of developing the project "Vatika Trade Centre", a state of art commercial complex in Sector-81-A, Gurugram, Haryana. The respondent portrayed that all the necessary approvals have already been obtained by the company from the concerned regulatory authorities of DTCP and HUDA and shall deliver the alleged project to its prospective buyers within the committed period.
- b) That based on the rosy picture and false representations of the respondent, the complainant purchased a unit in question in the project 'Vatika Trade Centre' at Sector 81-A, Gurgaon, Haryana of the respondent. Accordingly, the builder buyer agreement dated 22.07.2011 was executed between the parties. By way of the said agreement, the complainant was allotted unit no. 322A, located on third floor, tower A, admeasuring 500 sq. ft. super area for total sale consideration of Rs.24,37,500/- calculated at the rate of Rs.4,875/- per sq. ft. along with other charges and therefore an amount of Rs. 25,00,266/- was paid in total to the respondent.
- c) That the respondent was to complete the construction of the said complex within a period of three years from the date of execution of the agreement. The respondent had further agreed to pay the complainant, a committed return for the period of construction at the rate of Rs.71.50 per sq. ft. per month and Rs. 65/- per sq. ft. per month after completion of the building. That such monthly return became due to the complainant from the date of the signing of the agreement and remains due till date, however the respondent abruptly in the month of September 2018 stopped paying the assured monthly returns to the complainant.

- d) That since 2011, the complainant has been regularly trying to communicate with the respondent regarding the update on status of the unit of the complainant in the said project of the respondent, however, despite making all the payments in time, the respondent has not bothered to apprise the complainant about the status of his unit and has failed to pay any heed to the visits or communications of the complainant.
- e) That the respondent is in no position to offer possession to the complainant even in the near future. The complainant had paid the entire amount at the time of execution of the agreement in anticipation of delivery of possession within the promised timelines.
- f) That despite an inordinate delay of more than 12 years, the respondent has failed to obtain the mandatory occupation certificate from the concerned department and has failed to complete the said project and handover the unit of the complainant in time.
- g) That as on date, the respondent has already extracted Rs. 25,00,266/- from the complainant and is further arbitrarily and illegally trying to extract even more. The said payment made by the complainant has been admitted by the respondent in the agreement.
- h) That the complainant wishes to withdraw from the said project of the respondent and is therefore not willing to take possession and when it will be offered by the respondent. It is further submitted that the complainant deserves refund of the amount if there is a delay in handing over the possession of the unit.
- C. Relief sought by the complainant: -**
9. The complainant has sought following relief(s):
- I. Direct the respondent to refund the entire paid-up amount along with interest at the prescribed rate.

- II. Direct the respondent to pay the dues towards the promised assured return from October 2018 till date of decision of the present complaint.
 - III. Direct the respondent to pay interest to the complainant on entire amount paid by the complainant from the date of payment made till the actual date of realization.
 - IV. Direct the respondent to pay Rs.1,50,000/- on account of litigation charges.
 - V. Direct the respondent to place on record all statutory approvals and sanctions pertaining to the project.
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 by way of its reply: -
- a) That the complainants are the investors and have got no locus standi or cause of action to file the present complaint, same being based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the BBA dated 27.07.2011.
 - b) That the present complaint is not maintainable or tenable in the eyes of the law as the reliefs being claimed by the complainants cannot be said to fall within the realm of jurisdiction of this Authority. Upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, the 'Assured Return' or any 'Committed Returns' on the deposit schemes have been banned. The respondent company having taken no registration from the SEBI board cannot run, operate, and continue an assured return scheme. Further, the enactment of BUDS read with the companies Act, 2013 and the Companies (Acceptance of Deposits) Rules,



2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being taken within the definition of 'Deposit.'

- c) That the assured return scheme proposed and floated by the respondent has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to the operation of law. As a matter of fact, the respondent duly paid an amount of Rs.30,63,282/- till September 2018.
- d) That the commercial unit of the complainants was not meant for physical possession as the said unit was only meant for leasing purposes (Clause 32 - Leasing Arrangements) (Clause 32.1 (d) 'Deemed Possession') for return of investment. Furthermore, the said commercial space shall be deemed to be legally possessed by the complainants. Hence, the unit booked by complainants is not meant for physical possession and rather for commercial gain only.
- e) That the complainants are seeking the relief of assured returns, and this Authority has no jurisdiction to entertain the present complaint as has been decided in the complaint case no. 175 of 2018, titled as "Sh. Bharam Singh and Ors. Vs. Venetian LDF Projects LLP" by the Authority itself.
- f) That the Hon'ble High Court of Punjab and Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took cognizance in respect of the Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and State of Haryana from taking coercive steps in criminal cases registered against company for seeking recovery against deposits till the next date of hearing.
- g) That the respondent promoter has always been devoted towards its customer and have over the years kept all its allottees updated regarding



amendments in law, judgments passed by Hon'ble High Courts and status of development activities in and around the project. Vide e-mail dated 31.10.2018, the respondent sent a communication to all its allottees qua the suspension of all return-based sales and further promised to bring the detailed information to all the investors of assured return-based projects. In furtherance to the said email, the respondent sent another e-mail dated 30.11.2018 further detailing therein the amendments in law regarding the SEBI Act, Bill No. 85 (Regarding the BUDS Act) and other statutory changes which led to stoppage of all the return based/ assured / committed return based sales. The e-mail communication of 29.02.2016 also confirmed to the allottees that the project was ready and available for leasing. That the issue regarding stoppage of assured returns/committed return and reconciliation of all accounts as of July 2019 was also communicated with all the allottees of the concerned project. Further the respondent intimated to all its allottees that in view of the legal changes and formation of new laws the amendment to BBA vide Addendum would be shared with all the allottees to safeguard their interest. Thereafter on 25.02.2020, the respondent issued communication to all its allottees regarding ongoing transaction and possible leasing of block A, B, D, E and F in the project "Vatika INXT City Centre."

- h) That complainants have instituted the present false and vexatious complaint against the respondent who has already fulfilled its obligation as defined under the BBA dated 27.07.2011 and issued completion of construction letter on 27.03.2018. Further for the fair adjudication of grievance as alleged by the complainants, detailed deliberation by leading the evidence as well as cross-examination is required, thus only



the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.

- i) That it is a matter of record and admitted by the complainants that the respondent duly paid the assured return to the complainants till September 2018. Further due to external circumstances which were not in control of the respondent, construction got deferred. That even though the respondent suffered from setback due to external circumstances, yet the respondent managed to complete the construction and duly issued letter of completion of construction on 27.03.2018.
- j) That even though the assured return scheme was stopped in the year 2018, yet the complainants chose to sit till 2023, i.e., till the filing of the present complaint. The delay in claiming the relief of recovery of dues on account of assured return non-payment, suffered from severe delay of 5 years. That the onus is upon the complainants to show that the alleged cause of action.

Further, by way of written submissions dated 01.08.2024, the respondent apprised the Authority as under:

- k) That the respondent issued communications to all its allottees from company id noreply@saleesforce.com and noreply@vaticagroup.com regarding committed return/assured returns suspension vide email dated 31.10.2018. The respondent issued second communication to all the allottees through email dated 30.11.2018 detailing therein the amendments in law regarding the SEBI Act, Bill No. 85 (regarding the BUDS Act) and other statutory changes which led to the stoppage of all return based/assured/ committed return based sale and respondent's proposal to reconcile all accounts as of July 2019. The respondent issued third email to all the allottees on 28.12.2018 regarding stoppage of



assured rentals and reconciliation of all dues by June 2019, and issued communication regarding addendum agreement containing revised clauses excluding assured return/ committed return clause alternatively giving option to shift to another project.

- l) That the respondent on 14.06.2019 issued update to all the allottees regarding reconciliation of accounts as of 30.06.2019 and issuance of addendum agreements for revising the clause of assured returns and finally stopping the future returns. The allottees who chose to cancel the allotment were also provided required document e-mails and were refunded investments. Thus, the respondent admittedly paid assured returns from the date of execution of the BBA till September, 2018 and at the time of stoppage of assured return in September 2018, the respondent timely provided detailed communication to all the allottees in the project, however the complainant chose to sit till filing of this complaint and now cannot be allowed the relief as prayed.
- m) That the objective of the Act of 2016 is to regulate the real estate sector in terms of the development of the project in accordance with the law and to provide relief of interest, compensation or refund to the allottees in case of violation of the provisions of the Act of 2016. The objective of the Act of 2016 is very clear to regulate the real estate sector and form balance amongst the promoter, allottee and real estate agent. However, the entire Act of 2016 nowhere provides any provision to regulate the commercial understanding regarding returns on investment or lease rentals between the builder and the buyer.
- n) That the Act of 2016 provides for three kinds of remedies available to the complainant in the case of any dispute arisen between a builder and buyer with respect to the development of the project. Such remedy is provided

under Section 18 of the RERA Act, 2016 for violation of any provision of the act. The said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for "compensation" for the loss occurred to the allottee, if any, However, nowhere in the said provision the Authority has been empowered with the jurisdiction to grant assured returns or any other arrangement between the parties with respect to investment and returns.

- o) That the true nature of the relief sought is kind of specific performance of the assured returns commitment. It is respectfully submitted that the relief of specific performance flows from the Specific Relief Act, 1963 and no part of the Real Estate (Regulation and Development) Act, 2016 clothes this Authority to exercise powers under Specific Relief Act, 1963. Thus, this Ld. Authority not being a civil court could not assert to itself the jurisdiction to grant specific performance of the "Assured Returns" which is a relief under the Specific Performance Act, 1963.
- p) That the assured returns were received by the allottee/complainant from the date of booking/allotment till 2018, when the complainant was duly intimated about stoppage of assured return. That in the event the refund is granted the Authority may duly note that such relief ought not cause prejudice to the respondent who has paid the said amounts of assured return and the said amount along with interest thereon ought to be deducted from the refundable amounts in case of refund.
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 maintainability of complaint on account of complainants being the investors.

17. The respondent took a stand that the complainant is an investor and not the consumer and therefore, he is not entitled to protection of the Act and thereby not entitled to file the complaint under Section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is the buyer, and has paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

18. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between the parties, it is crystal clear that the complainant is an allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottee being the investor is not entitled to protection of this Act also stands rejected.

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

19. The respondent-promoter has raised the contention that the construction of the unit of the complainant has been delayed due to some force majeure circumstances. However, the respondent has failed to give details as to what force majeure circumstances surfaced before it. Otherwise too, the respondent should have foreseen any such situations. Thus, the promoter respondent cannot be given any leniency based on aforesaid reason, as it is a well-settled principle that a person cannot take benefit of his own wrong.

F.III Pendency of petition before Hon'ble Punjab and Haryana High Court regarding assured return

20. The respondent has raised an objection that the Hon'ble High Court of Punjab & Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the Company for seeking recovery against deposits till the next date of hearing.

21. With respect to the aforesaid contention, the authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), whereby the Hon'ble Punjab and Haryana High Court has stated that-

"...there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification."

Thus, in view of the above, the authority has decided to proceed further with the present matter.

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.

G.II Direct the respondent to pay the dues towards the promised assured return from October 2018 till date of decision of the present complaint.

G.III Direct the respondent to pay interest to the complainant on entire amount paid by the complainant from the date of payment made till the actual date of realization.

22. On the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of other relief and the same being interconnected.
23. The complainant was allotted unit no. 322A, 3rd floor, tower A in the project "Vatika Trade Centre", Sector 83, Gurugram, Haryana of the respondent/builder. The builder buyer agreement was executed between the parties on 22.07.2011. The complainant had paid an amount of Rs.25,00,266/- against the sale consideration of Rs.24,37,500/-. The due date of possession had to be calculated from the date of execution of builder buyer agreement in view of "**Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018.**" Accordingly, the due date of possession comes out to be 22.07.2014. As per the said agreement, the respondent developer was under an obligation to further lease out the unit of the complainant post completion.
24. The complainant states that there were no signs of completion of the project. Therefore, he stopped making further payment and is seeking refund of amount paid by him to the respondent by way of filing the present complaint. The complainant herein, intends to withdraw from the project and is seeking refund of the paid-up amount as provided under Section 18(1) of the Act. Section 18(1) proviso reads as under.

"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. -

in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or 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)

25. 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.
26. The due date of possession was 22.07.2014 and occupation certificate of the buildings/towers where allotted unit of the complainant is situated is not yet received by the respondent. The allottee has become entitled to his right under Section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter has failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of the subject unit with interest at the prescribed rate.
27. Moreover, 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.**"*

28. 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 it in respect of the unit with interest at such rate as may be prescribed.
29. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed 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.

30. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, ibid 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 ease uniform practice in all the cases.
31. Consequently, as per the 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., 14.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2% i.e., 11%.
32. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
- Explanation. —For the purpose of this clause—*
- i. *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
 - ii. *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
33. 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 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.

34. That the respondent had already paid an amount of Rs.30,63,282/- on account of assured return upto September 2018 to the complainant-allottee in complaint case no. 225 of 2023 and Rs. 30,95,782/- in complaint case no. 2370 of 2023. The said amount shall be adjusted by the respondent while making the payment of refund amount in respective cases.

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. The amount of assured return paid shall be adjusted/deducted from the payable amount as specified in para no. 34 above.
 - iii. 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.



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36. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
37. Complaint stands disposed of.
38. File be consigned to registry.

Dated: 14.08.2024

Ashok Sangwan
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
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