



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	602 of 2022
Date of filing:	11.04.2022
Date of first hearing:	31.05.2022
Date of decision:	19.09.2024

Raghu Shivas Gupta S/o Sh. Sohan Lal Gupta
R/o 47-D, Kamla Nagar, Second floor,
New Delhi-110007

....COMPLAINANT

VERSUS

Vatika Limited.
Vatika Triangle, 4th floor, Sushant Lok Phase-I
Block-A, MG Road, Gurugram-122002

....RESPONDENT

CORAM:

Parneet Singh Sachdev	Chairman
Nadim Akhtar	Member
Dr.GeetaRathee Singh	Member

Present: - Mr. Sanjay Chhabra Counsel for the complainant through VC.
Mr. Tarun Dhingra, Counsel for the respondent through VC.

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ORDER(PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint was filed by the complainant on 11.04.2022 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	Commercial Building "Vatika Mindscapes", Sector-27-B, Faridabad
2.	RERA registered/not registered	Registered bearing no. 196 of 2017 dated 15.09.2017
3.	DTCP License no.	1133 of 2006.
	Licensed Area	8.79 acres
4.	Unit no.	601-A, Tower-D

5	Unit area	265.87 sq. ft.
6.	Date of builder buyer agreement executed	08.12.2020
7.	Due date of offer of possession	Not available.
8.	Possession clause	Not available (not clearly specified in BBA)
9.	Total sale consideration As per page 5 of agreement	₹ 43,12,000/-
10.	Amount paid by complainant as per page 59 of complaint.	₹ 45,29,640/-
11.	Offer of possession	Not given.
12.	Occupation certificate	14.10.2016.

B. FACTS OF THE COMPLAINT

3. Complainant booked a commercial unit bearing unit no. 601A, measuring 265.87 sq. ft. in the block-D on 6th floor of the project namely, 'Vatika Mindscapes' located at Sector-27-B, Faridabad being promoted by the respondent at agreed sale consideration price of ₹43,12,000/- by the virtue of an agreement of sale dated 08.12.2020. Copy of said agreement is annexed as Annexure-2.
4. That complainant in total had paid a sum of Rs.45,29,640/-, i.e. Rs 44,83,050/- on 28.06.2017, Rs 22,990/- on 14.07.2017 and Rs 23,600/- on 06.06.2019. As per the Builder Buyer Agreement the construction was to be



completed and ownership was to be transferred in favour of the complainant within 48 months from the date of executing the Agreement.

5. That complainant was assured in the Builder Buyer Agreement (copy whereof is not available with the complainant having been cancelled on execution of the Agreement for Sale), the assured return will be given @Rs.71.50/- per sq. ft. till such time the possession of the unit is delivered/conveyance deed is executed in favour of the complainant.
6. That the complainant had paid full down payment towards the unit allotted and was thus eligible for committed/assured returns. Complainant had received Assured Returns upto September/October 2018. Thereafter, the respondent has defaulted in making payments to the complainant. Further, the possession of the unit has not been offered till date nor is the Conveyance Deed executed in favour of the complainant to assign a marketable right, title and interest in the unit in favour of the complainant.
7. That the complainant has made several attempts to ascertain the status of construction at the site, however, no satisfactory response was given by the respondent. The tower wherein the unit of the complainant is situated is not completed. The respondent has also failed to execute Conveyance Deed in favour of the complainant. That the complainant herein is constraint and left with no option but to file the present complaint to recover the committed



returns since October 2018 and for securing ownership of the unit by execution of conveyance deed of the unit in favour of the complainant; alternatively for cancellation of the unit and refund of the invested amount and till such time the invested amount is repaid, the Respondent to pay the committed returns.

C. RELIEFS SOUGHT

8. Complainant in his complaint has sought following relief:

- i. Direct the Respondent to pay Committed Returns from October 2018 till such time ownership rights in the unit are transferred in favour of the complainant together with possession of the unit and/or the same is leased out by the Respondent; and
- ii. Direct the respondent to execute the conveyance deed of the unit No.601A D Block, Vatika Mindscapes, Sector-27 B, Village Sarai Khwaja, District Faridabad in favour of the Complainant and simultaneously hand over the possession of the unit to the complainant in time bound manner and/or lease out the property; Alternatively; and
- iii. Direct the respondent to refund the invested amount to the complainant along with assured return starting from October 2018 till such time the principal amount invested by the complainant is refunded in entirety; and



- iv. Direct the Respondent to compensate the Complainant in a sum of Rs.5,00,000/- towards loss of opportunity, mental pain, agony and harassment;
- v. Pending final decision on the complaint, the Respondent be directed to secure the amount due and payable to the Complainant by furnishing a solvent security in terms of the Judgment passed by the Hon'ble Supreme Court of India in the case of "Rahul S. Shah Vs Jinendra Kumar Gandhi & Ors. "2021. As on the date of filing of the present complaint the amount due to the Complainant towards assured return together with the principal amount approximately Rs.50,00,000/-.
- vi. Direct the Respondent to pay a sum of Rs.1,00,000/- towards cost of this litigation.
- vii. Pass any other order(s) as this Hon'ble Authority may deem just and proper in the facts and circumstances of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 04.08.2022 pleading therein:

9. Respondent has challenged the maintainability of the complaint on following grounds:-



- a. That the complainant has neither any cause of action nor any locus standi to maintain the present complaint against Respondent, especially when the Complainants are actually seeking the relief of assured returns which amounts to amendment/ modification/ re-writing of the terms of the concluded and binding inter-se agreements entered into between the complainants and respondent. Whereas no such terms/conditions are in the agreement dated 08.12.2020.
- b. That the instant complaint is liable to be dismissed being barred by limitation.
- c. That this Hon'ble Authority cannot adjudicate upon the matter where the prima facie prayers are in the shape of modification or rewriting of the clauses of the agreement. In the captioned complaint, the complainant is seeking additional benefits beyond the agreement. The complainant are virtually inviting this Hon'ble Authority to assume the powers conferred on the fora under the Criminal Court / or under the Civil Court. As the pleas, regarding fraud have been raised. Therefore, ex-facie, this Hon'ble Authority does not have the jurisdiction to consider the present complaint or pass orders on the relief claimed.



10. That the project of respondent consists of total 4 towers, i.e., Tower A, B, C and D. That out of these four towers, the respondent Company has already received the Occupation certificate for Tower A, B and D and these towers are fully operational.
11. Commercial space bearing unit no. 601-A in Tower D in the abovesaid Commercial Project "VATIKA MINDSCAPE", was allocated to the complainant. Subsequently, a Builder Buyer Agreement was executed between the parties in respect of commercial space bearing unit no. 601-A in Tower D in the abovesaid Commercial Project "VATIKA MINDSCAPE".
12. That on 01.05.2017, Real Estate (Regulation & Development) Act, 2016 came into force and on the basis of the said Act, the Haryana Government has notified the Haryana Real Estate (Regulation & Development) Rules, 2017 on 28.07.2017. However, the Competent Authority vide Memo No. ZP-203/SD(DK)/2016/22138 dated 14.10.2016 had issued Occupancy Certificate in respect of tower A,B,& D for the project namely "VATIKA MINDSCAPE". Further as per Builder Buyer Agreement dated 08.12.2020 parties are bound by the terms and conditions, whereas complainant claiming relief of assured returns, however no such condition with regard to assured return is there in agreement dated 08.12.2020.



13. Further with regard to prayer of refund, since respondent had already received occupancy certificate for the unit in question, the refund in no manner be allowed by the Authority.
14. That as on date, the alleged violation of "delay in handing over possession" does not constitute a contravention of the RERA Act and the rules & regulations made thereunder, as the Haryana RERA, Panchkula has granted RERA registration to the abovesaid Commercial Project "VATIKA MINDSCAPE", and occupancy certificate had already been granted by the competent Authority.
15. That the delay in handing over the apartment/unit is not on the part of respondent company rather the complainant has failed to comply with the terms and conditions of agreement. The present complaint has been filed only to extract money and to avoid the agreed terms and conditions.
16. That the complainant is a speculative buyer, who has invested in the project for monetary returns and now since the Real Estate Market is showing downward trend, complainant cannot take it as a weapon by way of taking undue advantage of provisions of RERA Act 2016.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

17. Learned counsel for complainant has submitted that respondent has not handed over possession of the booked unit till date nor had made any discussion in respect of lease rental, which is the essence of terms and condition of builder buyer agreement. He further stated that respondent vide order dated 29.11.2023 was asked to clarify the status of possession and conveyance deed of unit in question but no statement/status has been made in this regard by the respondent. Further, he submitted that an affidavit in compliance of order dated 29.11.2023 had already been filed in registry on 16.01.2024 which has been duly taken on record in order dated 08.02.2024. He requested that relief of refund be passed in favour of complainant as no date/time in particular has been specified for handing over of possession and execution of conveyance deed. Without prejudice to interest of the complainant, it is averred that complainant is not desirous of waiting endlessly for handing over of possession of unit and is therefore, praying for relief of refund of paid amount along with interest by giving up claim of possession and payment of assured returns. Submissions in respect of relief sought has also been clarified in written submissions filed in registry on 04.05.2023.



18. At the outset, learned counsel for complainant stated that complainant does not want to continue with the project and as such he is pressing for relief of refund as prayed in the complaint.

19. Learned counsel for respondent argued that as the complainant is an investor in the project of respondent, relation of complainant and respondent is based on a commercial transaction between the parties in the form of leasing arrangement. The agreement/allotment is in the form of lease agreement wherein the respondent was duty bound to provide leasing assistance to complainant. There is no clause in agreement pertaining to assured returns, but the same has been sought by complainant without specifying basis for it. In the present case, no date for handing over of possession has been defined in the builder buyer agreement and it is because of the fact that the complainant has invested for monetary gains so there is no loss being caused to the complainant even if possession is not handed over within reasonable time. Further, occupation certificate for the unit in question has already been received on 14.10.2016. Copy of occupation certificate has been placed on record in registry on 10.09.2024. He requested that prayer of refund should not be allowed as it may jeopardise the project.



F. ISSUES FOR ADJUDICATION:

20. Whether complainant is entitled to refund of the paid amount along with interest?

G. OBSERVATIONS OF THE AUTHORITY:

21. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes as follows:

- i. With respect to the objection of the respondent that the respondent and complainant herein does not fall within the definition of promoter and allottee respectively, provided in the RERA Act,2016 and their relationship is a contractual relationship which does not fall within purview of RERA Act,2016, Authority observes that, firstly, it needs to be examined whether respondent (Vatika Ltd) falls under the definition of promoter provided in RERA Act, 2016 and whether there exists a relationship of allottee and promoter between the complainant and respondent. For this purpose, definition of “promoter” under section 2(zk) needs to be perused. Definition is provided below:



(zk) "promoter" means,—

(i) *a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

(ii) *a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*

(iii) *any development authority or any other public body in respect of allottees of—*

(a) *buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*

(b) *plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*

(iv) *an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*

(v) *any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or*

(vi) *such other person who constructs any building or apartment for sale to the general public.*



Plain reading of the definition given under section 2(zk) makes it clear that any person who develops land into a project and constructs apartments/floors/structures for selling it to public is a promoter in respect of allottees of those structures. Here, respondent is a developer who is constructing and selling the apartments to public. In furtherance of said process accepted the registration/booking amount from complainant on 28.06.2017 towards unit located in its project-‘Vatika Mindscapes, Sector-27, Faridabad. Hence, respondent-Vatika is duly covered under the definition of promoter under section 2(zk).

ii. In the present matter complainant was allotted unit no. 601-A, of an area measuring 265.87 sq ft in the respondent’s project mentioned in above paragraph vide agreement for sale dated 08.12.2020, therefore falls within the ambit of definition of allottee. Further, the unit was allotted by the respondent to the complainant-allottee for the basic sale consideration of Rs 43,12,000/-, and as per S.2(d) of the RERA Act, "allottee" is defined as follows:

(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:

Further, as per Section 2(zj) & (zn) of the RERA Act,2016. "project" & "real estate project" are defined respectively as follows:

(zj) "project" means the real estate project as defined in clause (zn):

(zn) "real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works. all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

A conjoint reading of the above sections shows that respondent-Vatika is a promoter in respect of allottees of units sold by it in its real estate project-Vatika Mindscapes at Sector-27, Faridabad and therefore there exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainant and respondent is established and the issues/transaction pertains to the real estate project developed by respondent, hence, provisions of RERA Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter. Furthermore, the preamble of the Real Estate (Regulation and Development) Act, 2016 provides as under.



An Act to establish the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions, directions or orders of the real estate regulatory authority and the adjudicating officer and for matters connected therewith or incidental thereto;

The Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e., allottee) and seller (i.e., promoter) of real estate, i.e., plot, apartment or building, as the case may be and matters incidental thereto. Thus, the issues involved in complaint and relief sought are well within the ambit of the Authority. Further, Section 79 of RERA Act exclusively bars the jurisdiction of civil courts with respect to any matter which is the subject matter (real estate transaction) under the Act and falls within the purview of the Authority.

iii. The respondent has taken a stand that the complainant is a speculative buyer who has invested in the project for monetary returns and taking undue advantage of RERA Act 2016 as a weapon during the present downside conditions of the real estate market and therefore not entitled to the protection of the Act of 2016. In this regard, Authority observes that “any aggrieved person” can file a complaint against a promoter if the promoter



contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainant is an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, already reproduced in aforesaid paragraph. In view of the aforementioned definition of "allottee" as well as upon careful perusal of builder buyer agreement dated 08.12.2020, it is clear that complainant is an "allottee" as unit bearing no. 601-A in the real estate project "Vatika Mindscape", Faridabad was allotted to him by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be any party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s SrushtiSangam Developers Ltd.**



VsSarvapriya Leasing (P)Ltd. And Anr. had also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of promoter that allottee being investor is not entitled to protection of this Act also stands rejected.

iv. Respondent has also taken objection that complaint is grossly barred by limitation. In this regard Authority places reliance upon the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** where it has been held that Indian Limitation Act deals with applicability to courts and not tribunals. Further, RERA Act is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act, 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not a Court. The promoter has till date failed to fulfil its obligations, which herein this case is actual handing over of possession of apartment because of which the cause of action is re-occurring.

v. On merits, complainant in this case had paid booking amount of Rs 44,83,050/- on 28.06.2017. Said fact duly find mention in agreement to sale dated 08.12.2020 in clause 'F' of agreement. Further, an amount of Rs

22,990/- was paid on 14.07.2017 and Rs 23,600/- was paid on 06.06.2019 by complainant to respondent. Thereafter, agreement for sale of unit no. 601-A, tower-D was executed between the parties on 08.12.2020. It is the stand of complainant that respondent has not handed over actual possession of unit nor made any effort for execution of conveyance deed till date. Keeping in view such negligent conduct of respondent, complainant wants to withdraw from the project by taking refund of paid amount with interest. On the other hand, it is the argument of respondent that there is no specific clause for handing over of possession of unit in the builder buyer agreement. Further, occupation certificate for the unit in question already stands received on 14.10.2016.

vi. Authority observes that series of event in this case is that respondent was in receipt of occupation certificate dated 14.10.2016 prior to booking/application by complainant. Thereafter, complainant paid booking amount of Rs 44,83,050/- on 28.06.2017 and in addition to it, an amount of Rs 22,990/- was paid on 14.07.2017 and Rs 23,600/- was further paid on 06.06.2019. In total, respondent was in receipt of Rs 45,29,640/- by June, 2019. Till said date, no unit in specific was allotted to complainant. Henceforth, agreement to sale was executed between the parties on 08.12.2020. In said agreement, particulars of allotted unit bearing no. 601-A,



block-D alongwith basic sale price of Rs 43,12,000/- in respondent's project-'Mindscapes' was specified by the respondent. As on date, said agreement subsists the relation of allottee and promoter between the complainant and respondent. Thus, terms and conditions of agreement are binding upon the parties and both parties remain bound to perform their acts/obligations accordingly.

vii. At this stage, it is important to examine the relevant clauses of the agreement in order to adjudicate the issues involved in this case. Said clauses are reproduced below for reference:-

"7.2 Procedure for taking possession of Commercial Space/Unit - Subject to Clause 18 the Promoter, upon obtaining the occupation certificate or part thereof of building blocks in respect of I.T. Park shall offer in writing the possession of the Unit within 3 (three) months from the date of above approval, to the Allottee to take over the possession of his/her Commercial Space/Unit for use in terms of this Agreement within 15 days of issue of the notice as aforesaid, subject to such Allottee having complied with all the terms and conditions of this Agreement including payment of the Total Price and applicable taxes as per demands raised by the Promoter as per terms of this Agreement;

12. CONVEYANCE OF THE SAID COMMERCIAL SPACE/UNIT

The Promoter, on receipt of Total Price and applicable taxes of Commercial Space/Unit and GST as mentioned under Schedule C for Commercial Space/Unit and Rs. 75000/- (subject to change) as administrative charges and other ancillary charges, shall execute a

conveyance deed preferably within 3 (three) months but not later than 6 (six) months from possession and convey the title of the Unit for which possession is granted to the Allottee, as agreed between the Parties, subject to Clause 18 of this Agreement and subsequent lease agreement;

18. LEASING ASSISTANCE

*18.1. The Allottee hereby specifically authorizes the Promoter or its nominated subsidiary to have the authority to negotiate and finalize the leasing in respect of the said Commercial Space/Unit, individually or in combination with other adjoining commercial spaces/units (having Super area 500.00 sq ft), with any suitable tenant/s, at the prevailing market rates and conditions as may be negotiated by the Promoter or its nominated subsidiary as the case may be and to execute the lease with the said intending lessee in its own name or on behalf of the Allottee, for which the Allottee has vested the Promoter or its nominated subsidiary with all the powers and rights as under the sign by the Allottee and which shall not be questioned by the Allottee subsequently. The Allottee has clearly understood the general risks and costs involved in giving any premises on lease to third parties and has undertaken to bear the said risks and costs & expenses, including any brokerage to be paid in respect of such lease, exclusively without any liability whatsoever on the part of the Promoter or its nominated subsidiary. **The Allottee shall sign a separate Agreement for lease, earlier to the date of completion/possession or at the time of possession with the Promoter or its nominee.**"*

viii. Perusal of aforesaid clauses establishes the line of action which was casted upon respondent to be followed in case of completion of project and handing over possession to allottee. By virtue of clause 7.2, the respondent was bound to issue offer of possession within 3 months of receipt of



occupation certificate. In the present case, fact is that occupation certificate was received by respondent on 14.10.2016, even prior to agreement. However, in compliance of clause 7.2, the respondent should have offered possession to complainant latest by 08.03.2021, i.e, 3 months from date of agreement. Respondent was well aware of the clause of handing over of possession as it was incorporated by itself only in the agreement. Accordingly, deemed date of possession in present scenario works out to 08.03.2021. But respondent till date has neither issued offer letter to complainant and never requested/proposed to complainant to take over physical possession. In case, plea of respondent that duty of handing over of physical possession was never casted upon respondent is admitted, then clause 12 of agreement comes into picture vide which the respondent was bound to get the conveyance deed executed in favour of complainant within 3 months of receipt of total paid amount. Admittedly, complainant has already paid an amount of Rs 45,29,640/- by June, 2019, even prior to agreement against the sale consideration of Rs 43,12,000/-. Respondent in its written statement has not disputed the fact of paid amount nor referred to any demand letters in order to prove that there is any amount which still remains payable on part of complainant. Without any document on record rebutting receipt of total paid amount, the



respondent was bound to execute conveyance deed till 08.03.2021, i.e., 3 months of agreement as paid amount in total was received by respondent in June, 2019. However, respondent did not make any effort for execution of conveyance deed till filing of this complaint and even thereafter till today's final hearing. At the time of filing reply to this case, respondent was well aware of fact that an allottee of completed tower against which occupation certificate has already been received approached this Authority for mainly relief of possession alongwith conveyance deed and for refund in alternative. Respondent should have communicated/approached to the complainant to complete the paper formality/necessary formalities for getting conveyance deed executed. Respondent chose to remain silent and did not act accordingly without any reasonable justification.

ix. Since the agreement dated 08.12.2020, provides for leasing assistance, it is relevant to refer clause 18 wherein it is clearly provided that complainant shall sign separate agreement for lease. No such agreement executed has been placed on record by respondent to show that leasing assistance was provided to complainant. Respondent was in receipt of total paid amount since June, 2019 against allotment of a unit and in fact, complainant invested into project of respondent for getting possession of apartment which implies that allotment of unit was the basis of relationship



between the complainant and promoter. It was not the case that the complainant opted to invest his amount in open market without having interest in tangible property, never wanted to perfect the title of apartment and only wanted to have the lease rentals for infinite years. Furthermore, the right to lease out the property could have been delegated only once a person has become an owner of the property for which it is a pre-requisite that the allottee gets a perfect title in the property. However, it is a matter of fact that the title was never perfected as no conveyance deed has been executed.

x. Further Authority observes that the complainant had purchased a showroom space-commercial unit and definitely commercial spaces are never being purchased for residential purpose, it is always for purpose of monetary gains in future. For the purpose of monetary gains, equation exists between the parties in form of leasing assistance/lease rentals. Complainant had filed the complaint in year 2022 for seeking possession with execution of conveyance deed and in alternate, refund of paid amount. Complainant herein is aggrieved by arbitrary acts of respondent first in not handing over possession of the unit till date and secondly, in not executing the conveyance deed despite receipt of total paid amount in June, 2019 and receipt of occupation certificate in year 2016. Every allottee has presumption that respondent shall complete the process of handing over and



exertion of conveyance deed within reasonable time of 2-3 years. Complainant who has already paid whole of total sale consideration in the year 2019 got stuck with respondent without any definite timelines of delivery of possession and execution of conveyance deed w.r.t. booked unit. The position of complainant even got more worsen by the fact that respondent was in receipt of occupation certificate in year 2016, much before the agreement dated 08.12.2020 so there was no explanation available with respondent to not deliver possession and execute conveyance deed or to delay said process till date. If we look at the intent of allottee-complainant, he has chosen to invest in a tangible property-showroom space in an commercial project wherein a license is granted by DTCP under the Haryana Development and Regulation of Urban Areas Act,1975, not in any open share market where there is no definite/precise mode of transaction to be carried out. Investment in commercial property does not imply that complainant-allottees never ever wanted to own that property by perfecting the title in their name. Said transaction cannot be said to be an open-ended transaction for the mere reason that respondent is acting in an arbitrary manner without following terms of agreement as well as provisions of RERA Act, 2016. No justification is provided by respondent in its written as well as oral submissions as to what was actually been stopping them from



year 2019 to get the conveyance deed executed in favour of complainant. Complainant who has already waited for last 5 years to have possession with conveyance deed does not want to wait any further as he has lost his confidence upon the respondent, who had made him to wait such long without any legitimate ground. Now, complainant is rightly under apprehension that his title of property will never be perfected. Respondent's act of not delivering the unit and paying heed to request of complainant is the sole reason for withdrawing out of the project. Respondent is not able to prove its willingness to handover possession of unit alongwith execution of conveyance deed despite receipt of total paid amount since June, 2019. Hence, the complainant is not allowed to be proceeded further in any direction, not even withdrawing out of project. In this scenario, RERA Act, 2016 plays an effective role in safeguarding the interest of allottees. Respondent cannot take benefit of his wrong (by non-delivery of possession of the unit till date). By virtue of Section 18 of RERA Act,2016, the respondent is obligated to refund the paid amount with interest to the allottee on its failure to complete or non-delivery of possession of unit in accordance with agreement or any other date specified therein. Further, it has been argued by respondent that complainant is seeking refund for the reason that real estate market has gone downwards. As a matter of fact, post year 2022



the prices in real estate market are seeing an upward slide. So, this contention of respondent does not hold any merit.

xi. Besides this, complainant can exercise his right to withdraw from the project by virtue of Clause 11 of the agreement, which is as under:-

11. EVENTS OF DEFAULTS AND CONSEQUENCES

11.1 Subject to the "force majeure Court/Tribunals/NGT orders, Government policy/ guidelines, decisions, affecting the performance of the obligation of the Parties under this Agreement, the Promoter shall be considered under a condition of Default, in the following events:

i. Promoter fails to provide possession of the Commercial Space/Unit to the Allottee in the manner given in Clause 18 of the present Agreement, within the time period specified in Clause 7.1 or fails to complete the Project within the stipulated time disclosed at the time of registration of the Project with the Authority:

ii. Discontinuance of the Promoter's business as a Promoter on account of suspension or revocation of his registration under the provisions of the Act or the rules or regulations made there under.

11.2 In case of Default by Promoter under the conditions listed above, Allottee is entitled to the following:

i. Stop making further payments to Promoter as demanded by the Promoter. If the Allottee stops making payments, the Promoter shall correct the situation by completing the construction/ development milestones and only thereafter the Allottee be required to make the next payment without any interest for the period of such delay; or

ii. The Allottee shall have the option of terminating the Agreement in which case the Promoter shall be liable to refund the entire money received by the Promoter from the Allottee towards the purchase of the



Commercial Space/Unit, along with interest at the rate prescribed in the Rules within and from the balance available in the account specifically opened for the Project ninety (90) days of receiving the termination notice;

xii. Aforesaid clause clearly provides, that in case respondent is at fault of not delivering the possession as per Clause 7.2 of agreement, the complainant shall have the option of terminating the agreement and respondent is bound to refund the entire money alongwith interest within 90 days of receiving the termination notice. In essence, if we look at the pleadings and relief sought of complaint, it contemplate the duty of complainant to deliver termination notice. Respondent was well within the knowledge of grievances raised by complainant by way of present complaint. Therefore, the respondent at this stage when he is in continuous default since year the 2019/2020 by not acting in accordance with agreement and RERA Act, 2016 cannot deny the right of complainant to withdraw from the project. Keeping in view the conduct of the respondent as discussed in aforesaid paragraphs, it does not lie in the mouth of respondent that complainant cannot be allowed refund of paid amount after receipt of occupation certificate. Hence, it is concluded that respondent has miserably failed in completing the process of handing over the possession and



execution of Conveyance Deed of the unit in favour of the complainant from year 2019/2020 to till date despite receipt of occupation certificate dated 14.10.2016.

xiii. Moreover, respondent even today has not committed any specific timeline for delivery of possession and conveyance deed. In these circumstances, Authority cannot force the complainant to wait any further for possession/conveyance deed of unit. Further, Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**" has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per agreed state. Para 25 of ibid judgement is reproduced below:

"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."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

xiv. In view of aforesaid observations, Authority finds it to be fit case for allowing refund in favour of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

xv. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(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;

xvi. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 19.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

xvii. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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".

xviii. Thus, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of Rs 45,29,640/- along with interest at the rate prescribed in Rule 15 of



Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10% (9.10% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 11.10% till the date of this order and total amount works out to Rs 36,32,803/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 19.09.2024
1.	44,83,050	28.06.2017	36,00,577/-
2.	22,990	14.07.2017	18,353/-
3.	23,600	06.06.2019	13,873/-
4.	Total=45,29,640/-		36,32,803/-
5.	Total Payable to complainant	4529640+36,32,803=	81,62,443/-

xix. Regarding relief of assured return, it is observed that complainant wants to withdraw from the project and wants paid money to be refunded back along with interest. As a matter of fact, Id. Counsel for complainant clarified at the time of arguments that he is not pressing upon relief of assured return and possession of unit. This clarification has also been provided by complainant in its written submissions filed in registry on 04.05.2023. Therefore, relief of assured return/lease rental is hereby vacated.



xx. The complainant is seeking cost of litigation and compensation on account of mental harassment and agony. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. &ors." (supra,), has 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 learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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. Therefore, the complainant is free to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.

G. DIRECTIONS OF THE AUTHORITY

22. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire paid amount of Rs 45,29,640/- with interest of Rs 36,32,803/- to the complainant. It is



further clarified that respondent will remain liable to pay the interest to the complainant till the actual realization of the above said amounts.

(ii) A period of 90 days is given to the respondent to comply with the directions of this Authority given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017, failing which, legal consequences would follow against the respondent.

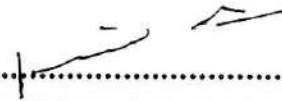
23. **Disposed of.** File be consigned to the record room after uploading of the order on the website of the Authority.



.....
DR .GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]



.....
PARNEET SINGH SACHDEV
[CHAIRMAN]