

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

Complaint no.: 6578 of 2022

Date of filing: 04.10.2022

Order pronounced on: 26.07.2024

Dr. Dolly Chopra R/O: C 1205 Mahindra Aura	Complainant
Versus	
M/S Vatika Limited Regd. Office: Unit No. A-002, INXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next Gurugram-122012	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Rahul Bhardwaj (Advocate)	Complainant
Sh. Dhruv Dutt Sharma (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/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 allottees 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 and location of the project	"Vatika India Next Signature 2 Villas, Sector 82, Gurugram, Haryana
2.	Nature of the project	Group Housing
3.	Project area	182 acres
4.	DTCP license no.	113 of 2008 dated 01.06.2009
5.	RERA Registered/ not registered	Not registered
6.	Allotment letter	20.01.2009 [pg. 15 of complaint]
7.	Plot no.	255, block C admeasuring 240 sq. yards [pg. 25 of complaint]
8.	Date of execution of plot buyer's agreement	15.03.2011 [pg. 21 of complaint]
9.	Possession clause	<i>10 Handing over possession of the said plot to the allottee</i> <i>That the Promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said independent dwelling unit within a period of three years from the date of execution of this Agreement.</i>
10.	Due date of possession	15.03.2014



11.	Total sale consideration as per BBA	₹ 49,20,000/- [pg. 26 of complaint]
12.	Paid up amount	₹ 43,82,400/- [Alleged by the complainant, page 5 of complaint]
12.	Occupation certificate	Not obtained
13.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- a) That the complainant is an NRI who has availed the services of the respondent with the vision of settling in India and providing a healthy and comfortable lifestyle to the family members of the complainant.
- b) That the complainant is before this Hon'ble Authority to raise her grievances and concerns as she has invested her hard-earned money in booking a plot in the respondent's project, namely "Vatika India Next", a residential plotted colony situated at Sectors 81, 82, 82A, 83, 84 & 85 Gurgaon. Induced by the attractive advertisements, assurances, representations, and promises made by the respondent and, thus, believing the same to be correct and true, the complainant applied for the allotment of a plot in the said project of the respondent. *Vide* an allotment letter dated 20.01.2009, the respondent acknowledged the booking request made by the complainant and allotted a plot, c/240/255 (plot no. 255, block c,



admeasuring 240 sq. yds.) to the complainant for a total sale consideration of Rs. 53,64,000/-including all the charges.

- c) That pursuant to the allotment of the abovementioned plot, the respondent executed a plot buyer agreement dated 15.03.2011 with the complainant. The said agreement contained various one sided and arbitrary clauses, but yet the complainant could not negotiate on any of the clauses, since any disagreement or cancellation would have led to forfeiture of the earnest money. As a result, the complainant herein was only required to sign on the dotted line. It is submitted that prior to the execution of the plot buyer agreement the complainant had already paid an amount of Rs. 31,68,000/- despite the fact that the complainant had opted for construction linked payment plan, which in itself is a breach of terms and conditions mentioned in the plot buyer agreement.
- d) That the respondent has miserably failed to comply with the terms and conditions of the plot buyer agreement, even after receiving more than 70% of the total consideration well before the execution of the plot buyer agreement. It is further submitted that the complainant has diligently paid her dues as and when the demands for the payments were raised by the respondent and never showed any intention of not paying the remaining amount.
- e) That the respondent has mischievously and unilaterally, with no prior intimation to the allottees, revised its layout of the project and later informed the same to the complainant herein vide an email and a letter dated 20.04.2013; and it further



informed the complainant that the respondent has initiated the process for re-allotment due to the change in the master layout of the said project. The respondent had invited the complainant for the re-allotment of the plot, and the complainant was asked to be physically present on 07.05.2013 for the re-allotment process. However, it is pertinent to note that the respondent was well aware of the fact that the complainant is living overseas and it is not possible for her to come to India within a period of 7 days, and the same was informed to the respondent vide an email dated 30.04.2013.

- f) That the complainant continued to follow up with the respondent through various correspondences, including emails, letters, and telephone calls with the authorized representatives of the respondent, expressing her grievances with respect to the re-allotment of her plot; however, the respondent paid no heed to her grievances. It is important to note here that, in order to defraud the complainant and rob her of her hard-earned money, the respondent never had any correspondence with the complainant via email, but instead attempted to keep its correspondence via an outdated system, i.e., courier, despite knowing that the complainant lives outside of the country. It is further submitted that the complainant never received the courier on time and that every letter received by the complainant was well after its dispatch date.
- g) That after sending numerous letters to the respondent regarding the re-allotment of the plot, the complainant never received a complete answer from the respondent. The



complainant had also paid PLC for her plot, which was originally allotted to her. However, whenever the respondent sent any letter to the complainant for the re-allotment of the plot, no available options were shown to the complainant and the complainant was consistently forced to take any plot available while threatening her that the all the plots are already sold and if the complainant does not take the plot given to her by the respondent, she would lose out on having any plot in the project. The complainant has been running from pillar to post, seeking re-allotment of her plot, but to no avail. Rather, the complainant has only received false promises and she feels cheated by the malpractices employed by the respondent. The malpractices of the respondent have resulted in great financial and emotional loss for the complainant.

- h) That the respondent deliberately induced the complainant to part with her entire life's hard-earned money, which the complainant had saved to buy a home for her family. It is submitted that till date, after a period of 11 years, the complainant still has not received the possession of any plot despite being the first few allottees in the project of the respondent. Earlier this year, the husband of the complainant had visited the office of the respondent wherein he was informed that all the plots had been sold and that the respondent is willing to refund the entire amount paid by the complainant. However, the respondent is still advertising its plots through various channels for sale and the complainant

herein has also received such an advertisement through WhatsApp.

- i) That despite receiving substantial consideration from the complainant for the plot, the respondent has miserably failed to hand the over the possession of the plot till date. The complainant is seeking and entitled for the possession of the plot along with the delayed possession compensation, as per the provisions of the RERA Act, 2016, as per the terms and conditions of the builder buyer agreement executed by the developer, and even otherwise, is entitled to the same. Furthermore, the complainant herein reserves the right(s) to add/ supplement/ amend/ change/ alter any submission made in the complaint, as well as the right to produce additional document(s) or submissions as and when required or directed by this Hon'ble Authority.

C. Relief sought by the complainants.

4. The complainants have sought following relief:

- i. Direct the respondent to handover the possession of the plot originally allotted to the complainant i.e., C/255/240 or in alternate any plot having same admeasuring area of 240 sq. yds. Along with delayed possession compensation.
- ii. Direct the respondent to pay a sum of Rs. 1,50,000/- to the complainant towards litigation cost.

D. Reply by the respondent.

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

- a) That apparently, the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as

sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.

- b) That it has been categorically agreed between the parties 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 promoter contemplates to complete the development of the said township or the sector/part thereof where the said plot is proposed within a period of 3 years from the date of execution of this agreement unless there is a delay or there is a failure of the allottee to pay in time the price of the said plot.
- c) That That 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 :-
- i. Laying of GAIL pipe line and loss of plots in ROU alignment of GAIL corridor :
- Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project of the respondent.
 - After receipt of Acquisition notice from GAIL authorities to various farmers, Vatika had submitted a detailed representation to the Gail authorities and HUDA administration for re-routing of the GAIL pipe line as

Vatika Ltd. has received the license and plots were sold to third parties based on approved layout plan.

- Based on our representation, a letter no (GAIL/ND/Projects/CJPL) dated 29.05.2009 written by GAIL (India) Ltd to the Director Town & Country Planning, Haryana under which a request for issuance of NOC for re-routing of Chalnsa- Gurugram -Jhajjar-Hissar natural Gas pipeline of GAIL in sector 77, 78, 82, 82A, 86, 90, 93 & 95 in Gurugram.
- A meeting was held between gail and the administrator Huda on 07 July 2009 to discuss feasibility which was approved. GAIL requested the administrator, Huda, Gurugram to submit the feasibility to Director Country & Town Planning, Haryana.
- 05-Aug-2009, by District town planner to Gail India, proposed re-routing of gas pipe line should be through green belt/ corridor proposed master plan.
- Civil Writ Petition No 16532 of 2009 (O & M) date of decision 21st Dec'09- Petitioner M/S Shivam Infratech Pvt. Ltd (petitioner) Versus Union of India & others was also filed by Vatika. Gail has denied for the re-routing alternative proposal.
- Due to non-issuance of consent by state of Haryana, Gail without waiting further has executed & completed gas pipeline work as per original schedule, thus approx 90-100 plots effect due to this Layout of GAIL Pipeline.

- Further, considering the positive approach of HUDA authorities as they were seeking re-routing permission from GAIL, Vatika Limited applied for license pertaining to Tranquil Heights on 26.07.2010. Meanwhile, during the pendency of granting of project license, GAIL had granted permission for reducing ROU from 30 mtrs to 20 mtrs vide its letter dated 04.03.2011 that passes through the Project Land.
 - Although GAIL had reduced the ROU by 10 mtrs, but since they had denied the re-routing of the GAIL corridor, Vatika not only lost number of plots but had to re-design the Project Land that consumed money and time and hence the construction of Project get delayed
- ii. That the delay caused by the Haryana Development Urban Authority (HUDA) in acquisition of land for laying down sector roads for connecting the Project. The matter has been further embroiled in sundry litigations between HUDA and land-owners. 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. 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.

- iii. That 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. 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. Disruptions caused by unusually heavy rains in Gurgaon every year. 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. Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana. 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.
- d) That further as per clause 13 and 14 of the plot buyer's agreement, it had been agreed and accepted that in case of failure to deliver the possession by the Promoter due to non-approval of layout & other plans or if after all the plans are approved, the Promoter is not in a position to implement the same then the Promoter shall be at liberty to cancel the



Agreement and refund the amount paid by the Allottee with simple interest @ 9% p.a.

e) That it was due to the aforesaid reasons which were beyond the control of the respondent; the unit of the complainant became non-deliverable and thus as per the terms and conditions of the agreement, the respondent can only be held liable to refund the amount.

6. All other averments made in the complaint were denied in toto.

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 submission made by the parties.

E. Jurisdiction of the authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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)(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.

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.*** SCC Online SC 1044 decided on 11.11.2021 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under



Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to handover the possession of the plot originally allotted to the complainant i.e C/255/240 or in alternate any plot having same admeasuring area of 240 sq. yds. Along with delayed possession compensation.

14. That the complainant booked a plot no. 255 Block C, in the project of the respondent namely, "Vatika India Next" admeasuring super area of 240 sq. yds. for an agreed sale consideration of Rs. 49,20,000/- against which complainant has paid an amount of Rs.43,82,400/-. Till date no occupation certificate has been obtained by the respondent and no possession has been offered to the complainant.
15. Vide proceedings dated 06.10.2023 the counsel for the complainant stated that the respondent has already constructed a commercial project on the same land in which the residential plot was allotted to the complainant, hence, the original allotted residential plot does not exist now. Whereas, the counsel for the respondent stated that there is no such pleading regarding commercial construction on the

said unit as per the pleadings of the complainant in the complaint filed. Also, the complainant further states that there was change in the master layout plan of the said township and the respondent had offered them to come forward for re-allotment of some other plot as per page 54 to 58 of the complaint. The complainant is an NRI and living is offshore and the intimation regarding changes in the master layout plan and offer for choosing an alternate plot was not made through email, rather by post which is a letter dated 30.04.2013. The letter dated 30.04.2013 was received by the complainant on 08.05.2013 i.e. after the expiry of time given in letter dated 30.04.2013 which was up to 07.05.2013 and further on 29.05.2013, the complainant sent a letter in response to the letter dated 30.04.2013 in which it was mentioned that as per the discussion with the customer care of the respondent by the complainant it was told that re-allocation has been postponed till further notice. As per email dated 30.07.2013 of the respondent which is at page 57 it is mentioned that construction is in progress and is in full swing, hence they shall inform you when a certain milestone is achieved.

16. The counsel for the respondent stated that on 26.02.2014 there was an email sent by the respondent which is Annexure C5 at page 53 which states that they have 8 options available for re-allotment, and requested the complainant to please select the unit, for re-allotment of the plot. The counsel for the complainant states that they had sent reply on 01.03.2014 to the above said mail dated 26.02.2014 in which it was mentioned that "please find attached my reply and relevant documents in response to your letter No.ref#12-01-0069005-20/02/2014 the same shall be couriered to you on first

working day. The counsel for the respondent on 06.10.2023 stated at bar that there is no plot/unit available in this very project, hence they are ready to refund the deposited amount. Thereafter, the respondent was directed to file an affidavit regarding non availability of plot in the very same project.

17. Therefore on 12.03.2024 an affidavit / written submission was filed by the respondent stating that currently there is no plot available in the said project for sale with the respondent.
18. The authority observes that since the respondent cannot provide the plot that was promised or expected as per the buyer's agreement executed between the parties the only appropriate option left with the authority is to grant full refund to the complainant under the section 18(1) of the Act. The matter is covered under section 18(1) of the Act of 2016 the same 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, —

(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 of the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)



19. As per clause 10 of the agreement provides for handing over of possession and is reproduced below:

*10. Handing over possession of the said plot to the allottee
Handing over possession of the said Plot to the Allottee That the Promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said Township or the sector/ part thereof where the said Plot is proposed to be located, within a period of three years from the date of execution of this agreement unless there is a delay or there is a failure due to reasons beyond the control of the Promoter or due to failure of the Allottee to pay in time the price of the said Plot along with all other charges and dues in accordance with the Schedule of payments given in Annexure-II or as per the demands raised by the Promoter from time to time or any failure on the part of the Allottee to abide by any of the terms or conditions of this Agreement. The Promoter, upon completion of development work in the said Township and carving out, demarcation and measurement of plots shall offer in writing to the Allottee to take over physical possession of the said Plot in terms of this Agreement within thirty (30) days from the date of issue of such notice and the Promoter shall hand over vacant possession of the said Plot to the Allottee subject to the Allottee having complied with all the terms and conditions of this Agreement and is not in default under any of the provisions of this Agreement and has complied with all provisions, formalities, documentation etc. as may be prescribed by the Promoter in this regard.*

20. On consideration of the abovementioned clause, 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 10 of the agreement dated 15.03.2011, the possession of the subject unit was to be delivered within a period of three years from the date of execution of this agreement month. Accordingly, the due date of possession comes out to be 15.03.2014 and there is a delay of more than 8 years on the date of filing of complaint to handover the possession of the allotted unit.

21. **Admissibility of refund at prescribed rate of interest:** The complainants are seeking refund amount at the prescribed rate of interest on the amount already paid by them. However, allottees intends to withdraw from the project and is seeking refund of the amount paid by him 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. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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—

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 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;"

25. 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)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. It was observed as under:

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

26. 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 promoters are liable to the allottee, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.

27. The authority hereby directs the promoter to return the amount received by it i.e., Rs.43,82,400/- with interest at the rate of 11% (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*.

F.II Direct the respondent to pay a sum of Rs. 1,50,000/- to the complainant towards litigation cost.

28. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357 held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

G. 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 entire amount of Rs. 43,82,400/- paid by the complainant along with prescribed rate of interest @ 11% p.a. from the date of each payment till the actual date of refund of the deposited amount as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.
- 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.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.07.2024